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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Union County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODERICK POPE,

PETITIONER

APPELLATE CASE NO. 2012-207226

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Roderick Pope, Appellant.

Appellate Case No. 2012-207226

Appeal From Union County
John C. Hayes, III, Circuit Court Judge

Opinion No. 5261
Heard June 2, 2014 – Filed August 20, 2014

AFFIRMED

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Attorney General Mark Reynolds Farthing, both of
Columbia, for Respondent.

SHORT, J.: Roderick Pope appeals his conviction for possession with intent to distribute crack cocaine. Pope argues the trial court erred in: (1) refusing to suppress the evidence seized during the search of the vehicle when law enforcement did not have reasonable suspicion to justify the traffic stop; (2) refusing to suppress the evidence seized during the search of the vehicle because law enforcement did not have probable cause to believe the vehicle contained evidence of criminal activity and no exigent circumstances existed to justify the warrantless search; and (3) finding a sufficient chain of custody existed to admit

the evidence seized during the search of the vehicle and the drug evidence found in the police car. We affirm.

FACTS

Officers arrested Vincent Harris at approximately 3:30 p.m. on June 24, 2010, after he sold crack cocaine to a confidential informant.¹ In an attempt to get out of jail on bond, Harris agreed to arrange a drug transaction with his supplier, Pope.² Harris called Pope to arrange a deal that same day for a half ounce of crack cocaine for six hundred dollars.³ Harris told Union County Sheriff's Sergeant James Johnson that Pope would be traveling on Highway 176 from Spartanburg into Union, and he would be driving a black Ford Expedition. Sergeant Johnson relayed the information about the deal and the vehicle to officers who set up at various locations along Highway 176. Harris called Pope to check on his location and told Sergeant Johnson that Pope had just passed the Lighthouse Fish Camp. Sergeant Johnson relayed Pope's location to the officers on the highway, and Captain James McNeil said he had a visual sighting on an Expedition at the Lighthouse Fish Camp. At approximately 6 p.m., Sheriff David Taylor saw the vehicle; he activated his blue lights; the Expedition pulled over; and Lieutenant John Sherfield and Captain McNeil pulled in behind the vehicles.

Three men were in the vehicle: Pope, Randy Crosby, and Lashad Brewton. Brewton was driving; Pope was in the front passenger seat; and Crosby was in the right rear seat. The vehicle was registered to Pope's wife, but Pope's license was suspended. Brewton stopped in the median instead of the right shoulder of the highway and took about a minute to pull over. As Lieutenant Sherfield approached the vehicle, he observed Crosby turn around, look back at him, bend down, and sit back up. After the officers removed the three men from the vehicle and handcuffed them, Lieutenant Sherfield searched the vehicle. Underneath the seat where Crosby had been sitting, he found a digital scale with white residue. He tested the residue with a field test kit and determined it was cocaine. All three men

¹ The confidential informant knew Harris as "Vince."

² Harris testified his bond was reduced to \$2,000 in exchange for making the calls to Pope. He later pleaded guilty to distribution of crack cocaine and was sentenced to three years' imprisonment. Harris was facing ten to thirty years' imprisonment if he had not offered to help the police.

³ A half ounce equals fourteen grams.

were arrested for possession of cocaine. The officers did not find drugs on the men when they searched them on the side of the road. However, Lieutenant Sherfield found two hundred eighty dollars and a cell phone on Brewton, and five hundred seventy dollars on Crosby. The officers also found a cell phone on Pope that had fourteen incoming calls and five outgoing calls on that day to a person listed as "Vince." After arriving at the jail, Corporal Russell Vinson searched the vehicle he used to transport Brewton and Crosby.⁴ In the back, underneath the seat where Crosby had been seated, Corporal Vinson found a yellow plastic bag containing a little more than eleven grams of crack cocaine.

Pope was indicted for trafficking more than ten grams but less than twenty-eight grams of crack cocaine. The case proceeded to trial on December 6 through 8, 2011. The State tried Pope with his two co-defendants, Crosby and Brewton. The jury found Pope guilty of the lesser-included offense of possession with intent to distribute crack cocaine. The court sentenced him to fifteen years, suspended upon the service of ten years with five years' probation. The court denied Pope's motion to reconsider his sentence. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, this court is limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). "This [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

⁴ Corporal Vinson testified he searched his vehicle prior to putting Brewton and Crosby in the back seat to make sure there was nothing there.

LAW/ANALYSIS

I. Reasonable Suspicion

Pope argues the trial court erred in denying his motion to suppress the evidence seized during the search of the vehicle because law enforcement did not have reasonable suspicion to justify the traffic stop. We disagree.

In criminal cases, this court only reviews errors of law. *State v. Butler*, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). This standard of review also applies to preliminary factual findings in determining the admissibility of certain evidence. *Id.* In Fourth Amendment search and seizure cases, our review is limited to determining whether there is any evidence to support the trial court's finding. *State v. Moore*, 404 S.C. 634, 640-41, 746 S.E.2d 352, 355 (Ct. App. 2013). This court will not reverse a trial court's findings of fact merely because we would have reached a different conclusion. *Id.*

"A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity." *State v. Woodruff*, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001). "The term 'reasonable suspicion' requires a particularized and objective basis that would lead one to suspect another of criminal activity." *Id.* In analyzing reasonable suspicion, "it is entirely appropriate for courts to credit the practical experience of officers who observe on a daily basis what transpires on the street." *State v. Wallace*, 392 S.C. 47, 52, 707 S.E.2d 451, 453 (Ct. App. 2011) (internal quotation marks and citations omitted). "In determining whether reasonable suspicion exists, the whole picture must be considered." *Woodruff*, 344 S.C. at 546, 544 S.E.2d at 295. "Factors that are alone consistent with 'innocent travel' can, when 'taken together' produce a reasonable suspicion of criminal activity." *Wallace*, 392 S.C. at 52, 707 S.E.2d at 453 (quoting *United States v. Sokolow*, 490 U.S. 1, 9 (1989)). "In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.'" *Id.* (quoting *United States v. Whitehead*, 849 F.2d 849, 858 (4th Cir. 1988)).

Pre-trial, Pope moved to suppress the drugs seized during the search of the vehicle. During trial, Pope again moved to suppress the evidence, arguing no reasonable suspicion existed for the traffic stop, and law enforcement did not have probable cause to search the vehicle. The State responded the corroboration between the

information Harris gave Sergeant Johnson and the officers' observations gave them reasonable suspicion to stop the vehicle.

The court denied the motion to suppress, stating, "I think the ice here is thin, but I think it's thick enough to support the arrest, the stop first, then the search and then the arrest, and they went in that order." The court determined Harris was not a confidential informant, but he was "somewhere between [a] confidential informant and [an] anonymous tip[ster]." The court found law enforcement had reasonable suspicion to stop the vehicle:

[L]ooking at the totality of the circumstances, . . . it was a police investigation that determined the validity of the information they received from [Harris] Not a lot of information, that's true, but enough, I think, to establish probable cause to make the stop, and that corroboration is that a black Ford Expedition would be coming from Spartanburg to Union on 176 out of Spartanburg. That alone would not be enough, but the . . . key is the fact that [Harris] . . . gave information that he had been contacted by whoever was on the other end of that phone, whether it was [Pope] or not, that the car in question was passing the Lighthouse Fish Camp, and that was confirmed by [Captain] McNeil So I think that's enough to create probable cause for the stop.

Pope argues on appeal the officers did not have reasonable suspicion to justify the traffic stop because: (1) the information provided by Harris is inherently unreliable; (2) the vehicle was not in a high crime area; (3) the vehicle was traveling legally and no citations were issued; (4) there was no evidence of attempted flight; (5) there was no evidence of evasive behavior; (6) the time was 6:00 pm on June 24, so it was not late; (7) the trial court relied on incorrect information that Captain McNeil saw the Ford Expedition at the Lighthouse, when it was actually a mile down the interstate; and (8) law enforcement failed to verify any information regarding the black Ford Expedition prior to the stop. Therefore, he asserts the trial court erred in refusing to suppress the evidence seized by law enforcement.

In *State v. Peters*, 271 S.C. 498, 502-03, 248 S.E.2d 475, 477 (1978), our supreme court determined that where the informant gave the officer a description of an automobile that would contain marijuana and would be leaving shortly, the

officer's direct observation of an automobile conforming in every respect to the informant's tip provided sufficient circumstances to assure reliability of the informant's information. "In determining whether the evidence is sufficiently detailed to give rise to probable cause, all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received." *State v. Roper*, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979). Additionally, "a non-confidential informant should be given a higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false." *State v. Driggers*, 322 S.C. 506, 511, 473 S.E.2d 57, 60 (Ct. App. 1996); *see also Lopez v. State*, 664 S.E.2d 866, 869 (Ga. Ct. App. 2008) ("[I]n terms of providing probable cause for an arrest, the admissions against penal interest of a known informant in the hands of police (even though that informant's name is not disclosed at the trial of the accused) are valuable facts indicating that the informant is telling the truth and is reliable.").

Sergeant Johnson was at the jail with Harris when Harris made several phone calls to Pope, and Pope made several calls to Harris. Sergeant Johnson testified he heard Harris on the phone and told Lieutenant Sherfield that Harris arranged a transaction to purchase fourteen grams of crack cocaine from Pope for six hundred dollars. Sergeant Johnson said Pope told Harris he would be traveling on Highway 176 into Union County from Spartanburg County in a black Ford Expedition. Sergeant Johnson said other people were in the vehicle because Harris could hear them talking in the background while he was on the phone with Pope. During a subsequent phone call, Pope told Harris he was almost in Union County and was driving past the Lighthouse Fish Camp. Sergeant Johnson radioed officers Pope's location, and Captain McNeil said he had a visual on the black Ford Expedition at Lighthouse Fish Camp heading towards Union. Captain McNeil followed the vehicle in his unmarked truck, and Lieutenant Sherfield followed behind him until Sheriff Taylor initiated the stop. As Lieutenant Sherfield approached the vehicle, he observed Crosby turn around, look back at him, bend down, and sit back up.

We find Harris' description of the vehicle, including the color, make, and model; the highway and direction the vehicle would be traveling; the location of the vehicle at a specific time; and that more than one person was in the vehicle, was corroborated by officers observing a vehicle matching the exact description, traveling in the specified direction, located in the stated area, and containing more than one person. Furthermore, Harris was not a confidential informant and exposed himself to criminal liability should the information he supplied to officers prove to be false. Therefore, we find the trial court did not err in denying the

motion to suppress the evidence seized during the search of the vehicle because law enforcement had reasonable suspicion to justify the traffic stop.

II. Probable Cause

Pope argues the trial court erred in denying his motion to suppress the evidence seized during the search of the vehicle because law enforcement did not have probable cause to believe the vehicle contained evidence of criminal activity and no exigent circumstances existed to justify the warrantless search. We disagree.

A warrantless search is generally *per se* unreasonable, and therefore, violates the Fourth Amendment's prohibition against unreasonable searches and seizures. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). However, a warrantless search will withstand constitutional scrutiny if the search falls within one of several well-recognized exceptions to the warrant requirement, one of which is the automobile exception. *Id.* "Pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained." *Id.* at 320, 649 S.E.2d at 482. Probable cause has been defined as "'a fair probability that contraband or evidence of a crime will be found in a particular place.'" *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). "The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation." *Weaver*, 374 S.C. at 320, 649 S.E.2d at 482. "The automobile exception does not contain a separate exigency requirement." *Id.*

During trial, Pope again moved to suppress the evidence, arguing the officers did not have probable cause to search the vehicle. The State argued the officers had reasonable suspicion to stop the vehicle, and therefore, they had probable cause to search it. The State maintained the officers had probable cause to think the vehicle would contain illegal drugs that were about to be used in the drug transaction Harris arranged, so they had a right to search the vehicle. The court found the search was proper under the automobile exception.

On appeal, Pope argues the officers did not have probable cause to believe the vehicle contained evidence of criminal activity because they failed to conduct an investigation to gain probable cause. He asserts they only had the unreliable

information provided by Harris, who was facing jail time. Therefore, he asserts the trial court erred in refusing to suppress the evidence seized by law enforcement.

We find that based on the corroboration of Harris' information—including the description of the vehicle, the highway and direction the vehicle would be traveling, the location of the vehicle at a specific time, and that more than one person was in the vehicle—combined with an officer observing Crosby turn around, look back at him, bend down, and sit back up, gave officers probable cause to search the vehicle for the drugs Harris had arranged to purchase. Therefore, the trial court did not err in denying the motion to suppress the evidence seized during the search of the vehicle because law enforcement had probable cause to believe the vehicle contained evidence of criminal activity.

III. Chain of Custody

Pope argues the trial court erred in finding a sufficient chain of custody existed to admit the evidence seized during the search of the vehicle and the drug evidence found in the police car. We disagree.

"[T]his court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). "Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." *Id.*

"Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." *Id.* at 7, 647 S.E.2d at 206. "[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive." *Id.* at 6, 647 S.E.2d at 205-06. "[T]he chain of custody need be established only as far as practicable, and we reiterate that every person handling the evidence need not be identified in all cases." *State v. Hatcher*, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011).

In contrast, "[w]hile the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence—that is, evidence that is unique and identifiable—the establishment of a strict chain of custody is not required." *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005).

If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition.

Id. at 134, 620 S.E.2d at 741-42.

During trial, Pope moved to suppress the scales found during the search of the vehicle, arguing the State failed to establish a sufficient chain of custody. The State responded that Lieutenant Sherfield testified he found the scales and put the case number on the scales.

The court addressed the chain of custody issue as it related to the scales found in the vehicle:

[T]here's certainly a lot of questions about the way it was handled, but it was not a fungible item. It's like a pistol or a shotgun or a television that could be not—I guess it could be tampered with. In fact, the battery was missing, but the character of it is not readily changeable, is not fungible; that is, it cannot be mixed in with something else and be confused. It could be under the way it was kept, had it not been marked, but it was marked on the [scales] itself. [If] [i]t could only be marked on the bag, we'd have a problem because the bag came open while it was in custody. But, it's my understanding of the testimony . . . that there is an identifying number on the [scales] itself. So I find that the . . . scales, I'm not going to suppress the introduction of the scales.

At trial, the court entered the scales over Pope's objection.

On appeal, Pope argues the trial court erred in finding a sufficient chain of custody existed because the scales were not secured in an evidence bag and one of the batteries was missing, and Lieutenant Sherfield provided false information on the affidavit accompanying the evidence bag.

We agree with the trial court that the scales were a non-fungible item; therefore, the establishment of a strict chain of custody was not required. However, the State also presented evidence of the chain of custody. Lieutenant Sherfield testified he found the scales in the vehicle, put the case number on the scales, and secured it inside a locked vault. He explained the scales were not still in the original evidence bag because that bag had broken open when he got it out of the vault the day before. Also, he testified a battery was missing from the scales, but was not missing when he put the scales into the vault. He asserted he had the scales in his vault the entire time.

During trial, Pope moved to exclude the crack cocaine found in the police car based on an alleged problem with the chain of custody because Lieutenant Sherfield's affidavit stated he seized the drugs from Crosby, Brewton, and Pope when he was not the one who seized the drugs. The court denied the motion.

We find the evidence shows the State properly established the chain of custody as to the drugs found in the police car. Lieutenant Sherfield testified he took the crack cocaine Corporal Vinson found in the back seat of the patrol car back to his office; secured it in an evidence bag to be sent to SLED for analysis; marked the bag with his name and the date; and secured the evidence in a vault in his office. Lieutenant Sherfield transported the evidence to SLED, along with several other evidence bags, on September 21, 2010. Willie Smith, a senior criminalist-chemist in the drug analysis department of SLED, testified he received the evidence on September 22, 2010. He determined the substance was eleven and a half grams of crack cocaine. He testified to the chain of custody of the drugs; that the evidence bag was still sealed when he received it; he resealed it after he tested it; and it was still in the same condition it was when he resealed it.

Therefore, the trial court did not err in admitting either the scales or the drugs found in the police car because the scales were a non-fungible item and the establishment of a strict chain of custody was not required, and a complete chain of custody was established for the drugs, which were a fungible item.

CONCLUSION

Accordingly, the decision of trial court is

AFFIRMED.

FEW, C.J., and GEATHERS, J., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RODERICK POPE,

APPELLANT

APPELLATE CASE NO. 2012-207226

Appeal from Union County

John C. Hayes, III, Circuit Court Judge

Opinion No. 5261

PETITION FOR REHEARING

On August 20, 2014, this Court affirmed the conviction and sentence of Roderick Pope for possession with intent to distribute crack cocaine. Pope argued on appeal that the trial court erred in: (1) refusing to suppress the evidence seized during the search of the vehicle when law enforcement did not have reasonable suspicion to justify the traffic stop; (2) refusing to suppress the evidence seized during the search of the vehicle because law enforcement did not have probable cause to believe the vehicle contained evidence of criminal activity and no exigent circumstances existed to justify the warrantless search; (3) finding a sufficient chain of custody existed to admit the evidence seized during the search of the vehicle and the drug evidence found in the police car.

ISSUE ONE: In Pope's case, law enforcement did not have reasonable suspicion to justify the traffic stop because: (1) the information provided by Harris, the drug dealer, is inherently unreliable because Harris was not known by law enforcement; (2) this was not a high crime area; (3) the car was traveling legally and no citations were issued; (4) there was no evidence of attempted flight; (5) there was no evidence of evasive behavior; (6) the hour was not late as it was 6:00 PM on June 24th; (7) the trial court relied on incorrect information that Captain McNeil saw the Ford Expedition at the Lighthouse, when he was actually a mile down the interstate; (8) law enforcement failed to verify any information regarding the black Ford Expedition prior to the stop. See *State v. Woodruff*, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001). . Therefore, the trial court erred in refusing to suppress the evidence seized by law enforcement. R. 157, l. 10 – 9, l. 1; See *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); see also *State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999).

This Court relied on *State v. Driggers*, 322 S.C. 506, 511, 473 S.E.2d 57, 60 (Ct. App. 1996) in affirming the trial court's decision that Harris was not a confidential informant (CI). In *Driggers* the Court held that a non-confidential informant should be given a higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false. This reliance was in error because Harris acted as a CI because he had already incurred criminal charges and was trying to reduce those charges by supplying additional information to law enforcement.

This Court also relied on *Lopez v. State*, 664 S.E.2d 866, 869 (Ga. Ct. App. 2008) for the rule that in providing probable cause for an arrest, the informant's admissions against penal interest are valuable facts indicating the informant is reliable and telling the truth. This reliance by the Court

is also in error because Harris was caught selling crack cocaine to a CI. He was not making an admission against penal interest; he was trying to get out of jail. R. 14, l. 9-15, l. 5.

This Court also affirmed the corroboration of Harris's information by Captain McNeil's validation that he saw Pope at the Lighthouse when Harris said Pope would be there. This reliance was in error because the testimony revealed that Captain McNeil did not actually see the Ford Expedition at the Lighthouse, but rather was a mile down the same highway before the Lighthouse. When defense counsel renewed his motion to suppress, R. 311, l. 7 - 312, l. 2, the trial court admitted:

I'm very concerned about that because my corroboration was based, for lack of a better way to put it, kind of a three-legged stool . . . they were expecting a black Ford Expedition; that there was more than one person in the car, which was confirmed by Officer Sherfield when he followed the car and saw somebody in the back; and that the car was coordinated to be at the Lighthouse when Mr. Pope said it was by an officer. . . . It's a crucial fact in the decision I reached.

R. 312, l. 14 - 313, l. 5. The trial court stated, "I am going to still not grant the motion to suppress. I am, as you can probably tell, disturbed about the way this has fallen into place." R. 318, ll. 16-18. The trial court subsequently ruled, "I still find it is sufficient . . . nexus in time and place to establish the settlement corroboration or Harris's testimony . . . [the] motions to suppress are again denied on behalf of all three defendants." R. 319, ll. 15-21.

Traffic stops are reviewed under the standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), because a traffic stop is more analogous to an investigative detention than a custodial arrest. See *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992). In *Terry*, the United States Supreme Court outlined a two-prong test for analyzing the constitutionality of a traffic stop: (1) whether the police officer's action was justified at the inception of the traffic stop; and (2) whether the police officer's subsequent actions were reasonably related in scope and duration

to the circumstances that justified the stop. *Rusher*, 966 F.2d at 875. Notably, temporary detention of individuals during a traffic stop by police, even if only for a brief period and for a limited purpose, constitutes a seizure of the persons within the meaning of the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 809–10 (1996); *see also United States v. Arvizu*, 534 U.S. 266, 273 (2002) (noting the Fourth Amendment's protection against “unreasonable searches and seizures” extends to “brief investigatory stops of persons or vehicles”).

In *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400 (2007) the United States Supreme Court ruled that passengers of vehicles may challenge the constitutionality of a stop. The court noted that “the stopping of a vehicle and the detention of its occupants constitute a “seizure” within the meaning of the Fourth Amendment.” 551 U. S. at 256, 127 S.Ct. at 2406 quoting *Colorado v. Bannister*, 449 U.S. 1, 4, n. 3, 101 S.Ct. 42 (1980) In *Brendlin* the court ruled that the passenger was seized from the moment the driver’s car came to a halt on the side of the road. In our case appellant was seized when their car was detained. “Inarticulate hunches” do not support detentions. *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 99 S.Ct. 1391 (1979); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

“To justify a brief stop [or] detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity.” *State v. Robinson*, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991). The term “reasonable suspicion” requires a particularized and objective basis that would lead one to suspect another of criminal activity. *See United States v. Cortez*, 449 U.S. 411 (1981); *see State v. Woodruff*, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001). In determining whether reasonable suspicion exists, the whole picture must be considered. *See United States v. Sokolow*, 490 U.S. 1 (1989). The burden is on the State to

articulate facts sufficient to support reasonable suspicion. *See State v. Butler*, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000); *see also State v. Pichardo*, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005).

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. *United States v. Calandra*, 414 U.S. 338 (1974). The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding evidence is not admissible under the "fruit of the poisonous tree" doctrine when the police exploit an unlawful search to seize evidence that would not have otherwise come to light). The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

"The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)). The United States Supreme Court and the Supreme Court of this State have recognized and applied the principle that police officers are not granted under *Terry*, "a general warrant to rummage and seize at will" and that any evidence seized from an unlawful detention must be excluded as "fruit of the poisonous tree." *State v. Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296-97, n. 1 (citing *Texas v. Brown*, 460 U.S. 730, 748 (1983) (Stevens, J., concurring)) (The United States Supreme Court "has been sensitive to the danger . . . that officers will enlarge a specific

authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will") (emphasis added).

The Court of Appeals misapprehended this issue. The Court relied on incorrect information that Captain McNeil had a visual sighting of Pope's car at the lighthouse Fish Camp when Captain McNeil actually was a mile before the Lighthouse. This Court also relied on the finding that Harris was not a CI when the record was clear that Harris expected a benefit and did receive one.

ISSUE TWO: In Pope's case, law enforcement did not have probable cause to believe that the vehicle in which Appellant was a passenger contained evidence of criminal activity. *See Carroll*, 267 U.S. at 153. This is because law enforcement failed to conduct an investigation to gain probable cause; instead, the officers handcuffed the occupants and immediately searched the car without consent. The incident does not meet the automobile exception because the car was not mobile once the men were removed. The men did not have drugs nor weapons on them.

Notably, this instant case is distinct from our Supreme Court's decision in *Weaver*, where the murder suspect's Jeep smelled of bleach and had a wet interior after the murder. *Weaver*, 374 S.C. 313, 649 S.E.2d 479(2007). The officers had only the unreliable information provided by the recently arrested drug dealer who was facing serious jail time. Accordingly, the trial court erred in refusing to suppress the evidence seized by law enforcement. R. 159 I. 2 – 160, I. 3; *See Wong Sun*, 371 U.S. at 484; *see also Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296-97, n. 1 (citing *Brown*, 460 U.S. 730, 748 (1983 (Stevens, J., concurring)).

This Court of Appeals relied again on the misconception that Captain McNeil saw Pope's car at the lighthouse for probable cause. The trial court had found that law enforcement had probable cause to stop the vehicle:

Not a lot of information, that's true, but enough, I think, to establish probable cause to make the stop, and that corroboration is that a black Ford Expedition would be coming from Spartanburg to Union on 176 out of Spartanburg. That alone would not be enough . . . [Harris] gave information that he had been contacted by whoever was on the other end of that phone, whether it was Pope or not, that the car in question was passing the Lighthouse fish camp, and that was confirmed by Mr. McNeil, Officer McNeil. So I think that's enough to create probable cause for the stop.

R. 158, l. 10 – 9, l. 1.

This Court found there was probable cause based on the automobile exception. The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation. *State v. Cox*, 290 S.C. 489, 351 S.E.2d 570 (1986). The automobile exception does not contain a separate exigency requirement. *See Dyson*, 527 U.S. 465 (1999).

“[U]nder the automobile exception, probable cause *alone* is sufficient to justify a warrantless search.” *State v. Cox*, 290 S.C. 489, 351 S.E.2d 570 (1985). “The standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant.” *State v. Bultron*, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995).

This Court again relied, in error, we respectfully submit, on the information provided by the CI, Harris to provide probable cause. When a confidential informant is involved, it is necessary to examine the reliability and credibility of the informant for determining the existence of probable cause. *Illinois v. Gates*, 462 U.S. 213, 230-235 (1983). This Court, for probable cause, further relied on the fact that the officer saw the co-defendant Crosby look at the officer and bend down in the car. This was in error because no drugs were found in the car nor on the three defendants. The only item found near Crosby was the scale with residue of cocaine.

ISSUE THREE: The Court of Appeals affirmed the trial court's finding that the scales seized from Pope's car were a non-fungible item and a chain of custody was not required. This Court misapprehended the issue.

"[Our Supreme] Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). In Pope's case, the "unique factual circumstances" of this case establish that a sufficient chain of custody did not exist. Our Supreme Court has noted, "[T]he mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody." *Hatcher*, 392 S.C. at 94-95, 708 S.E.2d at 754-55.

The scales had not been in a secured evidence bag and one of its batteries was missing when it was retrieved—not when it was placed in the drawer. The scales were kept in a drawer with other scales in a vault, and the original bag in which the scales were contained was broken. R. 36, ll. 1 – R. 38, ll. 11.

As to the crack cocaine, the officers provided false information on the accompanying affidavit of the evidence bag. Therefore, the trial court erred in finding a sufficient chain of custody existed. R. 160, ll. 9-25; R. 390, l. 24 – 391, l. 19; *See Carter*, 344 S.C. at 424, 544 S.E.2d at 837 ("Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.").

State v. Glenn, 328 S.C. 300, 492 S.E.2d 393, 395 (1997), succinctly summarizes the chain-of-custody law:

Because fungible items such as drugs or blood samples are not readily identifiable and may be easily tampered with, the party offering such items into evidence must establish a chain-of-custody as far as practicable. [Citations omitted.] Where the analyzed

substance is passed through several hands, the evidence must not leave it to conjecture as to had it and what was done with it between the taking an analysis. However, the proof of chain-of-custody need not negate all possibility of tampering, but instead must only establish a complete chain of evidence as far as practicable. [Citations omitted.]

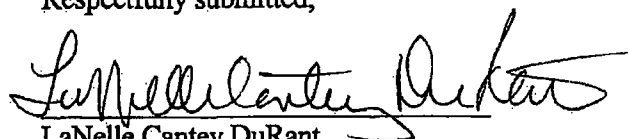
While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence – that is evidence that is unique and identifiable – the establishment of a strict chain of custody is not required ... [i]f the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit nearly on the basis of testimony that the item is the one in question and is in a substantially unchanged condition. On the other hand, if the offered evidence is of such a nature as not to be readily identifiable, or to be susceptible to alteration by tampering or contamination, the sound exercise of the trial court's discretion may require a substantially more elaborate foundation. A foundation of the latter sort will commonly entail testimony tracing the "chain-of-custody" of the item with sufficient completeness to render it reasonably probable that the original item has neither been exchanged with another nor been contaminated or tampered with. [Citations and quotation marks omitted.]

See, also, *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737 (2006).

The scales, in this case, do not fit the description of non-fungible items as stated in State v. Glenn, id. because they were not unique and identifiable. They were thrown in a drawer with other scales. The original bag was broken. A chain of custody was necessary to determine if these were the scales found in Pope's car. If the state could not prove that, the scales should have been suppressed. The issue is not whether it can be tampered with; it is can it be uniquely identified.

WHEREFORE, we respectfully request this Court to reconsider its ruling and grant Pope a new trial.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "LaNelle Cantey DuRant", written in black ink.

LaNelle Cantey DuRant
Appellate Defender

This 2nd day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

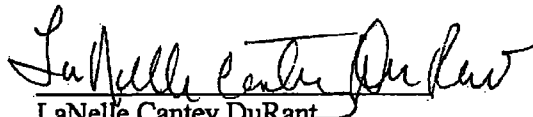
V.

RODERICK POPE,

APPELLANT

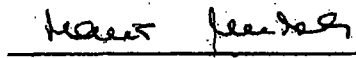
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Roderick Pope, # 163293, Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 2nd day of September, 2014.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 2nd day
of September, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-207226

THE STATE,

Respondent,

vs.

RODERICK POPE,

Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

On August 20, 2014, this Court issued a published opinion in which it unanimously affirmed Appellant Roderick Pope's conviction for possession of crack cocaine with intent to distribute. State v. Pope, Op. No. 5261 (S.C. Ct. App. filed Aug. 20, 2014). Pursuant to Rule 221(a), SCACR, Pope petitioned this Court for rehearing, and this Court requested that Respondent ("the State") file a return to Pope's petition. For the following reasons, Pope's petition for rehearing should be denied.

Investigatory Stop and Search Issues

In his petition for rehearing, Pope contends this Court misapprehended the issues raised in regard to the constitutionality of the investigatory stop and search of his vehicle. In support of that contention, Pope maintains the information provided by Harris was inherently unreliable and could not have established reasonable suspicion or probable cause because Harris was not previously known to the law enforcement officers, the information he provided was allegedly not

against his penal interest, and Harris offered the information in an effort to obtain his release from jail. However, in Pope's case, Harris provided information to the officers about the person he directly identified as his personal supplier of crack cocaine, Pope. Critically, by providing that information to the officers, Harris's statements established – apart from any of the evidence the officers already had – he was a crack cocaine dealer, and those statements could have been used against him as powerful evidence in regard to his own pending crack cocaine distribution charge. Moreover, had the information not been truthful, Harris could have been subjected to criminal and civil liability for providing the false information due to the fact his identity was known to the officers. See State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) (“Klepp-Egge also acted against his best interests by providing the police with information that possibly linked him to the crime.”); see also United States v. Harris, 403 U.S. 573, 583-584 (1971) (“Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a ‘break’ does not eliminate the residual risk and opprobrium of having admitted criminal conduct.”). Accordingly, just as this Court determined, Harris’ statements to the officers were sufficiently reliable – once corroborated – to establish reasonable articulable suspicion for the traffic stop and probable cause for the search of Pope’s vehicle. See Driggers, 322 S.C. at 511, 473 S.E.2d at 60 (“[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false.”); see also Illinois v. Gates,

462 U.S. 213, 233 (1983) (“[An informant’s veracity and basis of knowledge] are better understood as relevant consideration in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.”).

Furthermore, in seeking for this Court to grant rehearing, Pope maintains this Court erred in finding the information provided by Harris was sufficiently corroborated to establish both reasonable articulable suspicion and probable cause in light of the facts Pope was not at the Lighthouse Fish Camp as Harris stated he would be when Captain McNeil first observed his vehicle and there were allegedly no drugs found in Pope’s vehicle at the time of the search. Contrary to Pope’s contentions, the information provided by Harris was sufficiently corroborated to provide reasonable suspicion and probable cause, including as to the location of Pope’s vehicle. Specifically, prior to the stop, Harris informed the officers Pope would be travelling in a black Ford Expedition on Highway 176 and would be coming into Union County towards a convenience store located off of the highway. Thereafter, as the officers waited along the highway for the described vehicle to arrive, Harris informed the officers Pope had just driven past the Lighthouse Fish Camp. Moments later, the officers observed a black Ford Expedition driving into Union County along Highway 176 approximately a mile to a mile and half after it would have passed the Lighthouse Fish Camp and only a few miles away from the location where Harris arranged to meet Pope, which was entirely consistent with the information reported by Harris in light of the fact Pope’s vehicle was travelling down a highway at highway speeds and had just passed a fixed location along that highway. Thus, before initiating the investigatory stop of the black Ford Expedition, the officers verified: (1) the vehicle matched the description of

the make, model, and color of the vehicle identified by Harris; (2) the vehicle was travelling towards the location where Pope was supposed to meet Harris; and (3) it had recently driven by a specific location on the highway Pope reported he had just passed. See Alabama v. White, 496 U.S. 325, 332 (1990) ("Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities."); see also Gates, 462 U.S. at 244-245 ("It is enough, for purposes of assessing probable cause, that 'corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,' thus providing 'a substantial basis for crediting the hearsay.' " (citation omitted)). Because the officers were able to corroborate those substantial details, including the information regarding the black Ford Expedition's precise location at a specific time, it was entirely reasonable for the officers to believe Harris was also correct when he indicated Pope was involved in criminal activity and had crack cocaine in the black Ford Expedition, and that probable cause basis was further enhanced when the officers observed Crosby make furtive movements after he saw the officers behind Pope's vehicle. See White, 496 U.S. at 331 ("[B]ecause an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity."). For those reasons, this Court properly the trial judge's ruling regarding the constitutionality of the investigatory stop and search. Pope's petition for rehearing should be denied.

Chain of Custody Issue

In his petition for rehearing, Pope contends this Court misapprehended the issue raised in regard to the admissibility of the scale and crack cocaine. In support of that contention, Pope

maintains the scale was a fungible item because it was allegedly not unique and identifiable while appearing to assert the scale's chain of custody was insufficient because one of its batteries was missing and its original evidence bag was broken. However, to the contrary, the scale was clearly a non-fungible item because it was fairly unique, readily identifiable, and relatively impervious to change – just like a gun, a purse, or a piece of porcelain from a toilet. Cf. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 742 (2005) (instructing a gun is a non-fungible item); State v. Rogers, 361 S.C. 178, 186, 603 S.E.2d 910, 914 (Ct. App. 2004) (holding a purse was a non-fungible item); State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) (finding a porcelain fragment from a toilet was a non-fungible item). As a result, the scale could properly be admitted if it was identified as the one it was purported to be and was in substantially unchanged condition, and the trial judge properly admitted the scale in Pope's case after those requirements were met through the testimony presented during trial.¹ See Freiburger, 366 S.C. at 134, 620 S.E.2d at 741-742 (recognizing the establishment of a chain of custody is not required prior to the admission of non-fungible items into evidence and explaining non-fungible evidence can properly be admitted on the "basis of testimony that the item is the one in question and is in a substantially unchanged condition").

Furthermore, in seeking for this Court to grant rehearing, Pope maintains the chain of custody in regard to the crack cocaine was insufficient solely because false information was included in a chain of custody affidavit. However, testimony was presented during Pope's trial establishing the identity of each person who was in custody of the crack cocaine and what was

¹ Moreover, just at this Court correctly concluded, the State established a sufficient chain of custody in regard to the scale even though one was not required through the testimony presented during trial demonstrating Lieutenant Sherfield was in possession of the scale from the point it was taken during the search to the point it was introduced during trial. See Rogers, 361 S.C. at 187, 603 S.E.2d at 914-915 ("[E]ven if a chain needed to be established, it had been. At trial, every individual who had possession of the purse, which contained the slip of paper, testified to having it and denied tampering with it.").

done with it prior to analysis, which meant a complete chain of custody was established. See State v. Governor, 362 S.C. 609, 613, 608 S.E.2d 474, 476 (Ct. App. 2005) (finding fungible evidence should have been admitted in light of the fact a complete chain of custody was presented and noting discrepancies in the manner in which the evidence was handled were not a proper basis for suppression); see also Benton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957) (“ ‘Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.’ ” (citation omitted)). Accordingly, because a complete chain of custody was established, any issues regarding the credibility of the testimony or the information included on the chain of custody affidavit were solely matters impacting the weight to be afforded the crack cocaine and not its admissibility. See State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995) (“The State established a continuous chain of custody through the testimony of all people who had control and possession of the evidence. Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. **A reconciliation of this discrepancy was not necessary to establish the chain of custody**, but merely reflected upon the credibility of the evidence rather than its admissibility.” (emphasis added)). For those reasons, this Court correctly affirmed the trial judge’s ruling in regard to the scale and crack cocaine. Pope’s petition for rehearing should be denied.

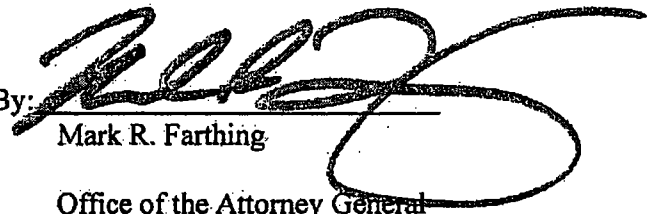
Conclusion

Based on the foregoing coupled with the arguments raised in the Final Brief of Respondent and during the oral argument before this Court, the State respectfully requests that Pope’s petition for rehearing be denied.

Respectfully submitted,

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Assistant Attorney General

By: 

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September 8, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-207226

THE STATE,

Respondent,

vs.

RODERICK POPE,

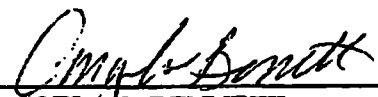
Appellant.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Respondent's Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 8th day of September, 2014.


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The South Carolina Court of Appeals

The State, Respondent,

v.

Roderick Pope, Appellant.

Appellate Case No. 2012-207226

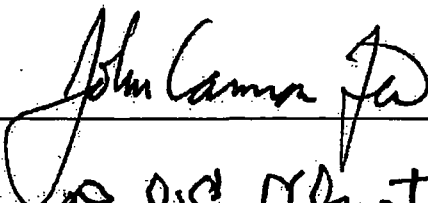
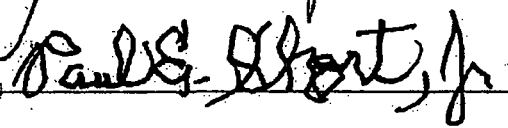
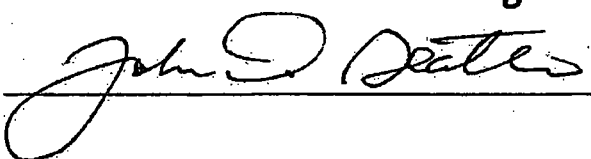
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SC OFFICE OF
APPELLATE DEFENSE

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

LaNelle Cantey DuRant, Esquire
 Mark Reynolds Farthing, Esquire
 Alan McCrory Wilson, Esquire

FILED

October 23, 2014

VCA

VOL. I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM UNION COUNTY

John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

RODERICK POPE,

APPELLANT

APPELLATE CASE NO. 2012-207226

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF UNION) SIXTEENTH JUDICIAL CIRCUIT
 2010-GS-44-1036, 1039, 1053

State of South Carolina)
)
) Transcript of Record
 vs.)
) Volume I - Pages 1 - 185
 Lashad Brewton, Randy)
 Crosby and Roderick Pope)

December 6, 2011
 Union, South Carolina

B E F O R E:

The Honorable John C. Hayes, III

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

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SHIRLEY G. BROOM
 CIRCUIT COURT REPORTER
 SIXTEENTH JUDICIAL CIRCUIT

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1 (Items marked for identification as State's
2 Exhibits Numbers 1, 2 and 3.)

3 The Court - I'm going to let the Solicitor call
4 the first case.

5 Mr. Anthony - Thank you, Your Honor. The first
6 case is the State vs. Roderick Pope, 2010-44-1053, State
7 vs. Lashad Brewton, 2010-44-1036 and State vs. Randy
8 Crosby, 2010-44-1039. These indictments have been true
9 billed by the Grand Jury and they're all three indictments
10 charging trafficking in crack cocaine.

11 The Court - All right. These are the cases
12 against, as the Solicitor has said, Randy Crosby, Lashad
13 Brewton and Roderick Pope. I'm going to let each lawyer
14 first start with the Solicitor introduce themselves and
15 come to the other side, I'm going to ask the attorney to
16 stand and introduce themselves and tell me who they
17 represent. We'll start with the Solicitor and tell us, of
18 course, your name and who you have seated with you.

19 Mr. Anthony - I'm John Anthony. I'm the Deputy
20 Solicitor here in Union. I have here, Sheriff David
21 Taylor, Lieutenant John Sherfield, Sergeant Jimmy Johnson,
22 and then on the front row is Captain James McNeil, all
23 with the Sheriff's office.

24 The Court - All right, you may be seated. All
25 right, Mr. Pierre -- St. Pierre.

1 morning.

2 Mr. Anthony - What I'd like to do is have the
3 remainder of the panel call back tonight.

4 The Court - Right. That's what I was going to
5 say, call back tonight and have this jury not be sworn.
6 I'll give them my remarks about not discussing the case,
7 not letting themselves be exposed to any news coverage and
8 that sort of thing and then them go until 9:30?

9 Mr. Anthony - That'll be fine, yes, sir.

10 Mr. Brannon - Your Honor, ---

11 The Court - All right, wait a minute. We've got
12 a lot of movement.

13 Mr. Brannon - I would ask the Court to entertain
14 the possibility of actual swearing the jury and then
15 releasing them for the day.

16 The Court - Well, I'm not sure that's fair to
17 the State, but I'll -- If the State doesn't object we'll
18 do it.

19 Mr. Anthony - We do object.

20 The Court - Yes, the problem is if I rule that
21 it's entrapment and jeopardy's attached, they may not have
22 an opportunity to appeal my ruling. That's just my first
23 glossing over without a whole lot of thought.

24 Mr. McKinnon - Your Honor, I would point out, I
25 do has motions. I think it's proper to give these to you

1 before the case is actually called. I do have a Motion in
2 Limine specifically about fourth amendment suppressions
3 issues and Jackson v. Denno hearing.

4 The Court - All right. So it looks like the
5 afternoon's going to be taken up. But I'm not going to
6 swear the jury. Again, I think it's not fair to the State
7 under the -- based on a recent motion I have already.

8 Mr. Brannon - I understand. I didn't
9 necessarily think it was fair myself but I ---

10 The Court - Well, no, I've got no problem with
11 that. All right, anything else before we get the jury in
12 and let them go?

13 Mr. Anthony - Well, the only thing, I would go
14 ahead and say is that we're prepared to do and we're
15 expected to do a suppression hearing on the stop and
16 possibly attendant searches after the stop. Our position
17 on the entrapment is that that is basically a charge
18 issue. The Court would just need to hear the evidence
19 during the trial and make a decision during the trial
20 whether he is entitled to a charge, so we would oppose
21 being required to present any evidence relevant to
22 entrapment pre-trial. That'll all be heard during the
23 course of our case, and if the Court thinks a defense has
24 been raised, it could be charged to the jury, but there's
25 -- There's nothing to do pre-trial ---

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1 The Court - Okay. You're right. All he does is
2 request a charge. I ---

3 Mr. Brannon - I agree with that, Your Honor. I
4 think a lot of the evidence regarding entrapment will come
5 out in the suppression hearing, but I don't think it's
6 necessarily pre-trial.

7 The Court - You're right.

8 Mr. Anthony - But even given that, there will
9 still be a significant amount of testimony this afternoon.

10 The Court - Okay. All right, let's see ---

11 (Discussion is held between the Court and the
12 Clerk regarding releasing the remaining jury panel which
13 was not reported.)

14 The Court - All right, bring in the jury.

15 (Jury panel enters the courtroom)

16 The Court - Members of the jury panel, I'm going
17 to talk with you for a few minutes. The first thing I
18 want to say is I've appointed M. Vinson as foreperson and
19 she will sit in that seat throughout the trial. The
20 alternate will sit in that seat. There's no other
21 assigned seating, so it's best when you come in, just go
22 all the way to the end and have a seat rather than pick
23 the first seat and make everybody go around you, so, only
24 those two people will have assigned seating. There are no
25 other assigned seating. We're not going to get into the

1 and also Lashad Brewton. I'm sorry. I thought we got two
2 of the same ones. I see Mr. Pope and Mr. Brewton.

3 Mr. Hall - Your Honor, Mr. Crosby -- I spoke to
4 a representative at his bondsman's office. At this point
5 they indicate to me that they were not willing to continue
6 on his bond.

7 The Court - Okay. All right, thank you. I
8 appreciate that. Now, the motions in limine, we'll take
9 them. First is from Mr. Crosby I have in my hand and --
10 (pause) And the first is whether or not as to -- and this
11 -- I'm sure all three defendants join in these motions.
12 We'll see if there's some individual ones in a moment.
13 The first motion to insure that the State has complied
14 with Rule 5 and Brady.

15 Mr. Anthony - We have, Your Honor.

16 The Court - All right. We got a Jackson vs.
17 Denno. Any statements by any of the three?

18 Mr. Anthony - We don't have any -- any
19 statements from any of the three made to law enforcement.

20 The Court - All right, admissibility of prior
21 convictions and bad acts of any of the three?

22 Mr. Anthony - Yes, sir. Mr. Pope does not have
23 any convictions the State believes it could use if he were
24 to testify. Mr. Brewton does not have any convictions
25 that we believe we could use if he were to testify. Mr.

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1 Crosby has habitual traffic offender conviction from 2010
2 and a possession of crack conviction from 2006. The State
3 would ask the Court to allow us to just ask him if has
4 been convicted -- if he was convicted in those two years
5 of crimes carrying over a year.

6 The Court - All right. You understand that?

7 Mr. McKinnon - Yes, Your Honor. We ---

8 Court Reporter - I didn't understand what he
9 said. I'm sorry.

10 Mr. McKinnon - We do not object to that.

11 The Court - All right. Any 404 or Lyle
12 evidence?

13 Mr. Anthony - No, sir, we don't have any
14 intention of admitting or seeking to admit 404(B) in this
15 case.

16 The Court - You have records of any of your lay
17 witnesses?

18 Mr. Anthony - There's only one who is -- That's
19 the informant and that's been provided to the defense
20 attorney.

21 The Court - All right. We've got a search and
22 seizure, number 6 and it says a Jackson v. Denno hearing.
23 I thought Jackson v. Denno dealt with statements, but at
24 any rate, you want to have a pre-seizure hearing and Mr. -
25 - Okay, let me back up so we can kind of keep the record

1 straight. This -- I'm looking at motions by Mr. Crosby.
2 Mr. Brannon -- Well, Mr. Brannon, do you have a similar
3 motion?

4 Mr. Brannon - Yes, Your Honor. It would be
5 simply a motion to suppress.

6 The Court - All right. Mr. St. Pierre?

7 Mr. Pierre - Yes, sir. I've got -- I've got a
8 few motions.

9 The Court - Well, let me just -- I'm trying to
10 keep my sanity. Do you have any concern about the seizure
11 -- search and seizure?

12 Mr. St. Pierre - Absolutely.

13 The Court - Okay. So all three of you join in
14 that. Then the last one on behalf of Mr. Crosby is
15 preclude to testify and to have somebody testifying about
16 scales or powder cocaine residue found in the car as they
17 were not taken into evidence and do not any longer exist.

18 Mr. Anthony - What I can do is I can do a
19 proffer that would address number 6 and number 7 basically
20 at the same time. I take it from number 6 they -- they're
21 actually -- they say Jackson v. Denno but I assume what
22 they're talking about is the -- or what they're talking
23 about is the actual stop -- probable cause to stop the
24 vehicle.

25 The Court - I read it that way. I think is just

1 a ---

2 Mr. McKinnon - That's correct, Your Honor.

3 Mr. Anthony - We can -- We would call the same
4 witnesses basically to cover what's asked about in six and
5 seven. I think we can basically proffer that evidence at
6 one time.

7 The Court - All right, Mr. St. Pierre?

8 Mr. St. Pierre - As far as ---

9 The Court - Any pre-trial motions.

10 Mr. St. Pierre - Yes, sir, ---

11 The Court - Motions in limine.

12 Mr. St. Pierre - I'm going to have the same --
13 the issue with the stop, the search. I'm going to have a
14 -- Depending on the ruling of that, I may have additional
15 motion, if there is -- probable cause was found. I've got
16 a motion to suppress the money found on my client. I
17 would like to delve into whether or not there is some
18 additional discovery out there. And that's about it.

19 The Court - All right. Mr. Brannon?

20 Mr. Brannon - Your Honor, I have -- I would move
21 for the Court related to the stop -- the traffic stop, the
22 search of the vehicle, the scale that was found in the
23 vehicle and any drug substances they alleged was found on
24 it, and as to the chain of custody for the crack that was
25 allegedly seized, actually in the police car.

1 The Court - All right.

2 Mr. Brannon - Thank you, Your Honor.

3 The Court - All right. State ready to proceed?

4 Mr. Anthony - I think I can basically deal with
5 every -- with what's being raised by Mr. Brewton and Mr.
6 Pope. The only thing is, the officer who actually located
7 the crack in question, I do not have him here this
8 afternoon. The crack was found in a patrol car after Mr.
9 Brewton and Mr. Crosby had been transported to the jail,
10 so I do not see a search issue there. I know Mr. Brannon
11 said he wants to raise the chain of custody issue. I
12 think that's something we could basically deal with during
13 the course of the trial.

14 The Court - I believe that's correct.

15 Mr. Anthony - But as to the money found on Mr.
16 Brewton, I can -- I can proffer evidence on that this
17 afternoon. I think we would be prepared to deal with or
18 receive a ruling from the Court on that this afternoon.

19 The Court - All right.

20 Mr. St. Pierre - And I may have said this
21 earlier -- I just want to be clear on the record -- I also
22 am challenging my client's arrest as well.

23 The Court - All right. You ready to proceed,
24 Mr. Anthony?

25 Mr. Anthony - Yes, sir. I think we can deal

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1 with that this afternoon as well. As to his inquiry as to
2 discovery, I can't -- there wasn't -- wasn't a specific
3 inquiry. All I can say is I have complied with Rule 5 and
4 Brady.

5 The Court - Well, let me ask it like this. Is
6 there something you think may exist that you haven't been
7 provided or ---

8 Mr. St. Pierre - Yes, sir. I can call witnesses
9 and go into that.

10 The Court - Well, you want to -- You want to
11 just have an -- You want to talk to Mr. Anthony first and
12 see if you can clear it up? I mean you can call a witness
13 -- you -- your choice.

14 Mr. St. Pierre - I mean to be perfectly honest
15 with the Court, this was a -- There's no video of any of
16 the incident and there was at least 5 or 6 patrol cars or
17 sheriff's office cars and they said that they set up
18 surveillance. There's no -- There's not even pictures of
19 the incident, so I was going to call the sheriff to see if
20 there's any kind of cameras installed in those cars and
21 how those cameras were activated so forth and so on.

22 The Court - All right. We'll do that after we
23 do the State's presentation on the other issues.

24 Mr. Anthony - Okay. Well, we would call as to
25 the stop, as to the scale and the powder cocaine, as to

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1 the money on Mr. Brewton and Mr. Brewton's arrest, we
2 would be prepared to call Lieutenant Sherfield as our
3 first witness on the proffer.

4 The Court - Okay. Please come up and be sworn.

5 John Sherfield, after being first duly sworn,
6 testifies as follows -

7 Direct Examination

8 by Mr. Anthony -

9 Q Would you state your name, please.

10 A My name is John Sherfield.

11 Q And, Mr. Sherfield, how are you employed?

12 A I'm a lieutenant with the Union County Sheriff's
13 Office assigned to narcotics investigations.

14 Q How long have you worked for the sheriff's office?

15 A I've been with Union Sheriff's Office about 18 years.

16 Q And how long -- How long have you worked as a
17 narcotics investigator?

18 A Eleven years.

19 Q Were you working in that capacity in June of 2010?

20 A Yes, sir.

21 Q And taking you back to June 24th of 2010, did you
22 come into contact that day with Venson Harris?

23 A I did, Your Honor -- sir.

24 Q How did you come into contact with Mr. Harris?

25 A We had an operative that was working for -- on behalf

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1 of the Union County Sheriff's Office that knew Mr. Harris
2 and had set up a -- the purchase of a quantity of crack
3 cocaine from Mr. Harris. Mr. Harris had came down, sold
4 the operative a quantity of crack cocaine and we arrested
5 him.

6 Q So after you made the arrest on Mr. Harris, did you
7 engage in any conversations with him?

8 A Yes, we talked to him about seeing if he could do
9 anything. He was wanting to get out of jail on bond.

10 Q Okay. What specifically were you talking to him
11 about doing?

12 A He said he could get his supplier down here to Union.

13 Q And did he tell you who that person was?

14 A Said it was Mr. Pope, the defendant in the middle
15 there.

16 Q And where did he tell you Mr. Pope would be coming
17 from?

18 A Spartanburg.

19 Q And what would be the motivation or what would be his
20 reason for cooperating with the sheriff's office in doing
21 this kind of operation?

22 A The deal was that we would assist him in trying to
23 help him make bond if he would get Mr. Pope down here with
24 a large quantity of crack cocaine.

25 Q So aside from yourself, who else was involved, as far

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1 as law enforcement personnel, who else was involved in
2 trying to put this together?

3 A It was mostly myself and Sergeant James Johnson.

4 Q What was Sergeant Johnson's role?

5 A He was at the jail with Mr. Harris and Mr. Harris'
6 wife while they made phone calls to Mr. Pope.

7 Q And then what -- What were you doing while Sergeant
8 Johnson was at the jail with Mr. Pope?

9 A I had contacted the sheriff, Captain McNeil, another
10 narcotic's officer, Mr. Parker and uniformed deputies and
11 had a meeting out at the drug task force offices. We was
12 kind of going over a briefing, telling them what was
13 happening and explained that we caught Mr. Harris, that he
14 was trying to arrange a drug purchase of crack cocaine
15 with Mr. Pope and we were standing by to wait to see what
16 information would be relayed to us through Mr. Johnson to
17 myself about the phone calls that Mr. Harris was making
18 with Mr. Pope.

19 Q So eventually what word did you receive from Sergeant
20 Johnson?

21 A Sergeant Johnson called me and said that Venson
22 Harris had contacted Mr. Pope, asked him about buying a
23 half ounce of crack cocaine, said that -- Mr. Pope said
24 that he did not have it at that time, but give him a few
25 minutes and he would get it.

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1 Q And so once you got that word from Sergeant Johnson,
2 what did you and the other officers that were assembled
3 there do?

4 A We waited til we got another phone call from Mr.
5 Johnson or Sergeant Johnson who told us that Mr. Pope had
6 made contact back with Mr. Harris, said he had the crack
7 cocaine and that he was on his way to -- into Union
8 County. Sergeant Johnson told me that he would be coming
9 down Highway 176 from Spartanburg into Union and that he
10 would be in a black Ford.

11 Q What type of Ford?

12 A Expedition.

13 Q Once you received that word from Sergeant Johnson,
14 what did you and the other people assembled at the task
15 force do?

16 A We left our office, our task force office, which is
17 here in the City of Union, went north on 176 towards
18 Spartanburg, we set up at various locations up near the
19 Disney Plant, Sams Road, Cedar Grove Road, and we were all
20 in unmarked vehicles. We had the uniformed deputies in
21 their marked patrol cars were off on the side roads where
22 they could not see 176 and individuals travelling up and
23 down 176 could not see them.

24 Q And after you got up to the northern part of the
25 county and set up on 176, what was the next thing you

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1 heard about where Mr. Pope coming into 176 from
2 Spartanburg?

3 A Like I said, we was at various locations. Sheriff
4 Taylor had stopped in the median near Sams Road on 176
5 kind of acting like we was running radar there. I was
6 continuing north in the northbound lane towards
7 Spartanburg. I was around Cedar Grove Road which is near
8 the Disney Plant. Captain McNeil was in a white Ford
9 pickup truck unmarked which is his vehicle. He had done
10 travelled on into Spartanburg County at the time Sergeant
11 Johnson had came on the radio and told us that they had
12 just spoke to Mr. Pope and that Mr. Pope had told Venson
13 Harris that he was coming by the Lighthouse Fish Camp in -
14 - above Pacolet headed into Union. And just momentarily
15 thereafter Captain McNeil said that he had a visual
16 sighting on an Expedition that was right at the Lighthouse
17 Fish Camp and that he was turning around and was following
18 it towards Union County.

19 Q All right. And so once you got that information from
20 Captain McNeil, what was the next thing that happened?

21 A We waited on him to get into Union County. Captain
22 McNeil advised that he was coming by the Disney Plant,
23 Cedar Grove Road. As I seen them pass me, they were in
24 the southbound lane, I was in the northbound lane, I cut
25 across one of the cross members there, the paved crossings

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1 there in -- on the highway, four-lane highway, fell in
2 behind them and tried to catch up to them and by that
3 time, they had drove up on Sheriff Taylor. Sheriff Taylor
4 activated the blue-lights. They pulled over and I pulled
5 in right at the same time and Captain McNeil was right
6 behind me.

7 Q And once you -- Once you saw them there at Cedar
8 Grove Road, did you advise the other people that were out
9 looking for the vehicle that you had seen it?

10 A Right.

11 Q Okay. And Sheriff -- And where did Sheriff Taylor
12 make the stop?

13 A Near the intersection of 176 and Sams Road.

14 Q Okay. And is that in Union County?

15 A Yes, sir. It's in the Jonesville community of Union
16 County.

17 Q All right. When Sheriff Taylor stopped the vehicle,
18 did he -- Did he get out and approach it?

19 A I don't recall.

20 Q Okay. Who was -- Who was the first person to
21 actually interact with the passengers of the vehicle?

22 A I know when I got out, I approached the driver's side
23 which Mr. Brewton was the driver of the vehicle.

24 Q Okay. All right. How many people were in the
25 vehicle?

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- 1 A Three.
- 2 Q And you said Mr. Brewton was the driver?
- 3 A Yes, sir.
- 4 Q Okay. And where were Mr. Pope and Mr. Crosby seated?
- 5 A Mr. Pope was in the right front passenger seat. Mr.
- 6 Crosby was in the right rear seat in the back.
- 7 Q All right. And did you notice -- Did you make any
- 8 observations about the movements inside the vehicle as you
- 9 walked up to it?
- 10 A Yes, as we was stopping it, it took them just a
- 11 minute to pull over. They pulled over in the median
- 12 instead of to the right shoulder of the road. The
- 13 individual in the back, Mr. Crosby, was moving -- moving
- 14 around and he leaned -- leaned forward and then I seen him
- 15 lean back up.
- 16 Q And so when you got to the vehicle, what did you have
- 17 the three men in the vehicle do?
- 18 A I had Mr. Brewton step out, spoke with him briefly,
- 19 placed him in hand-cuffs and told him that he was being
- 20 detained at the time.
- 21 Q And what was done in regards to the other two?
- 22 A One of the officers got them out of the passenger's
- 23 side. I don't remember which one. Went around and
- 24 searched the vehicle and I found a digital scale with
- 25 white residue on it under the seat where Mr. Crosby was

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1 seated in the back.

2 Q Okay. And you say there was white residue on the
3 scale?

4 A Yes, sir.

5 Q All right. Did you do anything to try and make a
6 determination as to what the white residue was?

7 A Yes, I had a field test kit in my car. I took the
8 digital scales and a pocket knife and I had scraped a
9 small piece of the white residue off, placed it in the
10 test kit, sealed the test kit up. It has three ampoules
11 in it, broke the ampoules as you're supposed to from left
12 to right and the suspected crack cocaine turned blue which
13 is indication of positive result for cocaine.

14 Q And once you -- Once you made this determination
15 about the residue on the scale, what did you advise the
16 three men in the car?

17 A That they were all under arrest for possession of
18 cocaine.

19 Q And after you arrested the three of them, were they
20 searched at that time?

21 A I searched Mr. Brewton the best that I could.

22 Q All right. Was anything found on Mr. Brewton?

23 A Yes, sir, a quantity of money. Two hundred and
24 eighty dollars was seized from Mr. Brewton ---

25 Q Okay.

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1 A --- and a cell phone.

2 Q All right. And was any money found on Mr. Crosby?

3 A No money on Mr. Crosby.

4 Q Could you check your report again, please?

5 A I'm sorry. Five hundred and seventy from Mr. Crosby
6 and none from Mr. Pope.

7 Q Okay. And were any drugs found on the three men when
8 they were searched on the side of the road?

9 A No, sir.

10 Q Okay. At that time were you able to do -- Well,
11 describe how you searched the three of them?

12 A We searched them outer clothing the best that we
13 could. You know, we could not do a strip search or a more
14 thorough search because that being Highway 176, that's
15 probably the busiest highway in Union County, cars coming
16 up and down the road there. We decided just to place them
17 all in hand-cuffs because they were under arrest and have
18 uniformed officers transport them to the jail.

19 Q And the scale that you -- that you found the residue
20 on, what was done with the scale?

21 A It was taken back to the task force office and it's
22 been held ever since yesterday down there.

23 Q Okay. It is in -- It is in evidence?

24 A Yes, sir.

25 Q Okay. I mean it's in the sheriff's office custody.

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1 A It was in our custody. It was never turned into the
2 vault downstairs, it or the phone. Just the money was
3 turned into the treasurer's office and I took the BEST bag
4 -- or the --- the crack cocaine to SLED myself.

5 Q And the money -- In regards to the money found on Mr.
6 Brewton, in your experience is there a correlation or
7 relationship between people involved in drug activity and
8 large amounts of cash?

9 A Yes, sir.

10 Q And what -- What is that relationship?

11 A They usually have large amounts of cash with no means
12 of gainful employment, and Mr. Brewton had said at the
13 time he was not working is what he told me on the side of
14 the road.

15 Mr. St. Pierre - I object. I mean -- There's no
16 statements that -- have a Denno on.

17 The Court - What do y'all say?

18 Mr. Anthony - We're not -- We would not submit
19 that to the jury. I was just laying the foundation for
20 the -- suppression motion.

21 The Court - Well, but you -- You still got to
22 show -- Well -- He was hand-cuffed and questioned.
23 Correct?

24 Mr. Anthony - Yes, sir.

25 The Court - Well, I sustain the objection.

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1 Q Had you given the Miranda warnings?

2 A Yes.

3 Q And ---

4 A To Mr. Brewton I did.

5 Q When did you give Miranda warnings?

6 A As he stepped out of the car and I was placing him in
7 hand-cuffs.

8 Q And would you tell -- Advise the Court of the
9 specific warnings you gave him.

10 A He was advised that he had the following rights: he
11 has the right to remain silent, anything you say can and
12 will be used against you in a Court of law. You have the
13 right to have an attorney and have him or her present with
14 you during questioning. If you cannot afford an attorney,
15 one will be appointed to you by the Court without any
16 cost. You have the right to stop answering any questions
17 or make any statements at any time. I then asked him if
18 they understand these rights, he indicated that he did.
19 I asked him, with these rights in mind are you willing to
20 talk with me and he indicated that he was.

21 Q He indicated that he was willing to talk to you.

22 A Yes.

23 Q And when you -- When you took the cash from him, did
24 you ask him anything when you got the cash off of him or
25 did he -- How did he -- How did you come to find out he

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1 wasn't working?

2 A Asked if he had any drugs. He said, no. I said,
3 well, where did you get this cash. He didn't say
4 anything. I asked him, where do you work at, and he said
5 he was unemployed.

6 Mr. St. Pierre - Judge, I'm going to object.
7 I've had no knowledge of this statement. I filed a Rule
8 5 and Brady Motion.

9 The Court - I sustain the objection.

10 Mr. Anthony - If I could just have one moment.

11 (Pause)

12 Q Just going back to the actual stop of the car, at the
13 time that the vehicle or the time the Expedition was
14 stopped, what -- If you would, just go through the things
15 that you knew that in your mind gave or created probable
16 cause to suspect that that vehicle would contain
17 contraband?

18 A Sergeant Johnson was at the jail when several phone
19 calls were made from Venson Harris to an individual that
20 he identified as Mr. Pope and they received several phone
21 calls from individuals they described as Mr. Pope to Mr.
22 Harris while he was at the jail. Sergeant Johnson was
23 there. He said he heard some of these phone calls and
24 relayed information to me that a transaction had been
25 arranged to purchase two quarters, meaning two quarter

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1 ounces of crack cocaine which two quarters is a half,
2 fourteen grams of crack cocaine from Mr. Pope and that he
3 would be driving into Union County from Spartanburg County
4 in a black Ford Expedition down Highway 176. They also
5 said that there was some other individuals inside the
6 vehicle because he could hear some other people talking
7 while he was talking with Mr. Pope, but that he did not
8 know who they were.

9 Q And insofar -- Aside from what was going on with Mr.
10 -- Sergeant Johnson and Mr. Harris, what had been observed
11 by other people or other law enforcement people with the
12 sheriff's office that would tend to -- tend to indicate
13 that Mr. Harris was providing you truthful information?

14 A Well, while we was there, as I said, Captain McNeil
15 was a little ahead of us in his unmarked pickup truck,
16 Sergeant Johnson came on the radio and said that during
17 the phone call that had just occurred, that Mr. Pope
18 indicated that he was almost in Union County, that he was
19 going by the Lighthouse Fish Camp. Captain McNeil spoke
20 up on the radio and said that he had a visual on the black
21 Ford Expedition right at the Lighthouse Fish Camp and it
22 was headed towards Union. He turned around and was
23 following it and he said that was the only one that he
24 seen. He followed it until I could visually see it and
25 then I fell in with him and we followed him on down to

John Sherfield - Cross by St. Pierre

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1 where the sheriff initiated the stop.

2 Q All right.

3 Mr. Anthony - All right. Thank you. That's
4 everything on direct.

5 The Court - All right, Mr. St. Pierre?

6 Cross Examination

7 by Mr. St. Pierre -

8 Q Lieutenant Sherfield, you testified that you were
9 involved in the Venson Harris bust with Johnson?

10 A Yes, sir.

11 Q Okay. And tell me -- I got the incident report. It
12 said that you'd been watching him for about an hour and a
13 half. Is that -- How long did this sting take?

14 A I had been watching who?

15 Q Mr. Harris.

16 A Sergeant Johnson was with Mr. Harris at the jail. I
17 was not at the jail.

18 Q I'm talking about the bust where -- where Mr. Harris
19 distributed crack cocaine to one of your operatives.

20 A What happened was, we had an operative that met with
21 Mr. Harris up near the Kangaroo Mart up in Jonesville.
22 The operative purchased a quantity of cocaine from Mr.
23 Harris and as he was leaving we stopped him and arrested
24 him and his wife, then they took them to the jail where
25 Mr. Johnson stayed at the jail and spoke with him. I left

John Sherfield - Cross by St. Pierre

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1 the jail.

2 Q Okay. Who took Harris and his wife to the jail? Do
3 you have personal knowledge of that?

4 A It was a uniformed car, but I do not remember which
5 deputy it was.

6 Q Okay. So it wouldn't have been Johnson.

7 A No, sir, I don't -- Not that I remember.

8 Q Okay. Were they in the same car together taken to
9 jail?

10 A Mr. Harris and his wife?

11 Q Yes.

12 A Best of my recollection they were.

13 Q Okay. Do you know or ---

14 A I'm not positive.

15 Q You'd just be guessing?

16 A Yes, sir. What I did then, sir, after the arrest, I
17 went back and met with the informants and collected the
18 evidence.

19 Q All right. And you had a chance to speak with Mr.
20 Harris at the jail. Right?

21 A No. Sergeant Johnson did that.

22 Q Okay. You had no contact with Mr. Harris.

23 A No, not -- not that day.

24 Q As a narcotic's officer, is it usual to offer people
25 a lower bond on a distribution crack third?

John Sherfield - Cross by St. Pierre

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- 1 A We have done it, if they help us, you know.
- 2 Q Okay. And in your negotiations with Mr. Harris or
3 your officers negotiated with Mr. Harris, you're saying
4 that all you promised was a lower bond?
- 5 A To speak with the magistrate -- The deal was that
6 Sergeant Johnson would speak with the magistrate who was
7 on call that comes in the evening and sets the bonds, he
8 would let Mr. Harris know that he had cooperated and
9 assisted us and basically apprehended his supplier, who he
10 said was his supplier from Spartanburg in asking for a low
11 bond.
- 12 Q Okay. And that's the only deal your office had with
13 Mr. Harris?
- 14 A Yes, sir.
- 15 Q Are you aware that distribution of crack cocaine
16 carries ten to thirty years third offense?
- 17 A Yes, sir.
- 18 Q Okay. Are you aware what Mr. Harris has pled to?
- 19 A He pled to distribution, but I don't know what
20 offense.
- 21 Q Do you know how much time he got?
- 22 A No, sir.
- 23 Q Who told you -- if you look in -- Let me ask you,
24 where was the targeted buys at? Where was this buy going
25 to go down?

John Sherfield - Cross by St. Pierre

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- 1 A We were not going to buy. Venson Harris was in jail.
2 We were just going to -- Venson Harris had told Mr. Pope
3 to meet him at the mini mart, the very mini mart that he
4 had got busted at, but Mr. Harris was not there. There
5 was no one there. We set up north of there and we was
6 going to intercept the vehicle before it got ---
- 7 Q At the mini mart?
- 8 A Yes.
- 9 Q Two miles away from where you actually stopped ---
- 10 A Right.
- 11 Q Okay. And you -- The first contact you made was with
12 Mr. Brewton?
- 13 A Yes, sir.
- 14 Q Okay. And you immediately put him in hand-cuffs?
- 15 A Asked him to step out of the vehicle, placed him in
16 hand-cuffs, yes, sir.
- 17 Q Okay. Did you have a gun pointed in his face?
- 18 A I don't recall that. I don't remember that.
- 19 Q Would you deny that you had a gun to his face?
- 20 A I don't see any reason why. I don't -- I can't say
21 either way.
- 22 Q Do you remember if any guns were drawn by any -- by
23 any law enforcement?
- 24 A No, sir, I don't remember. This is a year and a half
25 ago. I don't remember.

John Sherfield - Cross by St. Pierre

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- 1 Q Okay. Would a video-tape remember?
- 2 A If it showed, then ---
- 3 Q Do you have a video-tape in your car?
- 4 A No, sir.
- 5 Q Okay. But you have multiple audio video electronic
- 6 recording devices used in narcotics. Right?
- 7 A Yes.
- 8 Q Okay. Was a video used in the buy with Venson Harris
- 9 and the operative?
- 10 A Yes.
- 11 Q Okay. And why didn't you use video?
- 12 A Because -- another piece of evidence ---
- 13 Q Okay. Do you think that would've help here in this
- 14 case?
- 15 A I don't have a video in my car.
- 16 Q Okay. Do you -- Do you ever make any DUI arrest of
- 17 a defendant?
- 18 A Do I ever?
- 19 Q Yes.
- 20 A I -- Maybe two a year. Not very many.
- 21 Q Okay. Can you please tell the Court how many -- how
- 22 many law enforcement officers were at the scene of the
- 23 stop?
- 24 A Myself, Sergeant Johnson, Sheriff Taylor, Captain
- 25 McNeil initially and then there were two uniformed cars,

John Sherfield - Cross by St. Pierre

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- 1 maybe six, seven.
- 2 Q Okay. And the uniformed cars, do they have video
3 cameras in them?
- 4 A Yes, sir.
- 5 Q Okay. And you're the lead detective in this case.
6 Right?
- 7 A Yes, sir.
- 8 Q And part of your jobs is to collect all the evidence,
9 whether it's good or bad for you. Right?
- 10 A Yes, sir.
- 11 Q Okay. And there has been no video turned over to the
12 solicitor's office regarding this case. Right?
- 13 A No. By time the uniforms got there, they were
14 already in hand-cuffs. There was no -- none -- we take
15 video from. We don't have any video.
- 16 Q Does Sheriff Taylor have a video camera in his car?
- 17 A No.
- 18 Q You said there was two uniformed cars hiding in the
19 woods. Right?
- 20 A They were on some side roads, yes.
- 21 Q Side roads. How far away from Sams Road?
- 22 A One of them was on Sprouse Road. That's probably
23 mile and a half. The other I think was on Cedar Grove
24 which is maybe a -- The actual road is maybe a mile, but
25 I don't know how far they were off the road. They were

John Sherfield - Cross by St. Pierre

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1 just told to get off the roadway.

2 Q How long before Sheriff Taylor blue-lighted this car
3 did you know you were going to make a move on this car?
4 Do you have any -- like seconds, minutes, anything like
5 that? How long did you follow it before you -- or saw it
6 before you -- or saw it before you pulled it over?

7 A When Captain McNeil first radioed they were in
8 Pacolet area. That was probably five minutes.

9 Q Okay. So you knew this car was coming down the road?

10 A Yes.

11 Q Okay. And of course that was gone over some sort of
12 radio communication between all the officers. Right?

13 A Yes.

14 Q Okay. So you're saying that by the time that the
15 uniformed officers who were only a mile, mile and a half
16 away got to the scene, everyone was already in hand-cuffs
17 and everyone's already been arrested and put in the car?

18 A Yes, they were told not to come out and make initial
19 stop, that we would make initial stop and that whenever we
20 got everything secured, they were to come.

21 Q Why is that?

22 A They were going to be used for transport only and us
23 -- all of us had unmarked cars, and we didn't want them to
24 see marked car coming up behind them because as you know
25 a half ounce of crack is not very big, they can throw it

John Sherfield - Cross by St. Pierre

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1 out the window and you'd never find it.

2 Q So you placed Lashad in hand-cuffs and searched him
3 as best you could. Right?

4 A Yes, sir.

5 Q Okay. What kind of search was this on Mr. Brewton?

6 A We searched his outer clothing and stuff until we
7 found the scales in there and then we went back and went
8 in his pockets then, after he was placed under arrest.

9 Q You already testified once you got him out the car,
10 you put him in cuffs.

11 A I did. I put him in hand-cuffs, told him that he was
12 being detained, then we searched the car, found a scale,
13 told them they were under arrest, that all three of them
14 were under arrest.

15 Q But I think you testified you searched him and went
16 through his -- went through his wallet, found some money.
17 Right?

18 A Yes, we found some money.

19 Q Okay. And it was in wallet, wasn't it?

20 A I -- Yes, I think so.

21 Q Okay. And it wasn't in a rubber band bundle or
22 anything like that?

23 A No, sir.

24 Q Okay. And then you testified that large amounts of
25 money like two hundred and eighty dollars is consistent

John Sherfield - Cross by St. Pierre

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1 with the trade in drugs. Right?

2 A Large amounts of currency is consistent with trade of
3 large sums of ---

4 Q And large amounts of currency is certainly consistent
5 with just getting a paycheck -- Right -- having cash?

6 A Yes, sir.

7 Q And it's -- Nothing is illegal about having two
8 hundred and eighty dollars worth of cash on you, is there?

9 A No, sir.

10 Q Okay. And then you said you searched the car.
11 Right?

12 A Yes, sir.

13 Q Okay. And you found a set of scales. Is that
14 correct?

15 A Yes, sir.

16 Q Okay. And what were -- You were looking for dope in
17 the car?

18 A Yes, sir.

19 Mr. St. Pierre - If I may approach, Your Honor?

20 The Court - Yes, sir.

21 Q Are those the scales that you found under the seat?

22 A Yes, sir.

23 Q Okay. And this looks like -- Does this look like a
24 weapon or anything like that?

25 A No.

John Sherfield - Cross by St. Pierre

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- 1 Q Okay. Kind of looks like a cell phone?
- 2 A Looks like scales to me.
- 3 Q Looks like scales?
- 4 A (No response)
- 5 Q How do you know that's a scale?
- 6 A By doing narcotics for eleven years.
- 7 Q Okay. And is there a battery missing in there?
- 8 A Yes, there's a battery missing.
- 9 Q Okay, so that would make -- That would render it
- 10 inoperable. Right?
- 11 A Was not missing at the time. It's just been in a
- 12 file cabinet.
- 13 Mr. Anthony - I'm sorry. I didn't hear the
- 14 answer.
- 15 The Court - Answer it again.
- 16 A The battery was not missing at the time. It's just
- 17 been in our file cabinet and I pulled it out yesterday,
- 18 whenever you called wanting to see it.
- 19 Q Okay. So obviously, the evidence hasn't been
- 20 secured.
- 21 A The evidence is secured in a file cabinet, but it has
- 22 several other scales in there. That's why I put the
- 23 number -- The case number is written on it. It's secured
- 24 inside of a locked vault which is secured inside ---
- 25 Q When did you put this case number on there?

John Sherfield - Cross by St. Pierre

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1 The Court - All right, let's talk one at a time.

2 Let him finish. Go ahead.

3 A The scales are secured in a locked vault which is
4 secured in a concrete building with metal doors with steel
5 post over the doors and the windows.

6 Q Okay. But somehow a battery turns up missing?

7 A I'm sure the battery's in there. We've got probably
8 a hundred set of scales in there.

9 Q Mixed in together ---

10 A Yes.

11 Q --- in the same --

12 A As soon as the evidence is collected, either the name
13 or the case number is placed on the evidence with them and
14 the cell phones.

15 Mr. St. Pierre - If I may approach the witness
16 again?

17 Q This is the bag that the scales were in?

18 A It's not the original bag, no. I -- I got the
19 original bag yesterday. Whenever you got it out, the bag
20 had broken open -- The seal had broken open. I just put
21 it in this one and brought it up here this morning.

22 Q I didn't see this yesterday.

23 A I know you didn't. I'm telling you. That's what ---

24 Q Okay. So that's not the original bag, and this isn't
25 the original shape that the scales ---

John Sherfield - Cross by St. Pierre

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1 A They's a battery missing out of it.

2 Q And in this unoriginal bag and unoriginal scale
3 condition, there's no chain of custody written on there,
4 is there?

5 A There's -- No. I had it the whole time. It's in my
6 vault.

7 Q Go ahead.

8 A It was in my vault where I keep my evidence. I
9 didn't turn it over to anybody else.

10 Q You don't -- No one else keeps your evidence?

11 A Not that. Not that and cell phones they don't.

12 Mr. St. Pierre - Just one moment, Your Honor.

13 (Pause)

14 Q You never asked for consent to search the vehicle,
15 did you?

16 A No, sir.

17 Q You just went ahead and searched it?

18 A Yes, sir.

19 Q Okay. And all -- All three co-defendants were
20 searched on the scene of the arrest?

21 A I can only answer about Mr. Brewton, sir.

22 Q You're the lead investigator. Right?

23 A Yes, sir.

24 Q In your 18 years in law enforcement and 11 in
25 narcotics, do you think it's a very prudent decision to

John Sherfield - Cross by St. Pierre

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1 search people you're arresting before you transport them
2 to the jail?

3 A Yes, sir.

4 Q And what exactly did you arrest my client for?

5 A Possession of cocaine.

6 Q Possession of cocaine. All right. And the elements
7 of possession of cocaine would be that he would've had to
8 have actually -- either actually or constructively
9 possessed the cocaine. Right?

10 A Yes, sir.

11 Q Okay. And you didn't see any movement on his behalf
12 when you were approaching the car, did you?

13 A No, sir.

14 Q Okay. And the only movement you saw was from the
15 backseat passenger. Right?

16 A Correct.

17 Q Okay. And you had no idea that a Lashad Brewton from
18 Spartanburg, South Carolina would be coming down the road,
19 would you?

20 A No, sir.

21 Q Okay. So how would he have actually possessed
22 cocaine?

23 A Because I felt like that he knew probably what was
24 going on, that they were coming down to sell crack
25 cocaine, and I felt like there was probably crack in there

John Sherfield - Cross by St. Pierre

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1 at that time, even though I hadn't found it, but knowing
2 that we found the scales, which is usually with someone
3 that is selling drugs, that he probably had knowledge of
4 that.

5 Q All right. So let me -- let's -- Would you arrest a
6 taxi driver in the same situation if one of his passengers
7 had a scale in the backseat of a taxi cab?

8 A No, sir, it's a little different situation.

9 Q Okay. So you had to merely speculate that he knew
10 what was going on.

11 A I speculated that, because he was driving Mr. Pope's
12 vehicle whose license is suspended. Mr. Crosby didn't
13 have any license at the time. They needed a ride, so he
14 was driving their vehicle down there.

15 Q And yet, he actually has a valid driver's license,
16 doesn't he?

17 A Yes, sir, he did at the time as far as I know.

18 Q So he was lawfully driving the car and you merely
19 speculated that he knew there was a scale with cocaine
20 residue in the backseat.

21 A Yes, sir.

22 Q Okay. Venson Harris. You work with him before?

23 A Not before that day.

24 Q Okay. You ever met Venson Harris?

25 A Not before that date I hadn't. Several times since -

John Sherfield - Cross by St. Pierre

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1 --

2 Q When did you actually first come into contact with
3 Venson Harris?

4 A The date that he was arrested.

5 Q Okay, what time?

6 A I can't say for sure, but I'm saying maybe -- 4:00
7 o'clock maybe.

8 Q Four o'clock. That's right after he got arrested.

9 A Yes, sir.

10 Q You met him at the jail?

11 A Yes.

12 Q Okay.

13 A After that date.

14 Q So now you --

15 A I've had several -- I've had several meeting with him
16 since that date.

17 Q Okay. Well, we're just going on the date of this
18 incident.

19 A Okay.

20 Q Between the time he's arrested and the time that you
21 were the first one to pull the driver out of the car.
22 You met him at the jail.

23 A No.

24 Q You didn't meet him at 4:00 o'clock?

25 A I met him on the side of the road when we arrested

John Sherfield - Cross by St. Pierre

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1 him.

2 Q Did you try to get a warrant -- search warrant?

3 A No, sir.

4 Q How hard would that have been to get a search
5 warrant?

6 A Uh, depending on which magistrate was on call, I
7 would probably have to drive 12 to 14 miles either way
8 outside of Union.

9 Q Okay. But certainly since you've just met Mr. Harris
10 on the side of the road in Jonesville, South Carolina on
11 the 24th of June, there is no way you could determine his
12 credibility, could you?

13 A I had an Officer Johnson who I've known for years and
14 years was there when he heard the phone call.

15 Q Okay, but you ---

16 A No, sir.

17 Q Okay. And you were the first one to approach the
18 car. Right?

19 A Yes, sir.

20 Q With guns, no guns or can't remember?

21 A Can't remember.

22 Q And I know you've already testified to it, but could
23 you just tell me who was all at the scene again?

24 A Myself, Sergeant Johnson, Sheriff Taylor, Captain
25 McNeil, I think a couple -- Corporal Russell Vinson was

John Sherfield - Cross by St. Pierre

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1 there, Investigator Mickey Parker and there was another
2 uniformed officer that I don't remember. I know there was
3 another car.

4 Q Who is Vinson?

5 A He was a corporal that was driving a uniformed patrol
6 car.

7 Q Uh ---

8 A It may have been Sergeant Vinson at the time.
9 Russell Vinson ---

10 Q I think it's corporal. Tell me about the shifts
11 y'all worked that day.

12 A Sir?

13 Q Do you remember what kind of shifts everyone was
14 working that day?

15 A No, sir.

16 Q How many uniformed patrol cars are there on at any
17 given time?

18 A Some days there are four in Union County that's
19 patrolling. Some days there's three.

20 Q Okay. What about in the Jonesville area?

21 A Our county's not separated in sections. They patrol
22 the whole county.

23 Q Okay.

24 A They're not assigned to a certain -- certain section.

25 Mr. St. Pierre - Have no further questions.

John Sherfield - Cross by Brannon

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1 The Court - All right. Mr. Brannon?

2 Mr. Brannon - Thank you, Your Honor.

3 Cross Examination

4 by Mr. Brannon -

5 Q Lieutenant, on June 24th, 2010 had you met this
6 Venson Harris before he was placed under arrest?

7 A No, sir.

8 Q Okay. Did you even know what his name was when you
9 walked up to the car to arrest him?

10 A I knew what the informant said. I -- I didn't know
11 that was his real name.

12 Q Okay, well, let's talk about that informant, the
13 informant that ratted out Venson Harris. What was his
14 name?

15 A I'd rather not ---

16 Q Let me rephrase -- withdraw and rephrase. Did you
17 know the name of that informant?

18 A Yes.

19 Q Had you -- Had that person ever been an informant for
20 you or for Union County Law Enforcement before that day?

21 A Yes, sir.

22 Q Had that person been paid for his services or had
23 that person been provided some benefit for his services
24 such as reduced charges or those kinds of things?

25 A Both at different times.

John Sherfield - Cross by Brannon

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- 1 Q Both at different times. So you had actually used
2 that confidential informant to make a case or cases.
3 Correct?
- 4 A Several cases.
- 5 Q All right. Several cases. You knew that person by
6 name. Correct?
- 7 A The informant?
- 8 Q Yes.
- 9 A Yes, sir.
- 10 Q Did you know where that person lived?
- 11 A The informant?
- 12 Q Yes.
- 13 A Yes.
- 14 Q Did you know where that person, that informant hung
15 out?
- 16 A Sometimes, yes, sir.
- 17 Q Okay. So if you had something particularly bothering
18 you, you know, some drug trafficking or drug sales going
19 on some place, could you approach that guy to see what he
20 knew about it?
- 21 A I would approach him, but I would not call out names.
22 I would say, do you know anything about this area.
- 23 Q Right. But you knew where to -- You could reach out
24 and touch that guy. Correct?
- 25 A Yes.

John Sherfield - Cross by Brannon

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- 1 Q Okay. Now, let's talk about Venson Harris. What'd
2 you know about Venson Harris on June 24th?
- 3 A That he brought some crack down and sold it to the
4 informant.
- 5 Q Okay. And you knew that because that confidential
6 informant had given you some information. Correct?
- 7 A And it was video-taped.
- 8 Q Right. But you knew that because initially this
9 informant that you knew had a relationship with and could
10 reach out and touch, gave you some information. Correct?
- 11 A Yes, sir.
- 12 Q Okay. Did you know where Venson Harris lived on June
13 24th?
- 14 A No.
- 15 Q Did you know where he hung out?
- 16 A No.
- 17 Q Had he ever made a case for you in the past?
- 18 A Venson?
- 19 Q Yes.
- 20 A No, sir.
- 21 Q Okay. How did you know what he said was reliable?
- 22 A This officer was standing next to him in a holding --
23 like a holding room or interview room at the jail while he
24 was making the calls and he overheard the calls.
- 25 Q Okay, good, good. Why was Mr. Harris in jail?

John Sherfield - Cross by Brannon

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1 A For selling crack.

2 Q Okay. Who else was in jail with Mr. Harris that day?

3 A His wife was there.

4 Q Right.

5 A I don't -- I don't even remember if she was charged
6 or not.

7 Q Well, would you believe me if I told you she was
8 charged with conspiracy to sell?

9 A Yes, that may happen.

10 Q Okay. Do you happen to know what happened to his
11 wife's charge?

12 A No, I don't.

13 Q Okay. Would you be surprised to know that it was
14 dismissed?

15 A No, I wouldn't be surprised.

16 Q Okay. And I believe you were asked earlier about Mr.
17 Harris. Do you know the sentence that he's serving right
18 now? Do you know how long it is?

19 A No, sir.

20 Q Three years.

21 A Okay.

22 Q Okay. Do you know what the potential sentence for
23 PWID third is?

24 A This other attorney said it was like ---

25 Q Ten to thirty?

John Sherfield - Cross by Brannon

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- 1 A Right.
- 2 Q So stands to reason that he didn't plead to PWID
- 3 third. Correct?
- 4 A Not third.
- 5 Q Okay. All right. Now, you've already testified that
- 6 you have equipment to tape record phone calls and those
- 7 kinds of things. Correct?
- 8 A Yes.
- 9 Q Okay. And you have Sergeant Johnson apparently
- 10 standing in a holding cell next to Venson Harris and
- 11 Johnson is listening to a phone call. Right?
- 12 A Yes, sir.
- 13 Q Are you telling me that the phone call -- the cell
- 14 phone was on speaker.
- 15 A I don't know. I wasn't there.
- 16 Q Okay. Wouldn't this be an appropriate time to have
- 17 a tape recording?
- 18 A It would've been ideal, yes.
- 19 Q Okay. All right. And you're in a law enforcement
- 20 facility. Correct?
- 21 A We was in the jail, yes, sir.
- 22 Q Is there no recording equipment at the detention
- 23 center?
- 24 A Not audio, other than the fixed camera.
- 25 Q Okay. All right. Did Johnson tell you he could hear

John Sherfield - Cross by Brannon

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1 the other half of the phone call?

2 A No. I didn't ask him.

3 Q Okay. So all you have is Johnson telling you that
4 Venson Harris says there's going to be a black Expedition
5 coming out of Spartanburg on 176 towards some convenient
6 store in Jonesville. Correct?

7 A Johnson told me that there was a black Expedition
8 coming from Spartanburg on 176. He didn't say Vinson told
9 him. He didn't say he heard it. That's what he told me,
10 said there was one coming, that Pope was coming.

11 Q Okay. We know that this phone call or these phone
12 calls were not recorded. Correct?

13 A Yes, sir.

14 Q I guess we have to assume since you didn't ask the
15 question that all Johnson could hear was what Venson
16 Harris said, he could not hear whomever it was on the
17 other side of the phone. Correct?

18 A You would have to ask Mr. Johnson over there.

19 Q Okay. All right. But you have information from a
20 person that at that time you didn't know where he lived,
21 you didn't know who he hung out with or where he hung out
22 with and you'd never made a case before that a black
23 vehicle was coming down -- was travelling 176 into Union
24 County. Correct?

25 A Yes.

John Sherfield - Cross by Brannon

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1 Q You didn't even know how many people would be in the
2 vehicle, did you?

3 A Not for sure, no.

4 Q Okay. 176 between Spartanburg and Union in the
5 Jonesville area, would you say that that is an area, a
6 high crime area?

7 A Well, I mean we don't make a lot of drug cases right
8 on 176. That is the busiest highway, you know, that flows
9 through Union, naturally comes from Spartanburg and goes
10 on into Newberry. I mean that's -- It's a four-lane
11 highway. It's the main highway.

12 Q Okay. But my question is simple. Is it or is it not
13 a high-crime area?

14 A No, I wouldn't say it's very high.

15 Q Okay, good. All right. What time did you make this
16 stop?

17 A Around 6:00 o'clock.

18 Q 6:00 o'clock p.m. in June. Correct?

19 A Yes.

20 Q So it's still easily daylight. Correct?

21 A Yes, sir.

22 Q So it would not be a late hour in the day, would it?

23 A No.

24 Q Okay. All right, now, you said that when you pulled
25 up behind the car, the black Expedition, you were actually

John Sherfield - Cross by Brannon

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1 behind the sheriff's car. Correct?

2 A The sheriff had fell in behind him and put his blue-
3 lights on, then the black Expedition pulled into the
4 center, the sheriff was on the right back, I went to the
5 left back of the vehicle, pulled mine along side with the
6 sheriff. Captain McNeil pulled in behind us in his white
7 pick-up truck.

8 Q Okay. And the only thing that you can say is that
9 you saw one of the occupants of the car bend down and then
10 sit back up. Correct?

11 A And turn around and look back at us.

12 Q Okay. Now, bend down, turn around and look at you,
13 and there were, what, at least four police cars circling
14 this vehicle. Correct?

15 A Yes, sir.

16 Q Okay. So you see one person turn and look. Would
17 you classify that as nervous or evasive behavior?

18 A No, sir, not really.

19 Q Okay, good, good. All right, now when the sheriff
20 turned on his blue-light, did the Expedition speed up?

21 A No, sir.

22 Q So there was no flight on the part of the occupants
23 of the black Ford Expedition. Correct?

24 A Correct.

25 Q All right. Okay. Now, I want to talk to you for a

John Sherfield - Cross by Brannon

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1 minute about the scale. Where's the original bag that
2 this was in?

3 A It was just in a plastic bag. It's down at the
4 office somewhere.

5 Q Okay. But you could get it here.

6 A It was -- It was open. The seal had broke. I mean
7 it just -- sometimes -- It's not uncommon for those when
8 they -- they sit around for a while, they'll just -- the
9 glue comes unglued in those. Those bags are old and
10 they've been here for years.

11 Q So your testimony is the BEST bag isn't a BEST bag
12 then. Is that right?

13 A That's not a BEST bag.

14 Q Okay. All right. Did the other bag that this scale
15 was in have exactly the same writing on it?

16 A Yes.

17 Q Okay. And you could bring that with you tomorrow?

18 A Yes.

19 Q Okay. All right. Where is the back to this and the
20 other battery?

21 A This is the way it was. When we got this, we put
22 this number on it to identify it with this case. The
23 battery -- I don't remember it having a back, but the
24 battery was in it.

25 Q Okay. All right. Now, you indicate in the incident

John Sherfield - Cross by Brannon

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- 1 report that you did some testing, some field testing on a
2 white powder-like substance. Correct?
- 3 A A white substance, yes, it was on the scale.
- 4 Q Okay. Where's the SLED check on that white powder
5 material?
- 6 A It was a field test.
- 7 Q Okay. Well, I'm asking you, did you send it for any
8 substantiation of your field test?
- 9 A The scales was not sent to SLED, no, sir.
- 10 Q Okay. I understand that. Did you scrape any more of
11 the white powder off and have it tested?
- 12 A No, sir.
- 13 Q Okay. Thank you. All right. You said earlier that
14 that was in -- that scale was in your locker. Correct?
- 15 A It was in our locked vault, yes.
- 16 Q Okay, no, no, no, no. You said it was in your
17 locker.
- 18 A Right. It's in my -- It's in my box on our locked
19 vault.
- 20 Q My box in ---
- 21 A There's several drawers in a locked vault. I have a
22 drawer. Sergeant Johnson has a drawer and Jermaine Smith
23 has a drawer.
- 24 Q Okay. All right. Then I would ask you why when we
25 filed -- when I filed my Rule 5 asking for discovery, that

John Sherfield - Cross by Brannon

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1 I was provided this in the way of evidence seized in this
2 case.

3 A This is a chain of custody. There was no chain for
4 the -- for the scales or the phone. There's no chain. I
5 -- I collected it and I kept it.

6 Q Okay, but you took it into evidence. Right?

7 A I took it into evidence. I put it in my evidence, my
8 evidence vault and nobody else has touched it, just me.

9 Q All right. Well, show me where there's a document
10 anywhere that says you took a scale and cell phones into
11 evidence? Now, it's in the incident report. It's in the
12 incident report, but it doesn't say that you have it.

13 A Well, I would assume that you would know that when I
14 put it in the incident report, that I took it, that I had
15 it.

16 Q Okay. So I'm supposed to assume now that you've done
17 something. Correct?

18 A It says in the -- that I seized the cell -- the phone
19 and the scale.

20 Q Well, it also says you seized two hundred and eighty
21 dollars from one person and five hundred and seventy
22 dollars from another person. You wrote that down.

23 A And that's signed on the back, yes, sir, because I
24 don't have control of that. That was turned into the
25 treasurer's office.

John Sherfield - Cross by Brannon

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1 Q All right. Well, can you answer this then? When my
2 fellow counsel came to look at evidence, why is it that
3 they were shown the crack cocaine but they weren't shown
4 the cell phones or the scales?

5 A Nobody asked me to show them the scales until ---

6 Q Could it be because we didn't ---

7 Mr. Anthony - Let him ---

8 The Court - Yes, let him finish answering.

9 Mr. Brannon - Forgive me. Forgive me.

10 The Court - Go ahead. Finish your answer.

11 A Nobody asked me to show anyone the scales until
12 yesterday evening and this gentleman from Laurens called
13 and asked me. It was late hours. I was doing some stuff
14 for the sheriff and I told him I had it here and provide
15 him with that first thing this morning and I did that.

16 Q Okay. Could it be that we didn't call and ask you to
17 look at the cell phones or the scale because we had no
18 documentation that you had that in your custody?

19 A The incident report says I had it.

20 Q Okay.

21 A I took it.

22 Q All right. When you arrested Mr. Venson Harris, did
23 you take his cell phone back from him?

24 A Yes.

25 Q Did you take his cell phone from him?

John Sherfield - Cross by Brannon

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- 1 A Yes.
- 2 Q Okay. So before he could call anyone, somebody
- 3 working for Union County Law Enforcement had to give him
- 4 his phone back. Correct?
- 5 A Sergeant Johnson had the phone, took it to the jail
- 6 with him and let Venson use the phone.
- 7 Q Okay. But it was taken from him and then it was
- 8 returned to him by whom?
- 9 A Sergeant Johnson.
- 10 Q Who works for?
- 11 A Union Sheriff's office.
- 12 Q And it was with Officer Johnson's authority and/or
- 13 permission that your informant made phone calls. Correct?
- 14 A Right.
- 15 Q And as a result of your informant making phone calls,
- 16 somebody had promised to talk to the magistrate to help
- 17 him make bond. Correct?
- 18 A Correct.
- 19 Q His wife's charges have been dismissed. Correct?
- 20 A That's what you say. I don't -- I don't know that.
- 21 Q All right. And he is serving a lesser sentence than
- 22 ten to thirty.
- 23 A That's what you say. I don't know.
- 24 Q Okay. Had you ever dealt with Roderick Pope in a
- 25 criminal case?

John Sherfield - Cross by Brannon

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- 1 A No, sir.
- 2 Q Did you ever know him to sell drugs?
- 3 A Never met him.
- 4 Q Never met him before.
- 5 A (No response)
- 6 Q Had you ever seen that black Ford Expedition?
- 7 A If I did, I didn't know it.
- 8 Q Didn't know it. Okay. All right, now, you
- 9 approached the driver's side of the black Ford Expedition
- 10 and you asked Mr. Brewton to step out of it. Right?
- 11 A Yes, sir.
- 12 Q You immediately place him into hand-cuffs. Correct?
- 13 A Yes, sir.
- 14 Q You didn't take the other two out of the passenger's
- 15 side, but they were removed from the vehicle. Correct?
- 16 A Yes, sir.
- 17 Q Okay. When -- And then you said you searched the
- 18 vehicle. Correct?
- 19 A Correct.
- 20 Q Okay. Were -- Was my client or Mr. Crosby still in
- 21 the car when you searched the vehicle?
- 22 A No, sir.
- 23 Q Okay. Do you believe -- And again you're the lead
- 24 officer. Right?
- 25 A Right.

John Sherfield - Cross by Brannon

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- 1 Q Okay. Do you believe that before you searched the
2 vehicle Mr. Pope was in hand-cuffs?
- 3 A Yes, I believe he was.
- 4 Q Do you believe that Mr. Crosby was in hand-cuffs?
- 5 A I believe he was.
- 6 Q Okay. And that's before you found the scale.
7 Correct?
- 8 A Correct.
- 9 Q Does Union County have access to a drug dog?
- 10 A We do now. We didn't then.
- 11 Q You didn't then. Okay. You have the man who was
12 driving the car in hand-cuffs. Right?
- 13 A Yes, sir.
- 14 Q You have the other two in hand-cuffs. Right?
- 15 A Right.
- 16 Q Is that vehicle going anywhere?
- 17 A No, sir.
- 18 Q Okay. Did you think then -- Well, let me back up.
19 Did you ask any of them for consent to search the vehicle?
- 20 A No, sir.
- 21 Q So you didn't have consent. Why didn't you go get a
22 search warrant?
- 23 A I just didn't.
- 24 Q Okay. Could it be that you knew that you didn't have
25 probable cause for a search warrant?

John Sherfield - Cross by Brannon

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- 1 A No, sir.
- 2 Q Okay. But you did not get a search warrant.
- 3 Correct?
- 4 A Did not.
- 5 Q All three of the occupants were in hand-cuffs at the
- 6 time that you searched the vehicle.
- 7 A Yes, sir.
- 8 Q Okay.
- 9 Mr. Brannon - Your Honor, I'm -- I have just a
- 10 few more questions and I'll be quick. All right?
- 11 Q I've highlighted all this here. It says upon arrival
- 12 at the jail Corporal Vinson searched his vehicle after
- 13 removing Brewton and Crosby and located a yellow plastic
- 14 bag containing a quantity of crack cocaine in excess of
- 15 ten grams where Crosby was seated. Correct?
- 16 A Yes, sir.
- 17 Q Okay. All right. Now, who's car were they in?
- 18 A Union Sheriff's office car.
- 19 Q Okay. Who was driving the car? Do you know?
- 20 A Mr. Vinson.
- 21 Q Mr. Vinson was driving that car. Okay. Who
- 22 transported Venson Harris and his wife after their arrest?
- 23 A I don't remember.
- 24 Q Could it have been the same car?
- 25 A I don't remember.

John Sherfield - Cross by Brannon

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- 1 Q Could it have been the same car?
- 2 A Could have been.
- 3 Q Could have been. Okay. All right. Now, but what I
- 4 don't have and you see, my problem with like the scales is
- 5 where does it say in there that Officer Vinson gave you
- 6 the cocaine or the crack that he found in his back seat?
- 7 Where does it say that?
- 8 A He called and told me. He -- It don't say that in
- 9 there.
- 10 Q Okay. So how am I to know that you have possession
- 11 of the crack?
- 12 A You received the BEST pack information from John that
- 13 showed that I took it. Right?
- 14 Q I got you, but where does it say in here that you got
- 15 it?
- 16 A It don't say.
- 17 Q It doesn't say that. Okay. All right. Now, I got
- 18 it right here and I'm walking around wasting time. What's
- 19 that page right there?
- 20 A It's the package slip where I filled out the iLAB
- 21 report to send the evidence to SLED.
- 22 Q Okay. And the evidence was?
- 23 A Large quantity of white rock-like substance believed
- 24 to be crack cocaine.
- 25 Q Okay. And right down there at the bottom, what does

John Sherfield - Cross by Brannon

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- 1 that say?
- 2 A They collected?
- 3 Q Yes.
- 4 A 6/24/2010 13:30.
- 5 Q 13:30. What time is 13:30?
- 6 A 1:30.
- 7 Q 1:30 a.m. or p.m.?
- 8 A A -- p.m.
- 9 Q P.M. Okay, so it's right -- It's an hour and a half
- 10 after noon. Right?
- 11 A Yes, sir.
- 12 Q Okay. What time was Mr. Pope and Mr. Brewton and Mr.
- 13 Crosby arrested?
- 14 A Around 6:00.
- 15 Q 6:00. Well, if you've got the crack in your
- 16 possession at 1:30 in the afternoon, how was it in their
- 17 car at 6:00 or 6:30 p.m.?
- 18 A Because iLAB is an automatic system with SLED where
- 19 you go in to pre-register. You used to not have to do
- 20 that. Some -- Some fields such as the time is already in
- 21 there. Like I may not have filled this packing slip out
- 22 on the 24th. I may have filled it out like -- actually
- 23 like on the -- the day before I took this to SLED which is
- 24 like three months later and that was the time when I was
- 25 sitting at the desk, but I do put the date in, but it

John Sherfield - Cross by Brannon

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1 automatically post the time in there that I'm sitting at
2 the desk filling the packing slip out.

3 Q Okay.

4 A That's how that works.

5 Q All right, so it's a computer glitch. Right?

6 A Right.

7 Q But now you bring me to the next topic that I want to
8 cover. When did you take it to SLED?

9 A I can tell you ---

10 Q Okay.

11 A On 9/21/2010.

12 Q 9/21 and the date of arrest is 6/24. Right?

13 A Yes, sir.

14 Q So it's three days short of three months. Right?

15 A Right.

16 Q Okay. Where was the dope from June 24th to September
17 21?

18 A In a locked vault in my office.

19 Q Okay. Do I have any documents that show who had it,
20 where it was locked, whose possession it was in?

21 A It was in my possession in my vault.

22 Q Okay. Do you see my problem? I've got an incident
23 report that says Vinson finds it. Nowhere does it say it
24 was given to you until three months later when you take it
25 to SLED. Okay. You see why I've got a bit of a problem

John Sherfield - Cross by Hall

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1 with that?

2 A That could be easily cleared up. Have Vinson here.

3 Q You understand ---

4 A I understand.

5 Mr. Brannon - I think I'm done.

6 Q You never had any additional testing done by SLED or
7 any laboratory on the white powder substance that you now
8 allege was cocaine or crack on the scale. Correct?

9 A No, sir.

10 Mr. Brannon - Okay. Your Honor, I don't have
11 anymore questions.

12 The Court - Mr. Hall?

13 Cross Examination

14 by Mr. Hall -

15 Q Lieutenant Sherfield, let's talk about that vault and
16 maybe clear that up. The scales you put in a file cabinet
17 with -- you testified with other scales and cell phones.
18 Is that right?

19 A The scales were in a scale drawer and the cell phone
20 was in a cell phone drawer.

21 Q I'm sorry. I missed that.

22 A The scales were in one area. The cell phones are all
23 together in another area.

24 Q Is that in a drawer?

25 A Yes.

John Sherfield - Cross by Hall

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1 Q All right. Are they -- And when you say one area,
2 are the cell phones and the scales are all in the same
3 drawer.

4 A Yes.

5 Q And is the crack cocaine also in that drawer?

6 A No, not in that drawer.

7 Q All right, where's the crack cocaine?

8 A It's in another drawer. All of us keep out BEST
9 packs in one big drawer.

10 Q And how many BEST packs were in that drawer?

11 A Different -- It varies. Wednesday of last week there
12 was 45 in there.

13 Q And y'all don't maintain any type of written record
14 or a log of the drugs that are in that drawer.

15 A It's listed on the chain that's with the drugs in
16 that sealed pack.

17 Q Right. Right. Obviously you -- Your testimony is
18 that there is a chain written on the pack, but my question
19 is, again, there is not a log, a separate log that tells -
20 - In other words, if you got to go find the drugs, you've
21 got to rifle through there and find the one with the right
22 number on it, don't you?

23 A There's not but three of us that contributes drugs to
24 that, and I'm the only one with the combination to that
25 vault.

John Sherfield - Cross by Hall

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- 1 Q Right. But my question is, still, you don't have a
2 log, you don't have them separated, there's 40 bags of
3 drugs in there, for them to be sent to SLED, you have to
4 go through there and find the right number.
- 5 A Right.
- 6 Q You identify them by the number, case number. Right?
- 7 A We put a case number on the outside and we initial
8 it. JS I know is mine. JJ is Jimmy Johnson, Jermaine
9 Smith is his, but he writes his JS in cursive.
- 10 Q But again, that would be -- Y'all have them in there,
11 you know they're in there, because you can open the drawer
12 and look at them.
- 13 A Right.
- 14 Q You don't look at a separate log to determine what's
15 in that drawer.
- 16 A No, sir.
- 17 Q Now, let me talk about the calls, and certainly
18 Sergeant Johnson should be able to answer most of the
19 questions about the calls, but as a supervise though, do
20 y'all have the ability to record phone calls?
- 21 A Yes.
- 22 Q And had he been using one of your phones or crew
23 (phonetic) phone you would've been able to record Mr.
24 Harris' phone calls to whoever he called.
- 25 A Mr. Harris said that he had to use his phone because

John Sherfield - Cross by Hall

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1 Mr. Pope wouldn't answer if he called from a strange
2 number.

3 Q And that makes sense, but -- And so as far as you
4 know, there is no listening device by which you can -- you
5 or anybody else in the Union County Sheriff's Department
6 can sit there and listen to what's going on in that phone
7 call.

8 A We had one in our office, but we did not have one at
9 the jail.

10 Q All right. And you did not have it at the jail, so
11 what you're testifying to, you -- As far as you know there
12 would not been any kind of electronic ability for you or
13 Officer Johnson -- Officer Johnson to be able to listen in
14 to any of those phone calls between Mr. Harris and whoever
15 he was calling.

16 A There was no recordings made, if that's what you're
17 looking for.

18 Q Now, I didn't ask you if there were any recordings.
19 There was no way he could've heard -- Is there any way he
20 could've heard what was on the phone unless the guy put it
21 on speaker phone? Do you have any idea how he could do
22 that?

23 The Court - He who?

24 Q I'm sorry. There's no devices -- Of course, you
25 can't testify to what he heard or didn't hear.

John Sherfield - Cross by Hall

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1 A Right.

2 The Court - Well, we still got he. You got to -

3 --

4 Q I'm sorry, Sergeant Johnson. You did not -- Again,
5 there are no devices by which Sergeant Johnson would've
6 been able to monitor those phone calls. Is that correct?

7 A None that I know of.

8 Q So tell me about the -- how you video-tape the deal
9 with Harris and the confidential informant. How do y'all
10 do that?

11 A We had an undercover camera that we hid that recorded
12 video and audio that was body worn.

13 Q So when you testified earlier that there was a video
14 of that, that would've been a body wires or something on
15 the confidential informant actually making the purchase.

16 A Yes.

17 Q Not video tapes that would've been any kind -- You
18 didn't have it in your patrol cars video ---

19 A No, none of our narcotics officers have videos in
20 their car.

21 Q Well, do you know when he was arrested, when he was
22 stopped -- And I believe your testimony is that he was
23 stopped some distance away after they made the deal, he
24 was stopped at a traffic stop and a narcotics officers
25 stopped him or a did a uniformed ---

John Sherfield - Cross by Hall

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- 1 A Narcotic's officer.
- 2 Q And when you searched Brewton, you did -- you were
- 3 able to find the wallet.
- 4 A Yes, sir.
- 5 Q And you found the cell phone.
- 6 A Yes, sir.
- 7 Q And then you were able to go through the wallet and
- 8 find the contents and the cell phone.
- 9 A Yes, sir.
- 10 Q And it appears that you -- you or somebody did or do
- 11 some type of retrieve whatever calls you can get off of
- 12 Mr. Harris' phone. Is that right?
- 13 A We later retrieved them from Mr. Pope's phone.
- 14 Q All right, so the pictures of the calls we have,
- 15 those are Mr. Pope's phone.
- 16 A Yes, sir.
- 17 Q Did -- Did y'all do any kind of analysis on Mr.
- 18 Crosby's phone?
- 19 A Didn't get a phone from Mr. Crosby.
- 20 Q You did not get a phone from Mr. Crosby?
- 21 A (Indicating no)
- 22 Q And you stated in your summary that cell phones were
- 23 seized from all three.
- 24 A Yes, sir. I don't have a phone from Mr. Crosby.
- 25 Q I'm going to show you what appears to be an incident

John Sherfield - Cross by Hall

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1 report signed by you or typed by you. It looks like this
2 says John Sherfield. You have it.

3 A Yes, sir.

4 Q And at the bottom of that, do you see anything in
5 that report indicating the cell phones that were
6 recovered?

7 A I took cell phones, sir. Took one from Mr. Brewton
8 and one from Mr. Pope.

9 Q All right. So you stated in the report that five
10 hundred and seventy dollars was seized from Crosby along
11 with everyone's cell phone. That does not mean all three
12 people. Is that your testimony today?

13 A No, sir. I don't -- I don't have Mr. Crosby's cell
14 phone.

15 Q Did you get Mr. Brewton's cell phone?

16 A Yes, Mr. Brewton's cell phone is right there in the
17 bag.

18 Q But you did not get Crosby's.

19 A No.

20 Q Make sure that's -- Now, you were the case agent. As
21 far as when Mr. Harris was in the jail, do you know if
22 anybody ran a rap sheet on Mr. Harris to investigate him?

23 A I don't know.

24 Q You don't -- You don't know?

25 A No, sir.

John Sherfield - Cross by Hall

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1 Q All right. Would Sergeant Johnson be able to answer
2 that?

3 A If anyone could, I guess it would be him.

4 Q But as far as you know, no investigation was delved
5 into as far as Mr. Harris ---

6 A No, sir.

7 Q --- whether he had a criminal record or even, in
8 fact, where he was from.

9 A No, sir.

10 Q And you charged all three of the occupants of that
11 vehicle with possession of cocaine but they were never --
12 or arrested, but they were never charged, were they?

13 A That's correct.

14 Mr. Hall - Court's indulgence. (Pause) Your
15 Honor, that's all we have of this witness.

16 The Court - All right. Mr. Anthony?

17 Mr. Anthony - Your Honor, could I have about
18 five minutes?

19 The Court - All right, we'll take a break.
20 We've been at it for a while anyway. This is a good time
21 to take a break. Of course, Mr. Anthony, you can't talk
22 to your witness.

23 Mr. Anthony - No, I won't talk to Lieutenant
24 Sherfield.

25 (Recess taken)

John Sherfield - Re-Direct by Anthony

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1 The Court - All right, thank you. Take your
2 seats again. All right. Mr. Anthony?

3 Mr. Anthony - Thank you, Your Honor.

4 Re-Direct Examination

5 by Mr. Anthony -

6 Q You have the scale up there?

7 A Yes.

8 Q Okay. I just want to ask you just to make sure I'm
9 clear on this. In looking at the scale, there's one --
10 one battery exposed. You can see one battery and it looks
11 like there's not a battery in the other. Is that correct?

12 A Right.

13 Q Okay. And did -- Were either one of the backs on the
14 scale when you seized it?

15 A No, sir.

16 Q Okay. So um as far as what might've happened to a
17 battery, it could've just fallen out.

18 A Yes, sir.

19 Q Okay. And you have placed a number on here. Is that
20 correct?

21 A On here what?

22 Q On the -- On the scale. I'm sorry.

23 A Yes, sir.

24 Q Okay. And what number is that?

25 A That is the case number for this case associated with

John Sherfield - Re-Direct by Anthony

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1 the three defendants.

2 Q Okay. And when did you do that?

3 A That same evening.

4 Q And during the time that you were talking to Sergeant
5 Johnson about the communications that the informant was
6 having with the -- with Mr. Pope, did you -- did he report
7 to you any expectation as to how many people would be in
8 the vehicle?

9 A Just said there was more than one.

10 Q Okay. And did he report to you what the actual
11 arrangement was as far as how much drugs was going to be
12 purchased for how much money?

13 A I was initially told it was going to be a half ounce
14 for six hundred dollars.

15 Q All right. And did that remain what you were
16 expecting.

17 A I was expecting the half ounce but I was later told -
18 -- Mr. Pope had told me that have to have fifty dollars
19 for gas, so it would be six hundred and -- six hundred for
20 the drugs and fifty for gas for delivering it to Union
21 County.

22 Q Okay. In regards to the actual search of Mr. Brewton
23 where you located the cash on his person, at what point in
24 your dealings with him did you actually retrieve the cash?

25 A After I'd found the scales with the powder substance

John Sherfield - Re-Direct by Anthony

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1 on it and placed him under arrest.

2 Q Okay. So it was -- as you were doing the -- what --
3 I guess you would categorize as the search incident to
4 arrest of Mr. Brewton after finding the scale, that's when
5 you found the money.

6 A Yes, sir.

7 Q Okay. And are you trained in recognizing controlled
8 substances?

9 A Yes, sir.

10 Q And when you saw the residue on that scale setting
11 aside the field test you conducted, did you have an
12 opinion as to what substance that was?

13 A Yes, I figured it was cocaine or crack cocaine, one
14 or the other.

15 Q And what -- What made you think that?

16 A That's just what -- That's commonly associated --
17 When you see white residue on a scale, it's usually powder
18 cocaine or either crack cocaine residue.

19 Q And why was it that the three men in the car were not
20 charged with possession of cocaine?

21 A Well, because crack cocaine also tested positive for
22 cocaine, because it has cocaine inside the crack cocaine,
23 and then we found a large quantity of crack cocaine, so I
24 just -- You know, all of it would kind of go together what
25 I was thinking, so I just left it all as trafficking.

John Sherfield - Re-Cross by St. Pierre

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1 It's not going to enhance the trafficking offense, so why
2 charge them with a possession of crack cocaine or cocaine
3 when you've got them charged with the more serious or
4 violent offense as trafficking cocaine --- trafficking
5 crack cocaine. I'm sorry.

6 Mr. Anthony - All right. If I could just have
7 one moment. (Pause) All right, thank you. That's
8 everything on Re-Direct.

9 Re-Cross Examination
10 by Mr. St. Pierre -

11 Q Officer Sherfield, in your duties as a law
12 enforcement officer in a lead detective in a case like
13 this it's your job to prepare an incident report.
14 Correct?

15 A Yes, sir.

16 Q And you have provided an incident report in this
17 case. Right?

18 A Yes, sir.

19 Q Okay. And when you fill out an incident report, is
20 there anything truthful, accurate and complete on an
21 incident report?

22 A Everything that's in there should be truthful and
23 accurate, yes.

24 Q Okay. Do you recognize this?

25 A Yes, sir. That's a copy of the incident report I

John Sherfield - Re-Cross by St. Pierre

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1 prepared.

2 Q You testified earlier that in your incident report
3 you put -- where you put in your incident report where you
4 seized scales. Right?

5 A Yes, sir.

6 Q All right, I want to have you look at that incident
7 report and tell me where it says you seized scales.

8 A Well, sir, it's not in that incident report that I
9 seized it.

10 Q Okay. But you testified earlier it was in the
11 incident report. Right?

12 A Yes, sir.

13 Q Okay. At the bottom of the incident report there's
14 a area where you can fill out what, in fact, you did
15 seize. Right?

16 A Yes, sir.

17 Q And what did you fill out?

18 A Crack and money.

19 Q Okay. And for the money that you filled in that slot
20 there, you actually filled out another form that you said
21 it went to the treasurer's office. Right?

22 A That's on the chain of custody, yes, sir.

23 Q Okay. I'm going to stick with the incident report
24 that we're speaking of. In your incident report that is
25 truthful, accurate and complete that you filled out as

John Sherfield - Re-Cross by Brannon

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1 lead investigator in this, please tell me who seized the
2 crack cocaine.

3 A Russell Vinson retrieved the crack cocaine from his
4 patrol car.

5 Q Okay. You recognize this?

6 A Yes, sir.

7 Q Okay. What is that?

8 A That's the chain of custody form they use for BEST
9 pack goes to SLED.

10 Q Okay. And that, in fact, is an affidavit, is it not?

11 A Yes, sir.

12 Q Notarized?

13 A Yes, sir.

14 Q And you're familiar with what an affidavit is.
15 Right? It's a sworn statement. Right?

16 A Yes, sir.

17 Q Okay. This sworn statement says that you seized the
18 crack from Lashad Brewton, Pope and Crosby. Right?

19 A Yes, sir.

20 Mr. St. Pierre - No further questions.

21 Mr. Brannon - Just a couple, Your Honor.

22 Re-Cross Examination

23 by Mr. Brannon -

24 Q Officer, were there any traffic citations issued to
25 Mr. Brewton, Mr. Crosby or Mr. Pope that day?

David Taylor - Direct by Anthony

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- 1 A No, sir.
- 2 Q Okay. And who did you physically seize crack cocaine
- 3 from?
- 4 A I got it from Russell Vinson.
- 5 Q Okay. Good. Who did he get it from?
- 6 A Floor of his car.
- 7 Q Floor of his car. Okay. Can you tell me without any
- 8 hesitation that Officer Vinson searched his car before he
- 9 put either Crosby or Brewton in it?
- 10 A He was told to do so. I'm assuming he did.
- 11 Q You can tell me that you told him to. My question
- 12 was, can you tell me without hesitation that he did it?
- 13 A No, sir.
- 14 Mr. Brannon - Thank you. Nothing further.
- 15 The Court - Mr. Hall?
- 16 Mr. Hall - Your Honor, we have nothing further.
- 17 The Court - All right, you can step down. Thank
- 18 you. Call your next witness.
- 19 Mr. Anthony - Call Sheriff Taylor.
- 20 Sheriff David Taylor, after being first duly
- 21 sworn, testifies as follows -
- 22 Direct Examination
- 23 by Mr. Anthony -
- 24 Q Would you state your name, please.
- 25 A Sheriff David H. Taylor.

David Taylor - Direct by Anthony

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1 Q And Sheriff Taylor, were you working back on June
2 24th of 2010?

3 A Yes, sir, I was.

4 Q Did you become involved in an operation to stop a
5 vehicle on Highway 176?

6 A Yes, sir, I did.

7 Q How did you get involved in the operation?

8 A Lieutenant Sherfield called and told me that they had
9 some individuals coming down from Spartanburg that was
10 going to be bringing a quantity of drugs that they needed
11 some help to carry out the operation.

12 Q And what did you do at that time to assist in the
13 operation?

14 A I con -- I went down to the county drug task force.
15 I think I contacted Captain McNeil or might've told
16 Lieutenant Sherfield to meet us down there.

17 Q And what was the plan or what were you advised of
18 when you went to the narcotics task force as far as the
19 vehicle you would be looking for?

20 A Lieutenant Sherfield told us about the earlier arrest
21 of Venson Harris, that he had made arrangements for an
22 individual to bring down a quantity of crack cocaine, he
23 was going to be bringing it down 176 from out of
24 Spartanburg County and the type of vehicle that it was
25 going to be in.

David Taylor - Direct by Anthony

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1 Q And what was the expectation as to the type of
2 vehicle?

3 A A black Ford Expedition.

4 Q Okay. And so what did you do in regards to
5 implementing the stop?

6 A I had positioned myself in the median of Highway 176
7 in my unmarked vehicle to kind of be a decoy as a state
8 trooper so they would not be suspicious of seeing a
9 vehicle, grey charger in the median, you know, be on the
10 lookout for that vehicle.

11 Q And once you -- When you say in the median of 176,
12 approximately where were you on 176?

13 A I was near Jonesville Fire Department substation near
14 Sam's Road.

15 Q Okay. All right. And while you were positioned
16 there, did you receive any communications advising of the
17 progress of this vehicle?

18 A Yes, sir, we -- We had radio communications, phone
19 communications, I did, with Lieutenant Sherfield and
20 Captain McNeil.

21 Q Okay. And what were you advised as to what Captain
22 McNeil had seen?

23 A Captain McNeil advised us that the vehicle had just
24 passed him and was headed south into Union, excuse me,
25 near the county line and that it was coming my way. Also

David Taylor - Direct by Anthony

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1 Lieutenant Sherfield advised me that the vehicle had -- He
2 was meeting the vehicle and he was coming right at me.
3 About the time that he told me that over the radio, I had
4 a visual on the vehicle.

5 Q And after you saw the vehicle -- What type vehicle
6 did you see?

7 A Black Ford Expedition.

8 Q And once -- After you saw the vehicle, what did you
9 do at that point?

10 A I made a turn around in the median, I proceeded
11 behind the vehicle, caught up with the vehicle and turned
12 on my blue-lights to engage a traffic stop. When I did
13 that, I looked and Lieutenant Sherfield had already caught
14 up.

15 Q Where did the vehicle stop?

16 A Stopped in the median on the inside lane, not
17 completely out of the inside lane, partly in the median,
18 partly in the passing lane is what we call it.

19 Q Okay. And after you stopped the vehicle, where did
20 you pull in your vehicle?

21 A Because the vehicle was sitting in the road, I
22 positioned my vehicle kind of to the right side of the
23 vehicle to protect occupants in the car and Lieutenant
24 Sherfield came to the inside.

25 Q And after that, who -- who got out and actually dealt

David Taylor - Cross by St. Pierre

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1 with the occupants?

2 A Lieutenant Sherfield, Narcotic's Officer Mickey
3 Parker, Captain McNeil came up at that time and I pretty
4 much just stayed in the position at my car at the time.

5 Q Okay. While the actual traffic stop occurred?

6 A Yes, sir.

7 Mr. Anthony - All right. Thank you. That's
8 everything on direct.

9 Cross Examination

10 by Mr. St. Pierre -

11 Q Sheriff, guns drawn or not?

12 A I'm not sure. They could've been. Would not been
13 abnormal if they were.

14 Q It would not have been abnormal.

15 A No.

16 Q Okay. You were in a black charger. Is that correct?

17 A No, sir.

18 Q Okay, what were you in?

19 A Grey charger.

20 Q Grey charger. All right. Was that equipped with any
21 sort of video-tape equipment?

22 A No, sir.

23 Q Okay. As the Sheriff is county you are over the
24 policies and procedures as far as video-tapes. Right?

25 A That's correct.

David Taylor - Cross by St. Pierre

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- 1 Q Okay. And I know I read from the DMV book at SLED,
2 Department of Public Safety database, there's 19 VHS
3 cameras. Do y'all possession of 19 VHS cameras?
- 4 A That's probably about correct.
- 5 Q Okay. And how many -- How many vehicles do you have?
- 6 A About 40, 45.
- 7 Q Okay. How many of these vehicles on the scene had
8 video cameras?
- 9 A To my knowledge, two.
- 10 Q Okay. And obviously you were here when you heard the
11 testimony of Lieutenant Sherfield. What would those
12 video-tapes have shown once those uniformed cars, those
13 patrol cars come up?
- 14 A The uniformed cars were not involved in the traffic
15 stop. The uniformed cars were used for transportation.
- 16 Q Okay. The video starts whenever the blue-lights come
17 on. Right?
- 18 A Yes, sir.
- 19 Q And which way, if you remember which way the
20 uniformed cars facing?
- 21 A They were -- I think they were facing south, but they
22 were behind the undercover vehicles. They were not part
23 of the arresting of the inmates -- of the individuals at
24 the scene.
- 25 Q Okay. But they were part and parcel of the transport

David Taylor - Cross by St. Pierre

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1 of the defendants to the jail. Right?

2 A They were transported, yes, sir.

3 Q And part of the video-tape as in a body mic that's
4 sensed with the video camera. Right?

5 A Yes, sir.

6 Q To the operator of the car.

7 A Yes, sir.

8 Q And even though the camera may not show anything,
9 there would obviously be some sort of audio, would it not?

10 A They were already in custody when the officers got
11 there to transport.

12 Q Yes, obviously, yes, but there would be some sounds
13 available on the video-tape. Right?

14 A Maybe, not necessarily.

15 Q Where would these video-tapes be?

16 A Sir?

17 Q Where would these video-tapes be right now at this
18 point?

19 A I don't know.

20 Q Let's go over your policies for the storage of
21 evidence. Does your office have an evidence custodian?

22 A Yes, sir.

23 Q And who is that?

24 A Right now it's Captain Robbie Hines and Master
25 Sergeant Wendy Childers.

David Taylor - Cross by Brannon

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1 Q Okay. Who was it on June 24th, 2010?

2 A Captain Robbie Hines and Master Sergeant Troy
3 Brewington.

4 Q Okay. And can you tell me officer, Sheriff, why
5 narcotic's agents don't have to -- don't have to follow
6 the same rules as any other officers as far as evidence?

7 A I don't understand your question.

8 Q Okay. Narcotic's officers have their own evidence
9 vaults?

10 A Yes, sir. Not vaults, an evidence vault.

11 Q An evidence vault.

12 A Yes, sir.

13 Q And who has access to that?

14 A Narcotic's officers.

15 Q All of them?

16 A Yes, sir.

17 Mr. St. Pierre - No further questions.

18 Cross Examination

19 by Mr. Brannon -

20 Q Sheriff, following up on that, so patrol deputy
21 seizes some evidence, he's got to surrender that to one of
22 your evidence techs. Correct?

23 A That's correct.

24 Q But Lieutenant Sherfield doesn't have to.

25 A These officers don't work a five (phonetic) -- they

David Taylor - Cross by Brannon

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1 work around the clock. They may take evidence after
2 midnight. The evidence custodian is not available to take
3 it at that time, so they have their own evidence vault
4 that they keep their drugs in until they turn it over to
5 the evidence custodian or transport it to SLED to be
6 examined.

7 Q Is it typical for one of your narcotics officers to
8 hold on to a fungible substance like crack cocaine for
9 three months without it ever being seen by your evidence
10 tech?

11 A This day and time when it's expensive to run county
12 cars up and down the road to Columbia, we hold evidence
13 until we get a quantity to take it. We don't take it
14 every time we seize it.

15 Q I understand that completely, but it seems to me that
16 it would've been more practical that you have your
17 evidence tech have that fungible commodity, that crack
18 cocaine so that we could have a chain of custody. Doesn't
19 it seem reasonable to expect that?

20 A If I'm not mistaken, you have a chain of custody.

21 Q We're going to talk about that. I want to show you
22 the incident report. Tell me who got crack?

23 Mr. Anthony - I'm sorry, what was the question?

24 Q Tell me who seized the crack? I said, who got the
25 crack?

David Taylor - Cross by Brannon

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1 A Who got the crack from where?

2 Q Who -- What law enforcement officer took possession
3 of the crack according to that document?

4 Mr. Anthony - Your Honor, ---

5 A Corporal Vinson.

6 Mr. Anthony - --- this has already been -- The
7 incident report's already been inquired about on the last
8 witness. This is rather cumulative. The Sheriff didn't
9 do this.

10 The Court - Well, this is cross examination.

11 I'll allow it.

12 A Corporal Vinson.

13 Q Corporal Vinson. Okay. Thanks. All right. And it
14 says he found it in the backseat of the car. Right?

15 A It just says it was found where Crosby was seated.

16 Q In his -- In Vinson's patrol car. Correct?

17 A Yes, sir.

18 Q All right. I'm going to show you the affidavit your
19 officer has previously testified to. Where does it say --
20 Who does it say seized the drugs on that document?

21 A Lieutenant John Sherfield.

22 Q From whom?

23 A From Randy Crosby, Lashad Brewton and Roderick Pope.

24 Q Right. Doesn't say anything about a cop car, does
25 it?

David Taylor - Cross by Brannon

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1 A Says pursuant to the traffic stop.

2 Q And personally from the individuals. Correct?

3 A That's what this document says.

4 Q Okay. All right. So now do we have chain of
5 custody?

6 A That's chain. The drug was taken to Columbia and
7 analyzed.

8 Q Okay. All right. But my question is, do we have a
9 chain?

10 A It's in your left hand.

11 Q So this -- This document is just superfluous.

12 A That's where the evidence was taken to SLED and
13 analyzed.

14 Q I understand that. I understand that completely.
15 But here it says ---

16 A That's the incident report.

17 Q Here it says an officer found some crack in the
18 backseat of his car. Here it says Sherfield personally
19 seized it from three individuals. Agree?

20 A You asked me did you have a chain of custody, and I
21 said yes, it's in your hand.

22 Q Okay. Then let me rephrase the question. Don't we
23 have a flawed chain of custody?

24 A You didn't ask me that. You asked me did you have a
25 chain of custody and I said yes.

David Taylor - Cross by Hall

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1 Q And I agree. That was a terrible question, so I
2 withdraw that question.

3 A Okay.

4 Q Now, I'm asking, isn't it true that we have a flawed
5 chain of custody?

6 A I -- That's your opinion. That'll be for the Judge
7 to decide.

8 Q Okay. All right, I've just got a few questions. Had
9 you ever met a guy named Venson Harris? Have you ever met
10 a guy named Venson Harris?

11 A No, sir.

12 Q Okay. Have you ever gotten any information from
13 somebody you believe was Venson Harris before June 24th,
14 2010?

15 A No, sir.

16 Q Okay. Do you know where he lives?

17 A No, sir.

18 Q Do you know where he hangs out?

19 A No, sir.

20 Q Do you know him to be truthful and credible?

21 A I don't know James Harris, Venson Harris.

22 Mr. Brannon - Thank you. Nothing further.

23 Cross Examination

24 by Mr. Hall -

25 Q Sheriff, who is Mickey Parker?

David Taylor - Cross by Hall

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- 1 A Who?
- 2 Q You said Mickey Parker?
- 3 A Yes, sir.
- 4 Q Who is he?
- 5 A He is a narcotic's officer with our county's drug
- 6 task force.
- 7 Q And was he present out there?
- 8 A Yes, sir.
- 9 Q And do you know what he did? Did you see him do
- 10 anything when he was out there?
- 11 A I just remember seeing him come up to the passenger's
- 12 side of the car. I don't remember seeing what he did, no,
- 13 sir. I just know that he was there.
- 14 Q And so Mickey Parker could have been involved in the
- 15 arrest or -- Would he have been involved in searching any
- 16 of these individuals?
- 17 A He could have been, yes, sir.
- 18 Q He could've been.
- 19 A But I can't say that for sure.
- 20 Q And was he -- was he dressed as a -- in street
- 21 clothes? He was not -- do you know if he was -
- 22 A My recollection he was in plain clothes.
- 23 Q Now, there's been testimony that Captain McNeil got
- 24 behind the Ford Expedition prior to it coming into Union
- 25 County. Is that right?

David Taylor - Cross by Hall

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- 1 A Yes, sir.
- 2 Q And so he followed it down 176?
- 3 A Yes, sir.
- 4 Q All right. And to your knowledge -- And at that
- 5 point prior to the stop y'all -- You knew the name of the
- 6 person who you thought the drug deal was with. Is that
- 7 right?
- 8 A No, sir, I did not.
- 9 Q You did not know? You did not know that it might be
- 10 Roderick Pope driving a Ford Expedition?
- 11 A No, sir.
- 12 Q Do you know if -- Well, I'll ask that of somebody
- 13 else, but as far as you know, Captain McNeil didn't run
- 14 the tag of the vehicle to determine who the vehicle
- 15 belonged to.
- 16 A I cannot testify to that. I'm not sure.
- 17 Q You didn't hear that over your radio. None of that
- 18 information was transmitted.
- 19 A No, sir.
- 20 Q And had he been able to see the tag, he could have
- 21 called in to find out who the car was registered to?
- 22 A Yes, sir, and I'm not sure. He may have. I just
- 23 don't recollect.
- 24 Q But prior to -- So you don't know whether he did or
- 25 not.

David Taylor - Cross by Hall

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1 A No, sir.

2 Q Nobody told you that they had run the tag to find out
3 who the car belonged to. You didn't have that
4 information.

5 A No, sir. I was just told by Lieutenant Sherfield
6 that the car was coming up on me.

7 Q Okay. All right.

8 A I said car, the vehicle, excuse me.

9 Q Right. And again, I may just have missed it, but you
10 -- You didn't get out of your car.

11 A Yes, sir, I got out of the car, but I didn't approach
12 the vehicle. I stayed at my vehicle.

13 Q And then -- And when you say you stayed at your
14 vehicle, you never were there present during the search.

15 A I never went to the vehicle. I stayed at my vehicle
16 while all of that was being conducted.

17 Q And you didn't talk to any of these three men on ---

18 A No, sir.

19 Q And you were not involve in anything that may have
20 happened with the sheriff's department once they were
21 brought up -- back to ---

22 A No, sir.

23 Mr. Hall - All right, thank you. That's all I
24 have.

25 The Court - Re- ---

James Johnson - Direct by Anthony

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1 Mr. Anthony - No, Re-Direct?

2 The Court - All right, you can step down,
3 Sheriff. All right, call your next witness.

4 Mr. Anthony - We call Sergeant Johnson.

5 James Johnson, after being first duly sworn,
6 testifies as follows -

7 Direct Examination

8 by Mr. Anthony -

9 Q Would you state your name, please.

10 A James Johnson.

11 Q And, Mr. Johnson, how are you employed?

12 A I am employed as a narcotic's investigator for the
13 Union County Sheriff's Office.

14 Q How long have you worked for the sheriff's office?

15 A Be 14 years, I think maybe next week.

16 Q And what's your rank with the sheriff's office?

17 A I'm a sergeant.

18 Q How long have you worked in narcotics?

19 A For going on three years now.

20 Q Were you working in that capacity on June 24th of
21 last year?

22 A Yes, sir.

23 Q And did you come in contact that day with Venson
24 Harris?

25 A Yes, sir, I did.

James Johnson - Direct by Anthony

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1 Q How did you come into contact with Mr. Harris?

2 A We had a confidential informant that was an
3 acquaintance of Mr. Harris, had the individual set up a --
4 We actually had set up a buy/bust with Harris where he was
5 going to bring a amount of crack cocaine or cocaine from
6 Spartanburg and he was supposed to meet the informant at
7 the Aunt M's on 176 in the Jonesville area. We set up
8 surveillance on the store. Mr. Harris showed up, he and
9 his wife, and once the deal was done, we actually did a
10 buy -- We actually moved in and placed both of those
11 individuals under arrest.

12 Q And then after Mr. Harris was placed under arrest,
13 did you have any discussion with him about providing the
14 sheriff's office any assistance?

15 A Yes. After he arrived at the jail and he was made --
16 I was made aware that he wanted to speak with me, that he
17 -- he wanted to help his self at that point, I went up to
18 talk to him and he started advising me that he needed to -
19 - that he could get his supplier to come to bring
20 something to Union, he was pretty certain he could do
21 that, that he would have to use his cell phone. I did
22 have -- I was in possession of his cell phone. We
23 discussed it. He advised me that Roderick Pope was his
24 supplier and that's who he usually dealt with to get his
25 dope. And -- he was able to -- Lieutenant Sherfield and

James Johnson - Direct by Anthony

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1 myself, I advised him and we made the initial call, I
2 allowed Mr. Harris to make the initial calls. At that
3 point, Mr. Pope were an individual that he stated -- Mr.
4 Harris stated Mr. Pope told him that let him call him
5 back, he would work on it. We were there for a short time
6 and ---

7 Q Well, just back you up a minute. What -- What did
8 you talk to Mr. Pope about doing for him if he ---

9 A Oh, Mr. Harris.

10 Q -- he provided some assistance -- or I'm sorry, not
11 Mr. Pope, Mr. Harris. What did you -- What did you talk
12 to Mr. Harris about doing for him if he provided
13 assistance to you?

14 A Mr. Harris advised me that he had -- he did have a
15 job, that it was very important that he make it back to
16 his job the next morning, and I talked to him, I said,
17 look, you know, you're going to have to help me before I
18 can help you any whatsoever, and the agreement was that if
19 he would assist me in doing this, the buy/bust or getting
20 these individuals to come to Union, that I would talk to
21 the magistrate about trying to get his bond set reasonably
22 where he could somehow make bond.

23 Q Okay. All right. And after you had this
24 conversation with Mr. Harris and he agreed to do this,
25 what did you do and then what did Lieutenant Sherfield do?

James Johnson - Direct by Anthony

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1 A Lieutenant Sherfield got the rest of the officers,
2 the sheriff and Captain McNeil together after I advised
3 him, said, you know, what we were doing, advised him what
4 Mr. Harris had planned, Mr. Harris placed the initial call
5 to Roderick Pope and that's when he stated, Mr. Pope
6 stated that he would -- let him check on something or that
7 he would have to call him back. A short time later he did
8 return a call back to Venson Harris' phone and that's how
9 it got started, that he -- He advised him that he could
10 get a hold to, you know, a half ounce or what was supposed
11 to be a half ounce of crack cocaine, that the deal was set
12 up to bring a half ounce to Union.

13 Q Okay. And did -- what was -- what was the price for
14 the -- for the crack going to be?

15 A He -- Venson while talking to Mr. Pope on the phone,
16 he agreed to -- he advised that he needed -- I forgot the
17 lingo that he called it, but it was two dubs or two -- I
18 can't remember what he called it now, but in other words,
19 he needed six hundred dollars worth. It was going to be
20 three hundred dollars a piece for each one.

21 Q Okay. And during the course of these phone calls,
22 did Mr. Harris relay to you that -- anything about hearing
23 other people?

24 A Yes. There was a number of phone calls placed back
25 and forth with Mr. Pope. During that time it would be

James Johnson - Direct by Anthony

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1 calls where Mr. Harris would call him and ask him, you
2 know, check his location, try to get an idea where he was
3 at so we would have -- being referenced to, you know,
4 having somebody set up at the time of intercepting and I
5 was asking, you know, how many people does he usually have
6 in the car, this and that. As he was having a
7 conversation with Mr. Pope he could hear other individuals
8 in the background, so he knew that there was more than one
9 person in the vehicle, that at that time when I found that
10 out, I passed it on the road -- the individuals out on the
11 road, Lieutenant Sherfield and others so they would
12 understand that Mr. Pope -- There should be one black male
13 in the vehicle and should be last name Pope and then there
14 was other suspects in the car. Did not give a description
15 or any at that time.

16 Q All right. And did Mr. Harris give you a description
17 of the vehicle that Mr. Pope would be in?

18 A Yes, he advised me that he always drives a black Ford
19 Expedition and that's what he usually is in when he meets
20 him at different times, you know, prior to this case.

21 Q Okay. And at some -- Did Mr. Harris have a
22 conversation with Mr. Pope where Mr. Pope actually advised
23 him of a physical location?

24 A Yes, they -- he was advising him that he would -- Mr.
25 Harris told him that he would meet him -- Once he got into

James Johnson - Direct by Anthony

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1 Union County or once he got into Jonesville that he would
2 meet him there at the store on 176 which was the Aunt M's.

3 Q Okay. And did he ever tell Mr. Harris where he was,
4 though?

5 The Court - He who?

6 Q Mr. Pope. I'm sorry. Mr. Pope ---

7 A Yes.

8 Q -- ever advise Mr. Harris -- Did Mr. Harris ever
9 convey to you Mr. Pope had advised him where he was on his
10 way to Union?

11 A Yes. After the initial calls, couple of calls where
12 Mr. Pope stated that he had the stuff, he advised him that
13 they leaving to come to Union, that they were on the way
14 and after that point -- at one point he did -- Mr. Harris
15 did call Mr. Pope to check on his location to see if he
16 was getting close and Mr. Pope advised him that he had
17 just passed The Lighthouse close to Pacolet.

18 Q All right. And then once you got this -- Once Mr.
19 Harris advised you that Mr. Pope had told him he was at
20 The Lighthouse, what did you do in regards to advising
21 officers, Lieutenant Sherfield and other officers that
22 were out?

23 A I -- At that time I advised them that the suspects
24 had just past The Lighthouse Fish Camp heading into Union
25 on 176.

James Johnson - Direct by Anthony

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1 Q Okay. And the other things that Mr. Harris advised
2 you as far as Mr. Pope conveying the quantity and the
3 price, did you relay that to Lieutenant Sherfield ---

4 A Yes.

5 Q --- and the rest of them as well?

6 A Yes, sir.

7 Q And the information about the vehicle, was that
8 relayed?

9 A Yes, sir. Majority of the information that I
10 gathered from Mr. Harris was passed on to Lieutenant
11 Sherfield.

12 Q All right. And then after -- after the stop was made
13 on the vehicle, did -- what was done as far as you doing
14 anything for Mr. Harris' benefit?

15 A The only thing that I done which was the agreement,
16 was I went to the magistrate and I explained to the
17 magistrate what took place, that Mr. Harris had assisted
18 us, and just requested if possible that the -- a bond --
19 when their bond was set, that it could be set, you know,
20 if not -- as low as they -- the magistrate could possibly
21 set it for the charges that they incurred -- that they'd
22 received, so that they could post bond, and they also
23 advised him that these individuals just got -- were just
24 brought in also, that they not need to have any contact
25 with Mr. Harris' wife, you know, while they were at the

James Johnson - Cross by St. Pierre

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1 jail and they just didn't need to know that they were even
2 there.

3 Q Okay. All right.

4 Mr. Anthony - Okay, if I can have one moment.

5 (Pause) That's everything.

6 Cross Examination

7 by Mr. St. Pierre -

8 Q Sergeant Johnson, we've heard about Venson Harris and
9 the Venson and Tammy Harris bust that took place at the
10 store -- the same store that allegedly there was going to
11 be another bust a few hours later. Right?

12 A Correct.

13 Q Okay. And then you arrested Mr. and Mrs. Harris
14 around 3 -- 3:30 p.m.? Is that about right?

15 A It's possible, yes, sir. I don't recall. It's been
16 a while.

17 Q Okay. And there's been testimony today that you were
18 not actually the person who transported Mr. and Mrs.
19 Harris. Is that a correct statement?

20 A No, sir, I did not transport them.

21 Q Okay. In fact, uniformed patrols officers did?

22 A Yes, sir.

23 Q Okay. And then you went to the jail and spoke with
24 Mr. Harris. Right?

25 A Correct.

James Johnson - Cross by St. Pierre

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1 Q And you agreed to some sort of leniency on a bond if
2 he helped you find someone else. Right?

3 A No, sir. I agreed that I would go to the magistrate
4 and request a leniency on a bond. I did not tell him that
5 I could give him a low bond. I told him that I would
6 request it and talk to the magistrate and see what I could
7 do.

8 Q You said that you would -- you would try.

9 A Yes, sir.

10 Q Is that something you do regularly in practice of
11 narcotics is have ex parte communications with a
12 magistrate regarding bond?

13 A Depends on the situation. Sometimes it does happen,
14 yes, sir.

15 Q Okay. Were you aware Mr. Harris had five prior crack
16 convictions?

17 A No, sir, not at that time. Also at the time when I
18 got to the jail he had not been booked in yet, so he did
19 not get booked in until after this was actually said and
20 done. He was there at the jail waiting to be booked in
21 when I got there and we went to a separate room to talk.

22 Q He -- So you're saying he was not booked until after
23 the stop with ---

24 A Correct.

25 Q --- these three individuals.

James Johnson - Cross by St. Pierre

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- 1 A Correct.
- 2 Q Okay. So ---
- 3 A What I'm saying, he was -- He was not processed until
- 4 after this was said and done.
- 5 Q And it's fair to say you can't have bond set until
- 6 you're processed. Right?
- 7 A Correct.
- 8 Q Okay. And it's fair to say that there must've been
- 9 a magistrate at the jail to process the bond. Right?
- 10 A The magistrate got there as actually -- a short time
- 11 after Mr. -- the suspects had been arrested.
- 12 Q Okay. And did you provide magistrate with Mr.
- 13 Harris' criminal record?
- 14 A I did not. Now, the jail it's usually standard for
- 15 them to run a criminal record on everyone that comes in to
- 16 check and make sure they're not wanted somewhere else.
- 17 Q Okay, ---
- 18 A Now, I don't know if the magistrate received that or
- 19 not. I cannot testify to that.
- 20 Q Do you know Omnibus Crime Bill of June 2nd, 2010
- 21 requires that any bond hearing, any Judge setting bond
- 22 their (sic) criminal history before he sets bond. Did you
- 23 know that?
- 24 A No, sir.
- 25 Q Okay. And that is the law.

James Johnson - Cross by St. Pierre

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- 1 A (No response)
- 2 Q Do you know what kind of bond he received?
- 3 A I have no idea. All I know is that it was low enough
- 4 for him to be able to require a bails bondsmans to be able
- 5 to post bond, so that he and his wife -- for him and his
- 6 wife both.
- 7 Q Do you remember what time he made bond?
- 8 A I would say that it was a short time after I left the
- 9 jail. I do not know.
- 10 Q After you left the jail?
- 11 A Yes, sir.
- 12 Q Okay. What time did you leave the jail?
- 13 A It was after the suspects were brought in and once we
- 14 were -- had concluded and I was able to speak with the
- 15 magistrate. I don't know. I can't give you a specific
- 16 time.
- 17 Q Okay. What is the first time you spoke with the
- 18 magistrate that day?
- 19 A In reference to Mr. Harris?
- 20 Q No. Just first time you spoke with the magistrate
- 21 that day.
- 22 A Well, there's a possibility I spoke to the head
- 23 magistrate, Judge Crocker downstairs, but it would've been
- 24 prior to all this happening, had nothing to do with this.
- 25 Now, there's only an on-call magistrate that comes to the

James Johnson - Cross by St. Pierre

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1 jail that's usually -- their times vary, but it's usually
2 sometime between 5:00 and 7:00 when they arrive. The
3 magistrate was not there when I arrived, but he did -- He
4 eventually showed up while I was there.

5 Q Okay. The on-call magistrate, tell me about the
6 rolls and duties of that position. Are they on-call?

7 A Well, ask me a question. Be a little more specific.

8 Q Who are they on-call for? Who calls them in?

9 A They are on rotation. Whoever's on that rotation is
10 responsible for going to the jail twice a day, once in the
11 morning and once in the evening. They -- Their times
12 vary, depending on the Judge, but if we need -- If a
13 officer needs a magistrate after the magistrate's office
14 has closed and then you have to go to the jail to see that
15 magistrate, the on-call magistrate when they are at the
16 jail.

17 Q Okay. When are normal bond hearings?

18 A I can't answer that, because I don't know.

19 Q You don't know?

20 A No, I don't know how they do that, go about that
21 process at the jail. I -- To be honest with you, I have
22 not been there when a Judge actually held bond hearings.
23 I -- I don't know. If I had anything to do with a bond
24 being set, it was prior to a bond hearing being held.

25 Q How long you been working for the Union County

James Johnson - Cross by St. Pierre

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1 Sheriff's Office?

2 A Going on 14 years.

3 Q Fourteen years. And you've been in narcotics for
4 three.

5 A Going on three, yes, sir.

6 Q Okay. So prior to narcotics, when were normal bond
7 hearings?

8 A Sir, that's what I'm telling you. An officer is not
9 always there or is not required to be at a bond hearing.
10 In 11 years of working on the road, three years in
11 narcotics, I've never actually been to a bond hearing
12 except for in big court when it was here and I was only
13 here to talk to the Judge about it being denied. I never
14 did go to a magistrate bond hearing. I have not been at
15 the jail when a magistrate set -- had what he considered
16 a bond hearing where he brought somebody in to discuss
17 what they were going to do and then held it right there.
18 I can't answer that. It's not a normal process for our
19 deputies to go through.

20 Q Okay. So I'm going to show you the booking sheet for
21 Mr. Venson Harris. Please tell me when he made bond.

22 A (Pause) I'm sorry, but I'm looking. You're going to
23 have to give me a second because majority of the booking
24 sheets that I see is prior to them actually getting out of
25 jail, because we stay and get a copy once they're booked

James Johnson - Cross by St. Pierre

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1 in the jail, it's passed on to us, and then it gets to
2 process and -- where the Judge gets it and then they
3 handle their end of it before it's sent to the sheriff's
4 office.

5 Q Would it be 8:10 p.m.?

6 A 6/24/2010 and at 8:10 p.m.

7 Q Okay.

8 A I'm sorry.

9 Q That's okay. So you testified that you didn't book
10 him until after they made the arrest on these three
11 gentlemen. Right?

12 A I'm saying that he was not processed, my
13 understanding, processed until after this was said and
14 done, because I went to the jail before they can complete
15 that process or the booking process on Mr. Harris and we
16 went to a interview room and that's when we began doing
17 what we were doing, talking, started making phone calls at
18 that point, so the jail officers did not have time to get
19 all that in before the rest of it went through.

20 Q Okay.

21 A May have been a partial booking sheet filled out, but
22 it was not completed until after we were done.

23 Q Okay. So are you the one that called the magistrate
24 to come?

25 A I didn't call the magistrate, no, sir.

James Johnson - Cross by St. Pierre

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- 1 Q Okay. Who did?
- 2 A The magistrate was -- regularly been there. The
3 magistrate that was coming in it would've been around the
4 time that we were there. And I talked to the magistrate
5 when he was there, which could've been anywhere from 5:00
6 to 7:00 or it varies, but it was the regular on-call
7 magistrate's rotation and I was there during that time.
8 That's how that was done.
- 9 Q Okay. Let's go down and move on to the actual arrest
10 of these three gentlemen. You were there or you were not
11 there?
- 12 A I was not there. I was at the jail.
- 13 Q Okay. You were just on the phone or on the radio ---
- 14 A Correct.
- 15 Q --- finding out play by play contact.
- 16 A Correct.
- 17 Q Okay. And you had never dealt with Venson Eugene
18 Harris before. Right?
- 19 A No, not prior to this date.
- 20 Q Never even heard of him. Right?
- 21 A No, sir, not prior to this day, except for just
22 information I had received through the confidential
23 informant who stated he had someone from Spartanburg that
24 would bring a quantity of contraband to Union.
- 25 Q Now, tell me about this lingo, six hundred dollar

James Johnson - Cross by Brannon

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1 lingo that you can't remember.

2 A I don't recall the slang word that Mr. Harris used,
3 but he was telling Mr. Pope six hundred dollars worth of -
4 - or was -- which was supposed to be a half ounce of crack
5 cocaine, which he said two of them were three hundred.

6 Q But you never heard any of the conversation, did you?

7 A I heard Mr. Harris' end of it and I knew -- I could
8 tell -- I couldn't tell you who he was talking to on the
9 phone, but I could hear a voice on the other end of the
10 phone. I couldn't tell you what they were saying.

11 Q Okay. So you heard one side of a series of
12 conversations.

13 A Correct.

14 Mr. St. Pierre - All right. No further
15 questions.

16 The Court - Mr. Brannon?

17 Cross Examination

18 by Mr. Brannon -

19 Q Sergeant Johnson, tell me about the CI that was used
20 in Venson Harris' arrest.

21 A No, sir, you're not going to get a lot of information
22 in reference to that. I mean if you want to be a little
23 more specific, maybe I can answer it.

24 Q All right. I'm not asking you to tell me his name,
25 but did you know his name?

James Johnson - Cross by Brannon

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1 A Yes, sir.

2 Q Was it a man?

3 A Don't know.

4 Q I'm sorry?

5 A I'm not saying.

6 Mr. Anthony - We object to anything that would
7 specifically identify the informant or give that kind of
8 identifying information about informant in another the
9 case.

10 The Court - Well, I'm not sure it was in another
11 case. That's I think the issue.

12 Mr. Anthony - Well, I believe he's asking about
13 the ---

14 The Court - I know who he's asking about, ---

15 Mr. Brannon - I don't know that sex is ---

16 The Court - --- but I'm going to protect the CI.
17 Just move on, but I think it's an important point.

18 Q Did you know this person's name?

19 A Yes, sir.

20 Q Did you know where this person lived?

21 A Yes, sir.

22 Q Did you know how old this person was?

23 A Yes, sir.

24 Q Did you know if he or she was married?

25 A Yes, sir.

James Johnson - Cross by Brannon

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- 1 Q Did you know if he or she had children?
- 2 A Yes, sir.
- 3 Q Did you know what he or she did for a living?
- 4 A Yes, sir.
- 5 Q Did you know where -- okay --- Did you know where he
- 6 or she hung out?
- 7 A Somewhat, yes, sir.
- 8 Q Okay. If you needed to get a hold of this person,
- 9 could you do it?
- 10 A At the time, yes, sir.
- 11 Q Okay. And could you do it by telephone or did you
- 12 have to go to a place to find this person?
- 13 A Most of the time by telephone.
- 14 Q Okay. All right, did you know where Venson Eugene
- 15 Harris lived?
- 16 A Before or after the arrest?
- 17 Q Before the arrest.
- 18 A No, sir.
- 19 Q Did you know how old he was?
- 20 A No, sir.
- 21 Q Did you know what he did for a living?
- 22 A No, sir.
- 23 Q Did you know what kind of car he drove before the
- 24 arrest?
- 25 A Was made aware of the type of vehicle that he drove

James Johnson - Cross by Brannon

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- 1 at times.
- 2 Q From your CI.
- 3 A Correct.
- 4 Q Okay. Prior to June 24, did you know what kind of
- 5 car he drove?
- 6 A No, sir.
- 7 Q Did you know where he hung out?
- 8 A No, sir.
- 9 Q Did you know him to be credible or reliable?
- 10 A No, sir.
- 11 Q Okay. Then this guy is arrested and is in a holding
- 12 cell at the Union County Detention Center. Right?
- 13 A Correct.
- 14 Q Okay, and you get word that he wants to help himself.
- 15 Correct?
- 16 A Correct.
- 17 Q All right, and you go to him and you say you are
- 18 going to have to help me before I help you. Right?
- 19 A Correct.
- 20 Q Okay. And I wrote that down. That was a quote.
- 21 Okay? So you said that. Right?
- 22 A Yes, sir.
- 23 Q And then he said, okay, but if I'm going to help you,
- 24 I've got to have my cell phone back. Right?
- 25 A He advised me that in order to contact his supplier,

James Johnson - Cross by Brannon

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1 that he would have to use his cell phone, because his
2 supplier would not answer strange numbers.

3 Q Got you. Okay. So in order for Mr. Harris to get
4 assistance from you, he had to do work for you. Correct?

5 A Correct.

6 Q Doesn't that make him a state actor?

7 A A what?

8 Q Doesn't that make him your agent?

9 Mr. Anthony - That's a legal conclusion. I'd
10 object.

11 The Court - I overrule the objection.

12 Mr. Brannon - I'm sorry?

13 The Court - Go ahead.

14 Q He's working for you. Right?

15 A At that point, yes, he would be working in the same
16 order as a confidential informant.

17 Q Okay. Thanks. All right, now you hand his phone
18 back and who called who first?

19 A He called Mr. Pope first.

20 Q Well, he called somebody, allegedly Mr. Pope. Right?

21 A Yes, correct.

22 Q Okay. Because at that point you didn't know if he
23 was telling you the truth or not. Right?

24 A Correct.

25 Q You didn't know anything about him. Right?

James Johnson - Cross by Brannon

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- 1 A Right.
- 2 Q All right. And he calls somebody else, some third
3 party. Right?
- 4 A I don't know. All I know is he said that he would
5 have to work on it and we would call him back.
- 6 Q No, no, no, no. Mr. Harris called ---
- 7 The Court - That's why we don't use pronouns.
- 8 Q Okay. Mr. Harris called somebody. Right?
- 9 A Right.
- 10 Q Could you hear what Mr. Harris was saying?
- 11 A I could hear what Mr. Harris was saying, but I could
12 not ---
- 13 Q Could you hear what the other person was saying?
- 14 A No, sir.
- 15 Q Okay. At any point during any of the series of
16 conversations that took place over the telephone, could
17 you hear specifically what the person on the other end of
18 the phone was saying?
- 19 A Not to my recollection. I ---
- 20 Q All right, now, earlier in the day Mr. Harris had
21 been arrested through the use of a confidential informant.
22 Correct?
- 23 A Correct.
- 24 Q And this confidential informant had been fitted with
25 a microphone and a tape-recording device. Correct?

James Johnson - Cross by Brannon

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- 1 A Correct.
- 2 Q I think he had a camera on him. Didn't he?
- 3 A Yes, sir.
- 4 Q Okay. Where was that equipment ---
- 5 A I did not have that equipment with me at that time.
- 6 I didn't have a way to record conversations that were
- 7 being taken place because he -- the recordings at the time
- 8 of Mr. Venson Harris' arrest would have to be taken back
- 9 to our office, placed on a computer and downloaded to take
- 10 that -- the evidence or the recordings off of that piece
- 11 of equipment, so I could not use that same piece of
- 12 equipment at that time and I had went straight to the
- 13 jail. I didn't go back to my office prior to going up to
- 14 the jail and talking with Mr. Venson.
- 15 Q So the county owns the equipment that you could've
- 16 used, but you didn't have it at your disposal there at the
- 17 detention center. Right?
- 18 A Correct.
- 19 Q Okay. All right. Now, your testimony is that Mr.
- 20 Harris told you that this guy named Pope always drives a
- 21 black Ford Expedition. Correct?
- 22 A Yes, sir.
- 23 Q Okay. Who was driving the black Ford Expedition that
- 24 Union County Law Enforcement stopped?
- 25 A My understanding it was Mr. Brewton?

James Johnson - Cross by Brannon

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1 Q Okay. All right. Okay, so your not so confidential,
2 not so reliable informant got that aspect wrong, didn't
3 he?

4 A I wouldn't say that he got it wrong, he said that he
5 was always in a black Ford Expedition.

6 Q Now, wait a minute. Now, wait a minute. You said
7 always drives. Which one is it?

8 A Okay. Excuse me. He says he was always in a black
9 Ford Expedition.

10 Q Okay. Because twice you've said always drives and
11 now ---

12 A But as far as I know he may always be the driver of
13 that vehicle when Mr. Harris was dealing with him.

14 Q Okay. Did you ever hear anybody call in the tag
15 number on the black Ford Expedition that was stopped?

16 A I don't recall, because I know that while I was in
17 the jail, majority of my conversations were with
18 Lieutenant Sherfield by phone. I couldn't use a radio to
19 make a lot of those conversations. I didn't not want Mr.
20 Pope on the other end of the phone in the vehicle to hear
21 a police radio in the background while Mr. Harris is
22 speaking with Mr. Pope.

23 Q Okay. How many times did Mr. Harris call Mr. Pope?

24 A I don't recall right off the top of my head without
25 looking at ---

James Johnson - Cross by Brannon

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- 1 Q Was it more than one?
- 2 A Yes.
- 3 Q Was it more than five?
- 4 A I don't know if it was more than five, but it was
5 around probably that many, back and forth conversations
6 between the two of them. I know Mr. Pope did call him
7 back at one point.
- 8 Q Okay. And this is important. At one point did Mr.
9 Harris tell you that whoever was on the other end of the
10 phone said I don't have it now, let me get back to you?
- 11 A The initial call. I don't have that -- I don't have
12 that or that much, let me get back with you. I don't
13 recall him if it was that or that much. I just remember
14 it was in reference to the dope that -- the crack cocaine
15 that he requested. He said let me call you back.
- 16 Q Okay. So we needed -- whoever it was on the other
17 end of the phone had to reach out and find something.
18 Right?
- 19 A Correct.
- 20 Q Okay. Now, was there any dope ever found on Mr.
21 Pope?
- 22 A I do not -- As far as I know, no, but I was not there
23 at the time of his arrest.
- 24 Q Okay. As far as you know, no drugs were ever found
25 on Mr. Pope?

James McNeil - Direct by St. Pierre

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1 A Correct.

2 Q Was there any cash found on Mr. Pope?

3 A I don't think there were.

4 Q Thank you.

5 Mr. Brannon - I don't have anything further.

6 Mr. McKinnon - No questions, Your Honor.

7 The Court - Any ---

8 Mr. Anthony - If I can have one moment. (Pause)

9 That's all. No Re-Direct.

10 The Court - You can step down. Thank you. Call
11 your next witness.

12 Mr. Anthony - That's our proffer.

13 The Court - Mr. St. Pierre, you have any
14 witnesses you want to call?

15 Mr. St. Pierre - If I may have just a moment.

16 (Pause) We call Mr. McNeil.

17 James McNeil, after being first duly sworn,
18 testifies as follows -

19 Direct Examination

20 by Mr. St. Pierre -

21 Q Mr. McNeil, were you at the arrest of these three
22 gentlemen?

23 A I was.

24 Q Okay. Do you remember if there were guns drawn in
25 these arrest?

James McNeil - Cross by Brannon

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1 A I'm not sure, but it very well could've been.

2 Q Okay. Did you have any dealings with my client?

3 A No, sir.

4 Q Okay.

5 Mr. St. Pierre - No further questions.

6 The Court - Mr. Brannon?

7 Cross Examination

8 by Mr. Brannon -

9 Q Had you ever seen Venson Harris before that day?

10 A No, sir.

11 Q Do you know him?

12 A No, sir.

13 Q Did you know him before that day?

14 A No, sir.

15 Q Do you know him to be trustworthy and reliable?

16 A I don't know him.

17 Mr. Brannon - No further questions.

18 Mr. McKinnon - Nothing, Your Honor.

19 The Court - Any -- All right, Mr. Anthony?

20 Mr. Anthony - No, sir.

21 The Court - All right, you can step down. Thank

22 you. Any other witnesses?

23 Mr. St. Pierre - No further witnesses.

24 The Court - Mr. Brannon?

25 Mr. Brannon - Call Venson Harris.

Venson Harris - Direct by Brannon

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1 The Court - All right.

2 (Venson Harris enters the courtroom)

3 The Court - Are you Mr. Harris?

4 Mr. Harris - Yes, sir.

5 The Court - All right, if you'd step up here to
6 the Bible. If you'll put your left hand on it and raise
7 your right.

8 Venson Harris, after being first duly sworn,
9 testifies as follows -

10 The Court - All right, if you'll have a seat
11 right up here, please, sir.

12 Mr. Brannon - May it please the Court.

13 The Court - Yes, sir.

14 Direct Examination

15 by Mr. Brannon -

16 Q Sir, you are Venson Eugene Harris. Is that correct?

17 A Yes, sir.

18 Q Are you currently incarcerated?

19 A Yes, sir.

20 Q Where at?

21 A Wateree.

22 Q Okay. And what sentence are you serving?

23 A Three years.

24 Q Three years. Now, what day were you arrested? Do
25 you remember?

Venson Harris - Direct by Brannon

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- 1 A June the 20 -- I think June 24th.
- 2 Q Of what year?
- 3 A 2010.
- 4 Q Thank you, sir. Was anyone else arrested with you
- 5 that day?
- 6 A Yes, sir.
- 7 Q Who was that?
- 8 A My wife.
- 9 Q What was she charged with initially? Do you know?
- 10 A No, sir, not really.
- 11 Q Okay. But she was charged as a result of the same
- 12 set of facts and circumstances ---
- 13 A Yes.
- 14 Q --- that caused you to be arrested. Correct?
- 15 A Yes.
- 16 Q What happened to your wife's charges?
- 17 A I don't know.
- 18 Q Is she incarcerated?
- 19 A No, sir.
- 20 Q Was she found guilty or did she plead guilty to
- 21 anything?
- 22 A No, not as I know of.
- 23 Q Okay. So in other words, her charge went away.
- 24 Right?
- 25 A I don't know.

Venson Harris - Direct by Brannon

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- 1 Q Okay. And this would've been your third offense of
2 possession with intent to distribute. Correct?
- 3 A Yes, sir.
- 4 Q So the sentence that you were looking at was ten to
5 thirty years. Correct?
- 6 A I don't know.
- 7 Q Okay, but you got a three year sentence. Right?
- 8 A Yes.
- 9 Q Okay. All right, I want to start from the moment you
10 got arrested. Okay?
- 11 A Okay.
- 12 Q And I want to go back in time. From the time you
13 were born until the moment before you were arrested, had
14 you ever worked as a confidential informant for any Union
15 County law enforcement agency?
- 16 A No, sir.
- 17 Q Okay. Did you live in Union County on June 24th,
18 2010?
- 19 A No, sir.
- 20 Q Okay. Did you work in Union County?
- 21 A No, sir.
- 22 Q Did you regularly hang out in Union County?
- 23 A No, sir.
- 24 Q Did you know the name of any individual law
25 enforcement officer that worked in Union County?

Venson Harris - Direct by Brannon

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1 A No, sir.

2 Q Okay. As far as you know, did any law enforcement
3 officer in Union County know your name before June 24,
4 2010?

5 A No, sir, not as I know of.

6 Q Okay. After you were arrested, did this law
7 enforcement officer right here offer to go to a magistrate
8 and help you get a reduced bond so that you could make
9 bond and be at work the next day?

10 A Yes, sir.

11 Q Did he say if you want me to help you, you've got to
12 help me?

13 A Told me to help myself.

14 Q Okay. If you want me to help you, you've got to help
15 yourself. Right?

16 A Yes.

17 Q And then what did he do?

18 A Well, he just told me that I had to do whatever, you
19 know.

20 Q Okay. Did he give you something back?

21 A My phone.

22 Q He gave you your phone back.

23 A Yes.

24 Q Okay.

25 Mr. Brannon - I don't have any further

1 questions.

2 The Court - Mr. Hall or Mr. McKinnon?

3 Mr. McKinnon - No, Your Honor. No questions.

4 The Court - Mr. St. Pierre?

5 Mr. St. Pierre - No, sir.

6 The Court - Mr. Anthony?

7 Mr. Anthony - No.

8 The Court - All right, you can step down and
9 they'll take you back to the holding cell. Mr. Brannon,
10 any further witnesses?

11 Mr. Brannon - No, Your Honor.

12 The Court - Mr. Hall or Mr. McKinnon?

13 Mr. McKinnon - No witnesses, Your Honor.

14 The Court - All right. We've got several
15 motions. We've got the arrest, the search, the chain. Is
16 that it?

17 Mr. St. Pierre - Money and the scales.

18 The Court - Okay, well, that'll all come under
19 the search I would think.

20 Mr. McKinnon - Your Honor, -- To the search and
21 arrest is the actual stop and I think that can probably
22 all be wound into one discussion and argument, but ---

23 The Court - All right, Mr. St. Pierre, you want
24 to start and tell me what's wrong with the stop?

25 Mr. St. Pierre - Yes, sir, Your Honor.

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1 Obviously, you've heard testimony saying that there was --
2 there were -- may have been guns drawn on the defendants
3 right at the moment of the stop. There were cars coming
4 from each direction, law enforcement cars coming from each
5 direction in the median of this stop. They immediately
6 pulled my client and the other two co-defendants out of
7 the vehicle and hand-cuffed them. Obviously, there was no
8 search warrant for it, which makes it presumptively
9 invalid unless it falls within the exception in the fourth
10 amendment. So then now we're looking at a probable cause.
11 They went in, they searched the car without a warrant, so
12 using the same logic as a magistrate would in issuing a
13 search warrant, you have to determine the credibility and
14 the veracity of this Mr. Venson Harris. We've got some
15 case law, State vs. Sylvester (sic) or Silester D. Taylor
16 388, SC 101. If I may quote -- And this is getting into
17 just the reasonable suspicion. Another factor to consider
18 when determining whether reasonable suspicion has been
19 aroused is the existence of a tip and the quality thereof.
20 Third party tips completely lacking ---

21 The Court - Don't read quite so fast, because
22 she's got to take it down.

23 Mr. St. Pierre - I apologize. Third party tips
24 completely lacking in indicia of reliability either
25 warrant no police response or require further

1 investigation before a forcible stop of a suspect would be
2 authorized. Certainly a black Ford Expedition and as
3 testified to the busiest road in this part of town would
4 certainly with no other corroborating factors wouldn't
5 even rise to reasonable suspicion. Maybe if he'd pulled
6 into the target place where he was supposed to have made
7 the sale or the transaction, that may have been reasonable
8 suspicion, but we're talking about probable cause when
9 they didn't even ask for consent to search. So they've
10 already been arrested without probable cause, without
11 reasonable suspicion and then they go in to search the car
12 and find the scales in the backseat of the car, which
13 leads to my next motion, the arrest of my client. You
14 heard testimony that they would only have to make -- they
15 would have to make some sort of speculative reason --
16 speculative reasoning that my guy could be guilty of
17 possession of cocaine when it's found under the backseat
18 and my client is the driver of this car. I don't see how
19 there's probable cause to arrest my client for possession
20 of cocaine, of something that's not even in his car.
21 There's testimony that it was someone else's car -- in the
22 backseat where he had no dominion and control over it.
23 You know, they can't prove that he knew of it, and they
24 can't prove -- I'm sorry -- There's no probable cause he
25 knew of it. There's no probable cause that he had actual

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1 or constructive possession of this cocaine, therefore, I
2 believe the arrest of Mr. Brewton is unlawful and
3 violative of the fourth amendment. I believe the search
4 is faulty. And then if I could move into the money found
5 on him. Because of the -- I believe that the money would
6 be fruit of the poisonous tree in that regard and also the
7 scales, Judge, I don't think I've ever heard testimony
8 like that with regards to the scales. I'm asking to
9 suppress these scales, number one, it's fruit of the
10 poisonous tree and number two, there's no -- there's no
11 reliable chain of custody on this thing. There's no --
12 there's no pictures of how it was when the officer
13 collected this piece of evidence. It's not even in the
14 same condition as it was when he collected it, and it's
15 not even in the same bag it was collected in to begin
16 with. Next, it's not even documented that he took the
17 scales. It's nowhere on the police report as he testified
18 it was. Everything that they collected -- The only thing
19 that was collected was crack cocaine and money. Crack
20 cocaine was labeled in a BEST pack and the money was
21 documented through the treasurer. Furthermore, I would
22 ask that you consider the scales under a 403 analysis,
23 that the whole circumstance regarding these scales, the
24 questionable circumstances is much more prejudicial than
25 probative. I mean these scales -- You know, how can a

1 jury determine what condition these scales were in at the
2 time of the arrest when you've got an officer says one
3 thing and writes down another, but also says that his
4 incident report is truthful, accurate and complete and
5 says nothing a year and a half later. I would ask that
6 you consider this and suppress everything from the moment
7 my client was cuffed seconds after he was pulled over.

8 The Court - Mr. Brannon?

9 Mr. Brannon - Your Honor, I'm going to back up
10 a little bit. In this case -- Your Honor, I'm going to
11 suggest to the Court that our Supreme Court and the United
12 States Supreme Court have defined two types of informant
13 information. There is the confidential informant and then
14 there is the anonymous tip. Confidential informant is
15 somebody who has provided information to law enforcement
16 in the past and those tips have turned out to be credible
17 and reliable. Law enforcement has a basis upon which to
18 use that information and that is a course of duty or a
19 course of dealings with this confidential informant.
20 Confidential informant has personal knowledge of something
21 happening or something being in a location or some deal
22 transacting or taking place. Then the Supreme Court of
23 this State and the United States have discussed anonymous
24 tips. They have suggested that anonymous tip in and of
25 itself is not -- does not give rise to the ability to law

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1 enforcement to make a traffic stop. In fact, they say
2 that anonymous tip in and of itself has no indicia of
3 reliability or credibility and therefore without further
4 police investigation, no action should be taken, but in
5 this case, Your Honor, I think we have something even
6 worse than an anonymous tip. We have a person who's been
7 arrested and charged with third offense possession with
8 intent to distribute drugs. He's in a jailhouse but has
9 not even been booked in yet. His wife was charged with
10 him at the same time and he has reached out to law
11 enforcement and they said to him or this officer said to
12 him, if you want me to help you, I've got to help --
13 you've got to help yourself or something to that effect.
14 So, Your Honor, it's not a confidential informant, because
15 there's none of the built in indicia of credibility or
16 reliability. It's not an anonymous tip because you know
17 who it is, but not only do you know who it is, you know
18 his impetus and desire and need to help himself. So based
19 on information provided by this person that I would submit
20 to the Court is even less reliable than an anonymous tip,
21 law enforcement sets up not a traffic stop but an ambush.
22 There are four or five, six police cars. This is not a
23 traffic stop, Your Honor. There were no citations issued.
24 Law enforcement's testified to that. They approached this
25 vehicle -- now, our client's testimony would be guns

1 drawn. Law enforcement says they can't remember, but it
2 wouldn't be unusual or atypical if the guns were drawn.
3 Officer Sherfield pulls the driver out of the vehicle,
4 some other officer pulls the other two occupants out and
5 they immediately hand-cuff them. Your Honor, in the
6 Taylor case that's already been cited to the Court, it's
7 388 SC 101 -- and I've given the Court a copy of it --
8 this case sets out, if what you have is an anonymous tip,
9 other factors that can lead to a traffic stop -- and Your
10 Honor, I'm starting on page 4 -- they talk about -- excuse
11 me, actually I think it's starting on page 3, Your Honor.
12 I'm sorry. They describe reasonable suspicion is a lesser
13 standard than probable cause and allows an officer to
14 effectuate a stop when there is some objective
15 manifestation of criminal activity involving the person
16 stopped, and then it sets out a series of additional
17 factors along with an anonymous tip that would give rise
18 to the officer's ability to make a legitimate traffic
19 stop. The first one is the individual's presence in an
20 area of expected criminal activity. I asked Officer
21 Sherfield, is Highway 176 in Union County a high crime
22 activity, a high crime area. He said no. The next prong
23 or the next element the Court talks about is the lateness
24 of the hour. We're talking about 6:00 p.m. on June 24th.
25 It's still daylight. It's certainly not a late hour. An

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1 individual's innocent and lawful actions may be -- may in
2 certain situations -- there's no -- there were no traffic
3 citations issued. This car was travelling legally down
4 Highway 176, not in a late hour and not in a high crime
5 area. In fact, if we move on to the other -- another
6 aspect, nervous and evasive behavior -- Officer Sherfield
7 said there was none. The only thing he saw was one of the
8 occupants bend over, sit back up and look back at the
9 officers. There was no nervous or evasive behavior. I
10 asked him about the next prong which was flight, the Ford
11 Expedition never sped up, did not try to evade law
12 enforcement and pulled over when the blue-lights came on.
13 Your Honor, then we get on page 4, right-hand column, mid-
14 way down in a paragraph that starts with another factor to
15 consider. In that paragraph it says third party tips.
16 Completely lacking in indicia of reliability either
17 warrant no police response or require further
18 investigation before a forcible stop of a suspect would be
19 authorized. This case would've been easy for the Union
20 County Law Enforcement officials to make. In my opinion,
21 all they needed to do was let the car get to Aunt M's, but
22 Your Honor, they didn't even do that. They stopped the
23 car at a reasonable hour travelling legally down the
24 interstate that didn't flee after the blue-lights came on,
25 with no nervous or evasive behavior going on in the

1 interior of the automobile.

2 The Court - Well, for the record, this wasn't
3 interstate.

4 Mr. Brannon - I'm sorry, Your Honor?

5 The Court - You said interstate, just for the
6 record, it wasn't interstate.

7 Mr. Brannon - Highway 176, forgive me. So, Your
8 Honor, there needed to be further investigation based on
9 the quality of the tip that they had been given, and there
10 was no investigation. They took the word of a man that
11 they had arrested only an hour and a half before and went
12 and made an ambush stop on this vehicle. Your Honor, once
13 they made the stop, they got the occupants out of the
14 vehicle. At that point that vehicle wasn't going
15 anywhere. They never got consent to search the vehicle,
16 and they never took the time to get a search warrant. I
17 understand that would -- would've required a fourteen mile
18 drive potentially, but they never took the time to get the
19 search warrant. That vehicle was no longer a risk of
20 flight and a search warrant was warranted. Probable cause
21 to search was warranted. Again, Your Honor, when they
22 pulled these men out of the car, none of them had drugs on
23 them. They have not yet found that scale and the only
24 thing that they have is one of them had five hundred
25 dollars in cash and the other one had slightly less than

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1 three hundred dollars in cash. My client had no money on
2 him. Your Honor, there's just no probable cause to search
3 that vehicle other than an unverified statement or
4 statements from this Venson Harris whom nobody knew
5 anything about before they arrested him. Your Honor, as
6 to the scale, the Court's already been informed through
7 direct testimony that the reason that these three men were
8 arrested was -- they were charged initially -- the charge
9 thought was to be simple possession of cocaine based on
10 some residue that was on the scales. Your Honor, I submit
11 to the Court that there is no residue. There was -- An
12 officer says he did a field test, but, Your Honor, no
13 drugs scraped from that scale were ever sent to SLED for
14 testing. I submit to the Court that that is not testimony
15 that this jury can hear and therefore is not testimony
16 that this Court can consider. There is no test. There is
17 no residue, and Your Honor, there is no chain on this
18 scale. Allegedly, this scale was taken by law enforcement
19 on June 24th, but, Your Honor, we don't have a document to
20 confirm that. There's no chain of custody of this scale.
21 This scale was allegedly put in a bag that unfortunately
22 came open, so they put it another bag. It was kept in a
23 drawer some place, but, Your Honor, nowhere on any of the
24 evidence sheets that we've been provided does it say that
25 Lieutenant Sherfield had it, that Johnson had it, and

1 certainly, apparently, none of the evidence techs at Union
2 County had it. We don't know where it was. It only has
3 one battery in it right now, so it certainly isn't
4 operable today. Now, there's testimony that it had both
5 batteries in it at the time, but, Your Honor, where's the
6 other battery? Without a test done on what was allegedly
7 scraped from that scale, there is no evidence of cocaine
8 being on that scale, and that was the basis for their
9 arrest. I submit to the Court that the scale must be
10 excluded in this matter and any evidence or testimony of
11 drug residue that was never tested must be excluded. If
12 you exclude the drug residue, Your Honor, this case goes
13 away. There is no chain. There is no drug testing.
14 There are no drugs. Last thing that I would submit to the
15 Court on this topic, Your Honor, is the fact that these
16 three men, not only my client, but these two co-defendants
17 were searched on the scene. There were no drugs were
18 found. I asked the two law enforcement officers -- I did
19 not ask the sheriff, but I asked the two law enforcement
20 officers that were most heavily involved in this
21 situation, did the officer that transported Crosby and
22 Brewton to the detention center check his automobile
23 before putting those two gentlemen in the car, and the
24 officer said he was told to, but I can't say that he did.
25 Your Honor, again, the State has to prove actual or

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1 constructive possession to make a trafficking charge. The
2 fact that there was some drugs found in the car that two
3 of these gentlemen rode in doesn't -- particularly since
4 it's a law enforcement vehicle, doesn't put them in
5 constructive possession of it. There's been no evidence
6 presented that they finger-printed the plastic bag to say
7 that one or the other had ever touched it. Certainly it
8 was in their possession. They had the ability to do that,
9 but that evidence isn't before this Court. Your Honor, I
10 would submit to you that the source of their information,
11 the informant that they used is less than that of
12 anonymous tip, and because there was no further police
13 investigation before the ambush stop, that this case --
14 these drugs should be suppressed. I would submit to you
15 that because there was no search warrant nor consent to
16 search the vehicle, the scale must be suppressed and any
17 drug residue allegedly found should be suppressed. I
18 would submit to you that because no testing of the alleged
19 drug residue was done by any state agency or any drug
20 testing laboratory, that that residue must be suppressed.
21 Your Honor, I would ask the Court to read the Taylor case.
22 It's enlightening. And, Your Honor, I asked the questions
23 of the officers directly from this case, there were no
24 other of the indicia of reliability that the State can add
25 to Venson Harris' testimony to make this case rise to the

1 level of reasonable suspicion. Thank you.

2 The Court - All right, Mr. Hall or Mr.
3 McKinnon?

4 Mr. McKinnon - Your Honor, if I may approach and
5 I've got two very short cases here, one is State vs.
6 Morris, not the one that was affirmed of yours this year,
7 but one from 1993, as well as State vs. Green. And I know
8 it's late and I will try not to repeat anything that Mr.
9 St. Pierre or Mr. Brannon said. Your Honor, I think that
10 in the case law there is kind of a dual-prong kind of test
11 I think and I it's very difficult to do, but I think
12 there's a dual-prong test that has come out through many,
13 many cases, but as far reasonable suspicion, one, there's
14 evaluation of the -- I guess the identification of the
15 person, the car, whatever is being alleged by the
16 informant or witness or anonymous tip-giver that sort of
17 thing. The other is the actual reliability of the alleged
18 crime in question, and certainly reliability of the person
19 providing that information altogether. I think that the
20 case law as I have given you, I think both involve
21 someone alleging them self to be an eye-witness to a
22 crime. This situation I think in several steps taken back
23 from a eye-witness as far as reliability. We've got an --
24 And as we've already gone over, Mr. Harris is the person
25 providing information that started this entire event. We

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1 know absolutely -- At the time the police knew two things
2 about Mr. Harris. They didn't know his name. I'm sorry,
3 they didn't know his age, social security number, date of
4 birth, address, criminal record. All they knew was an
5 hour ago he had just sold crack to an undercover agent or
6 informant, and two, he wanted out of jail. That's all
7 they knew. They roll with it. He gets on the phone and
8 makes a call on his phone. Now, whether or not Mr. Harris
9 himself is credible about what he's telling the officers
10 is filtered again because he is saying what somebody on
11 the other the end of the phone is saying as to what
12 they've convinced. He is saying, I'm talking to somebody
13 that says I have crack and they're coming here. So we
14 have the reliability of Mr. Harris and the reliability of
15 the unknown person on the other end saying that they have
16 this crack. They -- It's a additional level of
17 unreliability. Now, what did the police know? They were
18 given -- I mean if it's credible, they were given time,
19 place, vehicle description, that's it. No license plate
20 from Mr. Harris. Again, an eye-witness might be able to
21 provide a license plate number which is in the case law.
22 They did not -- As Mr. Brannon said, they did not wait and
23 see if the car turned into the eventual destination for
24 the deal. They were pulled over before then. There was
25 no verification of any cell phone conversation about what

1 Mr. Harris said or who he called. At the time they had
2 not verified anything about any of these defendants. All
3 they knew was that a guy -- I mean an officer -- I think
4 Sergeant Johnson heard Mr. Harris on the phone with
5 somebody but did not hear what he said. Nobody could
6 listen in. Your Honor, of course, all the other -- other
7 things were absent. In other words, you know, no smell of
8 drugs alleged, no discernable criminal activity observed
9 by any officers before the stop. They have no drug dogs
10 ever alerted after the stop, no exigent circumstances were
11 present, no confessions were involved, no -- There was no
12 consents alleged. I mean all these things were absent.
13 We're left with strictly just the developed case law on
14 reasonable suspicion and then probable cause. Now, this
15 isn't probable cause because I've gone over all this about
16 reasonable suspicion to stop, and respectfully -- I don't
17 want to waste the Court's time, but I think -- we don't
18 even have to -- I respectfully ask the Court not to even -
19 - you don't even need to rule on that, because the facts
20 and knowledge have not change from before the stop to the
21 arrest, so the exact same bit of knowledge, reliability
22 and facts, everything known by the police exactly the same
23 when they searched the car. Probable would cause be
24 required. So with that in mind nothing changed, I think
25 Your Honor can simply rule on the probable cause issue if

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1 that's in our favor certainly, that with these facts that
2 no probable cause existed to search that car. I mean
3 there are certain exceptions --- excuse me -- involving
4 actual reasonable articulate facts, no guns or gun
5 possession in a defendant's possession where they can
6 search easier the passenger in a vehicle. No testimony of
7 that was even made. They simply pulled three men over,
8 hand-cuffed them, searched the car with no new facts
9 discovered. So, Your Honor, in light of all that, again,
10 I would ask that no probable cause for the search be
11 found. Certainly would argue that no reasonable suspicion
12 existed for the traffic stop, but certainly without that,
13 no probable cause existed for the search and if that's the
14 case, then the scales that certainly have had a long
15 interesting history since then would never have been found
16 and no alleged white powder would ever been found and none
17 of these three gentlemen would've been arrested. And
18 therefore, nobody would end up in a police car with wrap
19 bands on. Your Honor, I think everything after the
20 illegal search of that vehicle is fruit of the poisonous
21 tree and we would ask it to be suppressed, and I also I
22 join Mr. Brannon's motions and arguments as far as the
23 scales and all that, the powder, if Your Honor finds
24 different as to the probable cause and reasonable
25 suspicion.

1 The Court - All right, Mr. Anthony?

2 Mr. Anthony - Your Honor, I'll start with the
3 stop. The defense is basically put this case under the
4 wrong roborant. This is not an anonymous tip case. It's
5 not a confidential informant case either. It's not a
6 situation say where the State goes and asked for a warrant
7 from a magistrate and you have to put reliability
8 information in a warrant. This is a situation where you
9 have an identified witness that the State is holding out,
10 has never held back, is holding out for everybody to know
11 about. You have an identified witness who's engaging in
12 a conversation with a suspect and contemporaneous to that
13 conversation there's a law enforcement officer monitoring
14 the conversation, and that law enforcement officer is
15 finding out what the arrangement is between Mr. Harris and
16 the -- and Mr. Pope.

17 The Court - Well, now, I didn't interrupt them,
18 so I'm going to try not to interrupt you, but these are
19 the questions that are floating around in my mind. How do
20 we know Mr. Pope was on the other end of the line?

21 Mr. Anthony - Because Mr. Harris said he was.

22 The Court - Well, how do we know Mr. Harris is
23 telling the truth?

24 Mr. Anthony - Well, that's a -- That's the jury
25 issue, but it's not -- it's not Mr. Harris given the

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1 degree of corroboration of what he was saying ---

2 The Court - Well, that's probably -- I mean
3 that's probably what's itching my mind the most is the
4 words you just used, corroboration, because -- I'm not
5 going to interrupt again, but go ahead.

6 Mr. Anthony - Well, given the degree of
7 corroboration from what Mr. Harris was given Sergeant
8 Johnson, the sheriff's office was justified in stopping
9 the vehicle, because Mr. Harris told them that it would be
10 a black Expedition. He told them ---

11 The Court - I thought he said a black Ford.

12 Mr. Anthony - No, he said Expedition. I believe
13 there's evidence that they were looking -- they knew they
14 were looking for a black Ford Expedition, color, make,
15 model, and he told them it would be coming out of
16 Spartanburg down 176. He told them that he got -- He
17 talked to -- Mr. Harris told them that he talked to Mr.
18 Pope, Mr. Pope said they'd just gone past The Lighthouse
19 Fish Camp. There was testimony that Captain McNeil saw
20 them, saw a black Ford Expedition at The Lighthouse Fish
21 Camp heading in the very direction that Mr. Harris had
22 reported it would be headed in, and when you have that
23 corroboration of what Mr. Harris was telling the law
24 enforcement officers, that gave them probable cause to
25 make the stop of the vehicle.

1 The Court - All right.

2 Mr. Anthony - And just to move on, Mr. Brannon
3 made an argument about them not getting a warrant. Well,
4 you don't have to get a warrant to search a vehicle if you
5 have probable cause. There's a well-established
6 automobile exception to the search warrant requirement.
7 If they have probable cause to stop the vehicle, they have
8 probable cause to search it. They had probable cause to
9 think that the vehicle would contain illegal drugs that
10 were about to be used in this drug transaction Mr. Harris
11 was arranging, so they had every right to search the
12 vehicle. They didn't have to get a warrant. When they
13 found the scale with the residue, at that point in time
14 they had probable cause to arrest all three of the
15 passengers or all three of the occupants of the vehicle
16 for possession of cocaine. As to Mr. Brewton, once they
17 had probable cause to make a valid arrest of Mr. Brewton,
18 they had probable cause to search his person, which gave
19 them probable cause to seize the money that was on his
20 person. As to the argument about the scales, I think
21 there have been very good jury arguments made about
22 reliability of the chain or reliability of the custody of
23 the scales, but Lieutenant Sherfield testified that he got
24 the scale out. He said that's the scale that he recovered
25 from the vehicle. He said he put the case number on the

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1 scale and any kind of questions about the condition of the
2 scale or where the scale was kept between the time it was
3 seized and the time of trial, that's -- There may be
4 strong arguments made to weight, but that's not going to
5 go to admissibility, and there's no fourth amendment
6 violation in seizing the scale, because they had probable
7 cause to search the Expedition.

8 The Court - What about the drugs in the car? No
9 testimony that the car was cleaned ---

10 Mr. Anthony - Well, there will be.

11 The Court - I got to rule on ---

12 Mr. Anthony - Well, Your Honor, -- I mean I feel
13 a little ambushed on that, because that's not -- That
14 wasn't a motion that I was -- I thought we were doing
15 today. I mean ---

16 The Court - Well, I can hold it over until in
17 the morning, but I want to read these cases anyway.

18 Mr. Anthony - Okay.

19 The Court - I will hold -- I can hold that open
20 if you've got additional ---

21 Mr. Anthony - I think my position is going to be
22 that drugs found in a police car, I don't -- I don't
23 really know what the objection to that is. I mean there's
24 -- You know, obviously, you can make an objection ---

25 The Court - Well, the objection is that -- I'm

1 not going to make their argument for them, but I mean it -
2 - Police cars are used to tote around drug dealers all the
3 time and if you cart around twenty drug dealers in a day
4 and at the end of the day you find some drugs in it, you
5 can't just assign it to the last people in there.

6 Mr. Anthony - Yes, sir. Well, I think -- I
7 think once again that's a -- that's a jury argument. I
8 think ---

9 The Court - Why is that -- Why is that a jury
10 argument?

11 Mr. Anthony - Because it would go to whether
12 they were actually the ones in possession. It's probably
13 a jury argument or a directed verdict argument. It
14 doesn't involve any kind of fourth amendment violation,
15 but when we present our case, assuming we're allowed to
16 present our case, I can obviously -- I mean that is
17 something that would be addressed by the officer who
18 actually found the drugs. But then -- The fact that the
19 drugs were found in a police car does not involve any
20 alleged violation of their fourth amendment rights that I
21 can think of. That was just all I was pointing out. So
22 that would -- That would be my response unless the Court
23 has something that I have neglected to address and would
24 like for me to address.

25 The Court - Well, I'm going to take overnight

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1 and we'll let you put your last witness up in the morning
2 with these cases, and before we stop for the day, anything
3 else, Mr. St. Pierre?

4 Mr. St. Pierre - Nothing further. If I could
5 just have a brief minute just to reiterate. Your Honor.
6 Even if reasonable suspicion is conceded by make, model of
7 the car, and I don't think it is, there's no way, that
8 just because there's a car matching that description that
9 gives them probable cause to search the car.

10 The Court - Well, but there's one other -- Let's
11 go back to that question about the stop. So basically
12 you're saying he had a right to stop, but he didn't have
13 a right to search.

14 Mr. St. Pierre - Yes, sir, Your Honor.

15 The Court - Okay.

16 Mr. St. Pierre - And I'm not conceding that they
17 had the right to stop ---

18 The Court - I understand, but I just -- Okay.
19 Mr. Brannon?

20 Mr. Brannon - Your Honor, there's one thing that
21 Mr. Anthony didn't address, and I'm not wanting to correct
22 his argument, but, Your Honor, one thing that they can't
23 fix, that they can't change is the possession of cocaine
24 which came from the scale. There is no drugs.

25 The Court - Well, I -- The thing about that when

1 you look at reasonable suspicion and probable cause, you
2 have to take into consideration the facts known to the
3 officer at the time. The fact that they weren't examined
4 and they are now missing, you've got to go on what the
5 officer -- the information the officer had at the time.
6 I mean that's how I see it.

7 Mr. Brannon - I agree with that, and I'll wait
8 until the Court rules on this one to raise the other
9 aspect of that.

10 The Court - Okay. All right. Because I can --
11 I mean -- All right, anything further, Mr. McKinnon?

12 Mr. McKinnon - Sir, and I -- very briefly. Mr.
13 Anthony did bring up a good point, that the officer saying
14 that he's passing The Lighthouse and some testimony to
15 that matter at same the time as what's being read (sic)
16 through the phone, does corroborate some of what Mr.
17 Venson said, but, Your Honor, as I point out, there are
18 two prongs to that. One is the location I.D. kind of
19 prong, the other is the prong on criminal activity.
20 There's still absolutely no credibility to his allegation
21 that any of these three gentlemen were engaged in any sort
22 of criminal activity, other than him saying he's on the
23 phone talking to some unknown guy and saying, being on the
24 phone talking to some other unknown guy who's telling him
25 that he's got crack. There's almost no reliability in

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1 that capacity. I mean, yes, it is corroborated I think
2 the location I.D. prong with The Lighthouse thing, but not
3 with the reasonable articulable fact of criminal activity.
4 It's just completely lacking, Your Honor. And Your Honor,
5 I think for that reason that there is no reasonable
6 suspicion to pull these over (sic) and it's -- even if
7 we're in the ballpark of reasonable suspicion, we're a
8 long different city, different sport from ---

9 The Court - All right, let -- Mr. Anthony, I'll
10 give you a chance to follow-up. Particularly, what do you
11 say about his two-prong argument that even if they had
12 reasonable suspicion that this particular car was seen at
13 The Lighthouse and -- Fish Camp and that corroborated the
14 information that somebody was going to be coming from
15 Spartanburg? What is the reliability of the -- Mr.
16 Henson? Was it Henson?

17 Mr. Anthony - Mr. Harris.

18 The Court - Mr. Harris. I'm sorry. That he --
19 That there would be drugs in the car other than this guy
20 who we don't know anything about?

21 Mr. Anthony - Well, I guess my -- What I'd say
22 is that, there's no reason to think that he's going to get
23 somebody started down 176 for any other reason. He is
24 contemporaneously reporting to Sergeant Johnson that he's
25 got this deal set up for six hundred dollars or six

1 hundred and fifty dollars worth of crack, and they've
2 corroborated that sure enough, somebody in that very
3 vehicle, the vehicle fitting that very description that he
4 gave is headed that way. It just doesn't seem -- seem
5 reasonable to think that he's going to be sending them
6 down there for some other reason and Sergeant Johnson
7 testified ---

8 The Court - Other than to get a low -- other
9 than to get a low bond.

10 Mr. Anthony - Well, Sergeant Johnson testified
11 that he heard Mr. Harris' part of the conversation. He
12 heard Mr. Harris talking to him about money. He heard Mr.
13 Harris talking about quantity. So I mean Mr. Harris said
14 enough that the Court could find that Sergeant Johnson
15 heard Mr. Harris saying that, that the Court could find
16 that we had probable cause to believe that there were
17 really drugs in that Expedition.

18 The Court - Okay. All right, well let me look
19 at these cases and ponder on it. Anything else?

20 Mr. Anthony - Just briefly. I have a case I'd
21 like to hand up, State vs. Bultron which is 457 SE 2nd.
22 616. This deals with automobile stops. And if I can get
23 the cite -- I got the cite on Taylor, but I did not get a
24 cite on Morris and Green. If I could get that.

25 The Court - All right, we'll be at ease then til

1 ---

2 Mr. Hall - Your Honor, we do have one particular
3 matter. Today is the first time we have heard of Officer
4 Mickey Parker. His name is not listed in any of the
5 material we received from the solicitor's office. We
6 would like to put him on our witness list and ask the
7 sheriff's department to make him available in case we
8 needed to call him. Again, we had no knowledge of his
9 existence or his involvement at all until the testimony
10 today. We ask again that they make him available in case
11 we need him tomorrow.

12 The Court - Mr. Anthony, you got any problem
13 with that or you want to issue a subpoena and have Sheriff
14 Taylor serve it on him.

15 Mr. Taylor - Your Honor, he doesn't work for me.
16 He works with public safety.

17 The Court - Oh, okay. All right. All right,
18 we'll do our best to get him here, but the sheriff doesn't
19 have any control over him. He works for public safety.

20 Mr. Hall - And, Your Honor, if he's not here,
21 then we'll deal with that at the appropriate time.

22 The Court - Okay. All right. Thank you.

23 Mr. Brannon - What time you want us here
24 tomorrow, Your Honor?

25 The Court - The jury's coming in at 9:30. Why

1 don't we come in at 9:15 or let's say 9:00 o'clock. Let's
2 say 9:00 and then that'll give us a half hour to hear any
3 further arguments and testimony. I hope we'll be in a
4 position to make some kind of ruling.

5 Mr. Brannon - Thank you, Your Honor.

6 The Court - I'll have to one way or the other,
7 right or wrong.

8 Mr. Hall - Your Honor, just to clear up the
9 issue on Mr. Parker. One of the officers testified that
10 he was a narcotic's officer. Is he a narcotic's officer,
11 and what is public safety? Is that ---

12 The Court - I can't answer those questions. Why
13 don't you get together with somebody afterwards and find
14 out -- and have us all -- I'm not finding fault with you,
15 but I -- I don't know.

16 Mr. Hall - Well, part of it's a discovery issue.
17 We just now heard about him today and ---

18 The Court - All right. Mr. Anthony, what's he
19 got to do with this case?

20 Mr. Anthony - He was just riding with Lieutenant
21 Sherfield when the stop was made.

22 The Court - All right, well, would you make him
23 available?

24 Mr. Anthony - He should -- I should be able to.
25 I mean he's -- I know he's working. He was a witness in

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1 another potential trial this week. So I don't think
2 that's ---

3 The Court - Well, if you can't get him here, let
4 Mr. Hall know in time that they can subpoena him. I mean
5 that's ---

6 Mr. Anthony - Okay, yes, sir. I don't think
7 that should be an issue.

8 The Court - All right.

9 (Court in recess)

10 The Court - Let's go back on the record. I just
11 think -- I just need to put on the record that I do have
12 a letter from Danny Sanders from Sanders Bail Bondsman on
13 behalf of Mr. Lashad Brewton and Roderick Pope indicating
14 that he would stay -- he -- now I'm using pronouns I
15 complain about -- He, Mr. Sanders, would stay on the bond
16 for those two individuals until the final outcome of the
17 trial. So I'm going to put those part of the record and
18 allow those two individuals, those two defendants to
19 remain out, but I want both of you to know, Mr. Pope and
20 Mr. Brewton, if for any reason you fail to appear tomorrow
21 and attend this trial, the trial will still go on, you
22 will still be tried, the jury will still deliberate
23 whether or not the State has proven your guilt to its
24 satisfaction beyond a reasonable doubt and if the jury
25 were to convict you and you're not here, then I will issue

1 a sentence, that sentence will be sealed and bench warrant
2 will be issued for your arrest. So, do you understand
3 that, Mr. Brewton?

4 Mr. Brewton - Yes, sir.

5 The Court - Do you, Mr. Pope?

6 Mr. Pope - Yes, sir.

7 The Court - All right. And have you discussed
8 that with him, Mr. St. Pierre?

9 Mr. St. Pierre - Yes, sir, and I will further.

10 The Court - Have you, Mr. Brannon?

11 Mr. Brannon - Yes, sir.

12 The Court - All right, thank you. And I
13 apologize. I just did not think of that earlier.

14 (Documents marked as Court's Exhibit Numbers 1,
15 2, 3 and 4.)

16 (Court in recess for the day at 6:00 p.m.)

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Union	)	
	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	No. 2010-GS-44-1036
	)	
vs.	)	
	)	
Lashad Brewton	)	
	)	
State of South Carolina	)	No. 2010-GS-44-1039
	)	
vs.	)	
	)	
Randy Crosby	)	
	)	
State of South Carolina	)	No. 2010-GS-44-1053
	)	
vs.	)	
	)	
Roderick Pope	)	
	)	
VOLUME II		

December 7th, 2011
Union, South Carolina

BEFORE:

THE HONORABLE JOHN C. HAYES, III, JUDGE; and a jury.

APPEARANCES:

JOHN ANTHONY, SOLICITOR
Attorney for the State

JOSEPH T. ST. PIERRE, ESQ.
Attorney for the defendant Lashad Brewton

DAN HALL, ESQ. and MARK McKINNON, ESQ.
Attorneys for the defendant Randy Crosby

N. DOUGLAS BRANNON, ESQ.
Attorney for the defendant Roderick Pope

AMINAH R. HARDY, RPR
Official Court Reporter

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THE COURT: Before we get into my rulings, one of the jurors, and Mr. Gault will give us her name, young female indicated she ought to tell us that she had been in PTI. I guess that didn't fall under any of the questions I asked, quite frankly. Apparently it bothered her enough to call it to our attention. Any comment on that, Mr. Anthony?

MR. ANTHONY: Do we know who it is?

THE COURT: We're getting there.

THE CLERK: I didn't ask her for her name because I just want to get to the jury. I believe it's Ms. Rice, but I'd have to ask her for her name, Your Honor, to make sure -- so I don't say the wrong one, but --

THE COURT: Just, Deputy, put your head in.

THE CLERK: I will.

THE COURT: You don't have to make a big deal out of it. "Your name again?"

THE CLERK: It's Ms. Lyle, Your Honor.

THE COURT: Who?

THE CLERK: Ms. Lyle.

THE COURT: Lyles.

THE CLERK: It's juror number 171.

MR. ANTHONY: Can I just have a moment to check on this, Your Honor?

1 THE COURT: Yes.

2 MR. ANTHONY: Thank you.

3 We wouldn't have any motions in regard to Ms. Lyle.

4 THE COURT: Mr. St. Pierre?

5 MR. ST. PIERRE: Nothing, Your Honor.

6 THE COURT: Mr. Brannon?

7 MR. BRANNON: No, Your Honor.

8 THE COURT: Briefly, any further follow-up on --
9 yesterday on the issues that are now before the Court?

10 MR. ANTHONY: I provided a case to the Court this
11 morning, State v. Driggers, 473-57. The only other thing
12 I would point out is that in evaluating Mr. Harris'
13 testimony, the State would just briefly submit that given
14 the circumstances of his cooperation with the sheriff's
15 office, he would be extremely unlikely to lie to them. It
16 would be extremely unlikely that he would be telling them
17 somebody was coming into Union County with drugs if they
18 really weren't, because that would only alienate him from
19 law enforcement further. So we think that there is a
20 significant indicia of credibility in what he was telling
21 you. That's the only verbal argument we would make.

22 THE COURT: Mr. St. Pierre, anything else?

23 MR. ST. PIERRE: Judge, I would just like to
24 reiterate the reasonable suspicion of probable cause,
25 especially in my client's case. Even after the search, I

1 don't see how it would be lawful for him to be arrested
2 for possession of cocaine when it's merely impossible for
3 him to have possessed that cocaine.

4 THE COURT: Well, there's some law that says if
5 you're -- there's inference if you're in control of the
6 conveyance of the house or whatever, there's some
7 inference there.

8 MR. ST. PIERRE: But he would have to know that it
9 was there, and there's no proof that he knew it was there.

10 THE COURT: I understand.

11 MR. ST. PIERRE: And then -- well, I just ask you to
12 consider the thresholds of reasonable suspicion and
13 probable cause in that regard.

14 THE COURT: Thank you.

15 Mr. Brannon, any brief --

16 MR. BRANNON: Only one, Your Honor. I've read what
17 Your Honor presented to us today. On page 2, head note 5,
18 it says, "The specificity of the informant's information,
19 coupled with the absence of ulterior motives, has been
20 held sufficient to constitute reliability." Your Honor,
21 what their informant here said, black car, Highway 176,
22 Mr. Pope in the vehicle. That's all they knew. Black
23 Ford Expedition.

24 Your Honor, the problem is the case the State
25 provided says "coupled with absence of ulterior motives."

1 This man had already been promised something, and the
2 testimony is he received it.

3 THE COURT: Well, it's kind of interesting and
4 somewhat ironical that the reason that you say that
5 argument was the reason he says he was reliable. I mean,
6 I understand, and I understand both the concepts. All
7 right.

8 McKinnon?

9 MR. MCKINNON: Nothing further.

10 THE COURT: Well, I'm going to deny the motion to
11 suppress. I think the ice here is thin, but I think it's
12 thick enough to support the arrest, the stop first, then
13 the search and then the arrest, and they went in that
14 order. Looking at the totality of the circumstances,
15 Mr. Harris does not fall into any niche that is set forth
16 in any of the cases. That is, he's not a CI, confidential
17 informant, because there's certainly nothing that
18 indicates there's any evidence of reliability that this
19 was a fresh face in the drug traffic -- drug community and
20 fresh face to law enforcement, so there's certainly no
21 reason that this particular man would fall into the
22 category of confidential informant. So I find that he is
23 not a confidential informant.

24 But this is somewhere between the confidential
25 informant and anonymous tip. The tip wasn't completely

1 anonymous because they knew who was giving it. Again,
2 someone who I can't say was unreliable but whose
3 reliability has not been established. However, again,
4 looking at the totality of the circumstances, it was my
5 opinion, police investigation had been referred to as an
6 ambush, but it was a police investigation that determined
7 the validity of the information they received from
8 Mr. Harris; that is, by setting up, again, what's been
9 referred to as an ambush and corroborating certain
10 information. Not a lot of information, that's true, but
11 enough, I think, to establish probable cause to make the
12 stop, and that corroboration is that a black Ford
13 Expedition would be coming from Spartanburg to Union on
14 176 out of Spartanburg. That alone would not be enough,
15 but the -- so the key -- even though we're look at the
16 totality, the key is the fact that the -- Mr. Harris,
17 whatever you want to call him -- we're not going to call
18 him confidential informant. We're not going to call him
19 anonymous tipster either. Whatever his title may be in
20 the world of legality, legal terminology, he gave
21 information that he had been contacted by whoever was on
22 the other end of that phone, whether it was Mr. Pope or
23 not, that the car in question was passing the Lighthouse
24 fish camp, and that was confirmed by Mr. McNeil, Officer
25 McNeil. So I think that's enough to create probable cause

1 for the stop.

2 As to the search, the three individuals were taken
3 out of the car. They were not arrested. They were
4 detained. They were, in fact, handcuffed. This is a
5 sticky point, quite frankly, as to the automobile
6 exception. I believe they had probable cause to stop, and
7 then I've got to determine whether or not under the
8 totality of circumstances there was a legal basis for the
9 search. That would come down to whether or not -- at
10 least in my opinion, whether or not the automobile
11 exception would apply. Generally that applies when --
12 because of the mobility of an automobile, the lack of
13 privacy, expectation of a lessened expectation of privacy
14 of a vehicle on a public road.

15 The question sort of becomes then whether or not the
16 officers should have detained and were detaining these
17 three gentlemen and obtained a warrant. I find that the
18 exigency of the circumstances -- that is, that at the time
19 they had probable cause to stop; they detained these
20 individuals and found no contraband or anything that would
21 give rise to a right to -- reason to arrest them but that
22 they had information that was credible only because it had
23 been corroborated that the Ford Expedition would have
24 contraband in it; that that was exigency enough. They --
25 couldn't arrest them because they didn't have grounds for

1 it. So they couldn't detain them forever because you
2 can't detain people longer than necessary. And so I
3 believe that created exigent circumstances.

4 For the search of the car, I find that the search did
5 produce scales and the -- which had the white residue on
6 them, and I'm not going to suppress them. There is the
7 additional issue about sort of the chain of custody. I
8 think that goes to talking still about the scales, not
9 about the drugs found in the car at this point. As to the
10 scales, the -- there's certainly a lot of questions about
11 the way it was handled, but it was not a fungible item.
12 It's like a pistol or a shotgun or a television that could
13 be not -- I guess could be tampered with. In fact, the
14 battery was missing, but the character of it is not
15 readily changeable, is not fungible; that is, it cannot be
16 mixed in with something else and be confused. It could be
17 under the way it was kept, had it not been marked, but it
18 was marked on the phone itself. It could only be marked
19 on the bag, we'd have a problem because the bag came open
20 while it was in custody. But it's my understanding of the
21 testimony, and I haven't seen it in my hand, but my
22 understanding that there is an identifying number on the
23 cell phone itself. So I find that the scale -- the
24 scales, not the cell phone -- scales, I'm not going to
25 suppress the introduction of the scales. I'm not going

1 to -- the powder has been repeatedly brought to the
2 Court's attention that it was not tested, so we don't know
3 what it was. But as I indicated yesterday, we've got to
4 look at what happened there at the scene in the light of
5 what happened there at the scene and not as to what later
6 came to light. And so I find that they had probable cause
7 to detain them, ergo, it was appropriate. Law enforcement
8 had the right to seize the scales at that time.

9 And I believe that covers -- I know we've still got
10 the matter of the drugs in the backseat of the car, but I
11 think Mr. Anthony's correct. I think that goes to
12 credibility. I hadn't heard from that officer about
13 whether the car was cleaned out or not, but in any event,
14 I think that would be a subject of cross-examination of
15 the officer that did the transport, Officer Vinson, if I
16 remember correct. So I'm not suppressing the drugs in the
17 car based on -- on absence of evidence of the car having
18 been cleaned. And by "cleaned," I don't mean detailed and
19 washed and waxed cleaned. I mean surveyed, searched
20 itself for the presence of any contraband prior to it
21 being used in this ambush operation transportation.

22 Does that cover everything that I had under
23 consideration?

24 MR. ST. PIERRE: I had a motion about my client's
25 arrest for possession of cocaine.

1 THE COURT: Well, I -- I denied -- well, I find the
2 arrest of all three to be -- I think I find it to be
3 probable cause for all three to be arrested for -- under
4 the totality, again, of the circumstances. Mr. Pope was
5 named as an individual again, but not by somebody
6 reliable. There was corroboration. He turned out to be
7 in the vehicle that was stopped. Mr. Crosby because he
8 was apparently seated at the point where the scales were
9 found. And Mr. Brewton as the driver as the captain of
10 the ship sort of concept that -- constructive possession.
11 You can be inferred, whatever's in your control, your
12 premises, your automobile. I'm not articulating this with
13 any great skill at this point because I don't have the law
14 in front of me, but basically constructive possession can
15 occur when contraband is found under the control, and
16 under the control of the person would be under the control
17 of the person who controls the location or the cause. So
18 I deny that motion.

19 MR. ST. PIERRE: And if I can just clarify, the
20 ruling of the Court is that there was probable cause --
21 there was reasonable suspicion to stop the car and
22 probable cause was found or there was determined to be
23 probable cause because they didn't see anything in plain
24 view, nothing -- the only thing that was corroborated was
25 the identity of a person in a car, and that created

1 exigent circumstances to search the car?

2 THE COURT: No, no, no. And this -- I'm going to --
3 if I start repeating myself, I'll probably dig myself into
4 a hole. I told somebody yesterday whenever you find
5 yourself in a hole, stop digging. So I don't want to go
6 anywhere beyond what I've already ruled. So I'm going to
7 leave my ruling what it is. I'm not going to try to
8 explain it because as soon as I try to explain it, I'll
9 say something that then I'll have to explain what I said
10 then. If -- if I'm in error in my rulings, of course the
11 record is there and a higher court can examine it. But to
12 start -- I hate to say kind of trying to justify because
13 my ruling, I've made my ruling. It stands for what it is.

14 MR. ST. PIERRE: Thank you.

15 THE COURT: Mr. Brannon.

16 MR. BRANNON: Your Honor, my only request, I
17 understand the ruling on the scale itself, and I
18 understand the officer had the ability to use his
19 experience and the circumstances surrounding it. But,
20 Your Honor, there's been no additional testing to any
21 residue, so I would ask the Court to bar the State from
22 deriving testimony such that the officer would say
23 field-tested positive for cocaine. I mean, he can say
24 there was a white powder substance, but there's no testing
25 beyond that.

1 THE COURT: Yeah, I agree, and that's a sticky
2 wicket, and my analysis of all this is that there was a
3 white powder substance that we thought was something. But
4 it turns out we don't know if it was or not. Field
5 testing is an issue. You can't -- you know, you've got --
6 well, there are a lot of things that even United States
7 Supreme Court recently have gone back to -- gone back in
8 the process of utilizing kits, DataMaster, spectrometry or
9 whatever. To even going back almost to having the --
10 testify how they were made and how reliable they are.
11 Field tests are just that. So I'm not going to allow the
12 State to go beyond what they found and the condition it
13 was found in.

14 MR. ANTHONY: Well, when you say "what they found,"
15 what --

16 THE COURT: The scales with a white powdery substance
17 on it. That's all they found.

18 MR. ANTHONY: Yes, sir. Would the Court allow the
19 investigator to testify that based on his training and
20 experience, he believed it was probable cause to find that
21 substance was cocaine or crack cocaine? Because that --
22 that's necessary -- him being able to say he reached that
23 determination is necessary for an explanation of why he
24 arrested them.

25 THE COURT: Well, I would imagine there will be some

1 testimony about scales being used in the trade, and I
2 think just like we talked about a green leafy substance
3 that I thought was marijuana that appeared to me, I think
4 he can testify what it appeared to him. But not further
5 than that. Because, I mean, that --

6 MR. ANTHONY: That's -- we do not have any objection
7 to the officer being allowed to testify, as long as he can
8 say he saw a substance, based on his training, it appeared
9 to him to be cocaine.

10 THE COURT: Well, I wouldn't expect you to have any
11 objection.

12 MR. ANTHONY: We don't. Thank you.

13 MR. BRANNON: Nothing further from me, Your Honor.

14 MR. HALL: Your Honor, the only thing that we have on
15 behalf of Mr. Crosby, we do have what we believe a
16 discovery issue as far as the scales. We did not learn
17 until yesterday that the scales were taken into evidence.
18 The case summaries that we were provided indicated that
19 scales were taken out of the car, and there's never been
20 any affirmative action on behalf of the State to let us
21 know that scales were in evidence. We certainly didn't
22 receive any type of documentation. We just learned about
23 that yesterday. We would ask based on that that any
24 reference to any scales being taken into evidence or being
25 found be excluded from these officers' testimony.

1 THE COURT: Didn't the incident report indicate that
2 scales were, quote, seized?

3 MR. HALL: No, Your Honor.

4 MR. ST. PIERRE: No, sir, Your Honor. In fact, there
5 is testimony from the stand from Mr. Sherfield, and I
6 asked him, I said, "Here's your incident report. Please
7 tell me where you said you seized the scales." And he
8 said, "Nowhere in the incident report did I."

9 MR. BRANNON: I can show it to you.

10 THE COURT: That's all right. No, I take your word.
11 What about that, Mr. Anthony, discovery abuse? Not
12 intentional, but how can --

13 MR. ANTHONY: If I could just have one moment. It's
14 sort of strange, believability thing. If you read the
15 case -- some -- a drug case about somebody finding a scale
16 and not knowing it was taken. But in addition to that, I
17 sent all the lawyers in this case an e-mail on
18 October 6th and said that the scale that was recovered
19 from the vehicle tested negative for fingerprints. So I
20 don't know how much clearer I can be. The scale that was
21 recovered from the vehicle indicates when it was seized,
22 tested negative for fingerprints. Advised him that he
23 check for prints and hadn't found any.

24 THE COURT: What do you have to say about that,
25 Mr. Hall?

1 MR. HALL: Your Honor, co-counsel, we -- our position
2 is we never received an e-mail stating that the scales
3 were fingerprinted.

4 THE COURT: Who is that indicating?

5 MR. ANTHONY: I sent it to Mr. McKinnon,
6 yorkcountygov.com on Thursday, October 6th, at 4:55 p.m.

7 MR. MCKINNON: Your Honor, I searched all my e-mails
8 Monday for Mr. Anthony. I mean, perhaps I missed it, but
9 I've looked specifically for every e-mail I got from
10 Mr. Anthony because of this discovery issue, if it may
11 come up.

12 THE COURT: Let me see what you -- let me see copy of
13 the e-mail printout.

14 MR. BRANNON: Your Honor, I can't tell you that I
15 didn't get an e-mail. I'm not the best at checking
16 e-mail, so I'm not going to tell you that John didn't. I
17 didn't see it. I can tell you that.

18 THE COURT: Mr. St. Pierre, do you recall any e-mail?

19 MR. ST. PIERRE: Your Honor, I don't recall the
20 e-mail, but, you know, I have no doubts about Mr. Anthony.
21 He's been up front with me from the get-go. My only doubt
22 is with the law enforcement. Especially reading over the
23 incident report, where we're supposed to -- testimony is
24 we're supposed to infer scales were taken and we're also
25 supposed to take the incident report at face value, which

1 says everyone's cell phone was taken, and there were only
2 two cell phones taken. And there's no log of that or
3 anything.

4 THE COURT: All that goes to the weight. The word
5 here says that the scale was recovered from the vehicle.
6 I don't know -- I think that would be enough to alert
7 Defense counsel if they saw this. Did each of you receive
8 photo sheets of Mr. Pope's cell phones?

9 MR. ST. PIERRE: Yes.

10 MR. HALL: Mr. Crosby, we don't have Mr. Crosby's
11 details.

12 THE COURT: Well, I'm reading fast.

13 Mr. Brannon, did you?

14 MR. BRANNON: I did. I did, Your Honor.

15 THE COURT: Did you, Mr. St. Pierre?

16 MR. ST. PIERRE: I believe I did, yes, sir.

17 THE COURT: Well, they were attached to this e-mail.

18 MR. ANTHONY: I'm looking for it.

19 THE COURT: The e-mail says, "Attached are two sheets
20 of photos taken from Mr. Pope's cell phone," and then the
21 second line talks about the scale. So if you got the
22 attachments, I would assume you got the e-mail. We'll
23 make this Court's exhibit.

24 (Court's Exhibit number 2 was marked.)

25 THE COURT: Anything else? We're going to take a

1 I'm going to take it and I'll give you the same
2 prerogative. And I extend that to counsel and the
3 defendants.

4 We do want to move the case along. We don't want to
5 drag the case more than necessary by the nature of the way
6 these things go, but we're not in such a hurry that we not
7 let somebody take a break if they need a break. So raise
8 your right hand if you need a break, and we'll take it.

9 Now we'll allow the attorneys to make their opening
10 statements.

11 OPENING STATEMENTS BY MR. ANTHONY

12 MR. ANTHONY: Thank you. Good morning. My name is
13 John Anthony. I'm the deputy solicitor here in Union.
14 I'm the man that will be representing the State in this
15 case.

16 You know, one thing about people is people like
17 things that are bad for them. And everybody is like that.
18 Everybody has something they like they know is not really
19 good for them. Either it's sweets or maybe for some
20 people it's tobacco, some people it's alcohol, whatever it
21 is.

22 For some people, though, some people like something
23 that's worse than that. Some people like illegal drugs.
24 They like cocaine, crack, or whatever, whatever illegal
25 drug you want to mention. And the problem that creates

1 for law enforcement is that people that like illegal
2 drugs, they're not really going to do anything about
3 people selling illegal drugs because if you -- if the
4 person gets robbed or house gets broken into or something
5 bad happens to them, they're going to normally call the
6 police. They're going to get the law enforcement people
7 involved. But that's not the case for people who like to
8 buy crack or cocaine because they want what's being sold,
9 so they're not going to call the police up and just report
10 that to them. So the spot that puts the police in is a
11 lot of times they have to use people to buy drugs and to
12 catch people who are selling drugs, that are in the drug
13 business themselves. And that's basically what you're
14 going to hear about here is -- today when we present the
15 evidence to you.

16 There was a man named Vincent Harris. And back on
17 June 24th last year, Mr. Harris got caught here in Union
18 County, selling crack cocaine. And after he was arrested,
19 he contacted one of the narcotics investigators at the
20 sheriff's office and said that he thought he could catch
21 someone else selling crack cocaine. And the man he said
22 that he could catch or help them catch was Roderick Pope.
23 So Mr. Harris got on the phone. He was in custody at the
24 jail. There was a narcotics agent who went out to the
25 jail, stayed there with him while he made some phone.

1 calls, and he got Mr. Pope on the phone. And he made
2 arrangements for Mr. Pope to come down here from
3 Spartanburg and sell him a half ounce of crack cocaine.

4 So in order to catch Mr. Pope -- because Mr. Harris
5 was in custody, he wasn't actually going to buy this crack
6 from Mr. Pope -- in order to catch Mr. Pope, there were a
7 number of law enforcement people who set up surveillance
8 up on 176 at the north end of the camp, because Mr. Harris
9 had told law enforcement that Mr. Pope would be coming
10 into Union County in a black Ford Expedition.

11 So these officers went. They set up. They started
12 hunting a black Ford Expedition. And Mr. Harris was
13 talking to Mr. Pope on the phone. Mr. Pope told
14 Mr. Harris, "I'm going past the Lighthouse Fish Camp in
15 Pacolet," so they kind of knew where he was. These two
16 guys were talking back and forth. And so right as
17 Mr. Pope got into the -- got into Union County past the
18 Disney plant, he was stopped by a number of narcotics
19 agents. And when the black Expedition was stopped, all
20 three of these defendants were in the black Expedition.
21 Mr. Brewton was the driver, and Mr. Pope was sitting in
22 the front seat passenger, and Mr. Crosby was sitting in
23 the backseat.

24 And so the officers searched the Expedition, and they
25 found the scale. And Lieutenant Sherfield of the

1 sheriff's office saw some residue on that scale, and he
2 determined that residue was cocaine, and he charged people
3 in the car -- or in the Expedition, all three of them,
4 with possession of cocaine. So he took -- Mr. Crosby and
5 Mr. Brewton were placed in a patrol car to be transported
6 to the jail. And they searched the Expedition, and they
7 didn't find any crack in the Expedition. It wasn't there.
8 But the deputy who transported Mr. Crosby and Mr. Brewton
9 to the jail, when he got him out of the car and checked
10 his backseat, he checked his backseat before he put him in
11 the car, it was clean. When he got out of the car and
12 checked the backseat --

13 MR. BRANNON: Objection, Your Honor.

14 THE COURT: Let me let the jury go to the jury room
15 just for a minute. I'm going to let you go to the jury
16 room while we deal with the matter of law.

17 (WHEREUPON, the jury left open court at approximately
18 10:40 a.m.)

19 MR. BRANNON: Your Honor, we raised that issue
20 yesterday. In fact, the Court even said, "What about the
21 search of the vehicle?" Mr. Anthony said, "I can put the
22 officer on the witness stand," which he never did. Your
23 Honor, he -- I may be overreacting, Your Honor, but, I
24 mean, potentially he could have said the officer will tell
25 you that he searched the vehicle. But, Your Honor, he's

1 stating things that right now I'm not sure he can prove.

2 THE COURT: All right. Let's just, instead of saying
3 couching them as a confirmed fact, just couch it a little
4 differently. I also have some concern myself, nobody said
5 anything about it --

6 MR. BRANNON: I saw --

7 THE COURT: -- that you told the jury that Officer
8 Sherfield determined that the powder was cocaine. I
9 thought we said we weren't going to let him do that.

10 MR. ANTHONY: I'm sorry. I thought -- I thought he
11 could say that he had an opinion it was cocaine.

12 THE COURT: That's true. That's right. But you said
13 "he determined." You used the word "determine," because I
14 wrote it down, because I'm listening. So you might want
15 to correct that. And let's couch our arguments in what we
16 think will be presented --

17 MR. ANTHONY: Yes, sir.

18 THE COURT: Okay.

19 MR. ANTHONY: I'm sorry.

20 THE COURT: Bring the jury back in.

21 (The jury entered the courtroom at 10:42 a.m.)

22 THE COURT: Mr. Anthony, you may proceed.

23 MR. ANTHONY: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. ANTHONY: After Lieutenant Sherfield formed an

1 opinion that he found cocaine on that scale, Mr. Brewton
2 and Mr. Crosby, they were taken to jail. The deputy who
3 took them to jail, Corporal Vinson with the sheriff's
4 office, he'll testify, and his testimony will be that he
5 checked the seat of the car. There wasn't anything in the
6 car when he put them in the car. He took Mr. Brewton and
7 Mr. Crosby to jail, and after they got them in jail, he
8 checked his car, and he found a significant amount of
9 crack cocaine where Mr. Crosby was seated. And the State
10 would submit that that was -- the crack -- the crack. It
11 wasn't cocaine; it was crack cocaine. The State would
12 submit that was the item that was going to be sold, that
13 they were taking down 176 to sell.

14 So in this case, we're going to call the witnesses to
15 prove this. We're going to call the witnesses -- we're
16 going to call Mr. Harris that was talking to Mr. Pope.
17 We're going to call the witnesses that were out looking
18 for the car, who searched the car. We're going to call
19 the deputy that found the crack in the police car. We're
20 going to call chemists from the law enforcement division
21 in Columbia who tested the crack, made that determination.

22 And there's a couple things that I do want to let you
23 know ahead of time just because you might be thinking
24 about it. First thing is the charge in this case is
25 trafficking. And the reason it's trafficking is because

1 of the quantity of the drugs involved. Because the law
2 says if you sell -- if you -- if you possess or if you're
3 attempting to sell more than a certain quantity of the
4 substance, that that is just trafficking.

5 There's different levels of drug offenses. There's
6 simple possession, there's distribution, and then there's
7 trafficking. In this case, anything over 10 grams of
8 crack cocaine makes it a trafficking offense. And we
9 believe our evidence will show that the amount of crack
10 that was in dispute here or the -- that was being seized
11 here was 10 grams. And so that's why these three
12 defendants are charged with trafficking.

13 Then the other thing I want to mention to you is that
14 three people can join together to commit a crime. So that
15 even if crack wasn't found on Mr. Pope, if you were to
16 find based on the evidence that Mr. Pope was the one that
17 Mr. Harris was talking to and Mr. Pope was the one that
18 basically orchestrated bringing the crack to Spartanburg,
19 even if crack wasn't found on his person, you could still
20 find him guilty of trafficking. With Mr. Brewton, even if
21 crack wasn't found on Mr. Brewton's person, if you find he
22 was driving into Union from Spartanburg to participate in
23 a drug transaction, he would be guilty of trafficking.
24 And Mr. Crosby, even if Mr. Crosby wasn't the one that
25 Mr. Harris was talking to, if you find that Mr. Crosby was

1 holding crack cocaine and had it in his possession, it was
2 over 10 grams, then he would be guilty of trafficking
3 crack cocaine.

4 And I will discuss that in a lot more detail with you
5 when we get through with the evidence, but I just wanted
6 to mention those two things before we started because I
7 assume those might be questions you have before you
8 started hearing the evidence. So as I said, we'll be
9 presenting several people who were involved in making this
10 case and we just ask you to listen to the witnesses and
11 listen to the evidence. And we believe once you've heard
12 this case that you'll find that all three of the
13 defendants in this case are guilty of trafficking in crack
14 cocaine. Thank you.

15 THE COURT: Mr. St. Pierre.

16 MR. ST. PIERRE: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 OPENING STATEMENTS BY MR. ST. PIERRE

19 MR. ST. PIERRE: You know, if that was the whole
20 story, my client wouldn't be here today and his
21 codefendants wouldn't be here today. Just as the judge
22 told you, all three of these defendants sit there innocent
23 until the State can prove them guilty beyond a reasonable
24 doubt. I'll go over the law with you in the end regarding
25 trafficking cocaine.

1 But there's another side to this story. Okay. A
2 side that displays deceit and cover-ups by law
3 enforcement. A side that displays an unconstitutional
4 arrest of my client. A side that shows that in no way,
5 shape, or form did Lashad Brewton possess any amount of
6 cocaine or crack cocaine. And a side at the end of the
7 trial you will find Lashad Brewton not guilty. Thank you.

8 THE COURT: Mr. Brannon.

9 OPENING STATEMENTS BY MR. BRANNON

10 MR. BRANNON: Good morning, ladies and gentlemen of
11 the jury. My name is Doug Brannon, and today I have the
12 privilege to represent this gentleman, Mr. Roderick Pope.
13 I want to tell you just a little bit about Mr. Pope. My
14 client is 49 years of age. He lives in Spartanburg
15 County, South Carolina, with his wife. And together they
16 have two children, grown children, ages 26 and 29 years of
17 age.

18 Back in the year 2000, Roderick Pope got a job at a
19 company called Bontex. It's on Regal Road in Spartanburg
20 County. And when he went to work there, he met a
21 gentleman, Vincent Harris, and they worked together. In
22 fact, they worked together for about seven years at
23 Bontex. They became friends. They would have cook-outs
24 from time to time, mostly at my client's mother-in-law's
25 house.

1 But in 2007, my client left that company. Even
2 still, he remained friends with Mr. Harris. My client
3 Mr. Pope's wife did some catering. And from time to time
4 she would cater at Bontex, and my client would help his
5 wife in the catering, and they would see Mr. Harris at
6 Bontex. They were friends. Now I'm not going to tell you
7 that my client has never had legal problems. But what I
8 can tell you is the last time that he had any involvement
9 with police was in 1989, almost half his life ago.

10 On June 24, 2010, that man named Harris came into
11 Union and he sold crack to a confidential informant. He
12 sold crack to a person working for Union County Sheriff's
13 Department. And between 1:30 and 2:00 in the afternoon,
14 Mr. Harris got arrested for selling crack to somebody
15 working for the Union County Sheriff's Department. After
16 he was arrested, he was transported to jail. But when
17 they arrested him, before they got him to the jail, they
18 took his cell phone away from him.

19 So Mr. Harris is transferred to the jail, and he's
20 sitting there waiting. And he's thinking, hmm, I'm in
21 trouble. So he reaches out to this police officer right
22 here. And he says, "I got a job. I need to be at work
23 tomorrow morning. Can you help me?" Testimony is going
24 to be from this officer right here, he said, "You want me
25 to help you? You got to help yourself." And he hands him

1 his cell phone back before he's even booked into custody.
2 He's in the jail, but before he's booked in and they took
3 his picture and took his fingerprints, before any of that
4 happened, that police officer right there hands him his
5 phone back.

6 Now, we live in a pretty automated and technical age.
7 We can record about anything we want. We can take
8 pictures of about anything we want. But on this day,
9 June 24, 2010, that police officer right there decides
10 tape-recordings and pictures aren't necessary. He just
11 hands a man who he knows just sold dope to somebody
12 working for him his phone back. And on that phone,
13 Mr. Harris makes a series of phone calls, several phone
14 calls. Now, he tells law enforcement that he's called my
15 client. But they don't record it. They don't know
16 anything about it. They don't have any proof of who
17 Mr. Harris called except pictures of the cell phone.

18 Sometime later, based on the phone calls that
19 Mr. Harris made, a group of law enforcement officers,
20 several -- five, six, seven, law enforcement officers --
21 set up on Highway 176. You're going to hear the sheriff
22 was sitting in the median. Another car -- another
23 unmarked car was sitting on the right-hand side of the
24 road. They got cops everywhere. This black Ford
25 Expedition comes in Union County and boom, every cop in

1 Union County stopped, guns drawn. And they pull three
2 people out of a car.

3 Now, what I'm going to tell you is my client,
4 Roderick Pope, he knows this man right here, Mr. Brewton,
5 because Mr. Brewton dates Mrs. Pope's niece. They know
6 each other. But on June 24, 2010, my client has never
7 seen, never met this man before, Mr. Crosby. He doesn't
8 know him from Adam. All of those police converge. They
9 stop that black Ford Expedition, and they pull him out of
10 the car. You're going to hear they don't know nothing
11 except for what that known criminal has told them. They
12 pull these three people out of the car, and before
13 anything is done or said, they're in handcuffs.

14 They search all three of the people sitting at this
15 table. They search Mr. Brewton. They search Mr. Pope.
16 They search Mr. Crosby. And you know what? They don't
17 find no dope. None. In fact, my client doesn't even have
18 any money in his pocket. You're going to see a document
19 that says what they took. They took some money from
20 Mr. Brewton. They took some money from Mr. Crosby. They
21 didn't find no dope. None. But yet we're here.

22 Now, you've heard the solicitor tell you that after
23 they transported Mr. Brewton and Mr. Crosby to the jail,
24 that a police officer went back out and says he found some
25 dope in his car. And they charged all three of them men

1 with trafficking crack cocaine because of some dope that
2 they say was found in a police car. And I'm kind of
3 wondering, is that the same police car that they used to
4 transport Harris to the jail, the known drug dealer? I
5 don't know. But that's what I'm thinking.

6 Now, the State, these people right here, they have to
7 prove beyond a reasonable doubt that my client, Mr. Pope,
8 is guilty of possessing a certain weight of cocaine, a
9 certain quantity of cocaine. Or they could prove that he
10 knew it was in the black Expedition. They have to prove
11 that. And they have to do it, again, beyond a reasonable
12 doubt.

13 At the end of the trial, the judge is going to tell
14 you what the law in this case is. But when it comes to
15 reasonable doubt, he's going to tell you that a reasonable
16 doubt is that kind of doubt that would make a reasonable
17 person hesitate to act. All of you are now jurors. And
18 that's because the lawyers in this case and the Court have
19 determined that you're reasonable people. So at the end
20 of this case, when they're done, if you go, hmm. If you
21 would hesitate to act, those three people are not guilty.
22 Roderick Pope is not guilty.

23 Now, I think different than a lot people. The way I
24 think about reasonable doubt is I have to think of a
25 picture. Okay. And here's the picture that helps me

1 define reasonable doubt. You know those boxes that you
2 get copier paper in? They got the box at the top that
3 hangs over, it's got the side, so when you close that box,
4 it's completely sealed. So if you would for me, just
5 picture in your mind that you got a copy paper box. No
6 paper in it, just the box. And you take that box and you
7 sit it on the table and you pull the top off the box. And
8 you get you a little mouse. And you put that mouse in the
9 box. Put the top back on it. Then you go over and you
10 get your neighbor's cat. Come back over to the house.
11 Take the top of the box. Put the cat in the box and then
12 put the top back on the box. And then take some duct
13 tape. Wrap it around there so you know that that cat
14 can't get out of that box. Then you walk away.

15 You hear scratching and screaming and hollering and
16 all that stuff, but you don't go back until it gets quiet.
17 And when it gets quiet, you take a knife and you cut that
18 duct tape and you pull the top off the box. There's the
19 cat in there, and that cat is sitting up, and he's got a
20 big smile on his face. But there ain't no mouse. Well,
21 you can be pretty certain that that cat killed that mouse
22 and then ate it because you know you sealed the box. You
23 put a mouse in the box. You put a cat in the box. You
24 open it back up, there ain't no mouse. Mouse is gone
25 because the cat ate it.

1 Now, let's change it just a little bit. You do the
2 same thing. You got the box. You find the mouse, put it
3 in there, put the top on. You go get the neighbor's cat,
4 put it in the box, tape it up. You hear the scratching
5 and the screaming and hollering, and then it gets quiet.
6 You come back. You cut the tape, take the top off the
7 box. And there's no mouse. And the cat's in there, but
8 this time he ain't smiling. And you look over in the
9 bottom left-hand corner. There's a hole about that big.
10 That hole is reasonable doubt.

11 And at the end of this trial, there's going to be a
12 hole about that big in their case. You're going to be
13 asked today to take the word of a man who is not known to
14 be a criminal, who is not thought of as a drug dealer, but
15 you're going to have to take the word today of a man who
16 sold dope to a police informant on June 24, 2010, and then
17 makes some phone calls because this man right here gave
18 him his cell phone back. That's it.

19 Now, ladies and gentlemen, my case is a little bit
20 different than the other two because I'm going to tell you
21 about this big word called "entrapment." Okay. My case,
22 my defense is entrapment. Entrapment is easy. It's got
23 two parts to it. You have to determine that there was a
24 State agency, a State actor, or somebody working for the
25 State was involved.

1 Mr. Harris gets arrested. He asks this man for some
2 help. They hand him the phone back. And then in a little
3 while when this officer takes the witness stand, he's
4 going to tell you Harris was working for him. Harris was
5 working for him. That's problem one right there. The
6 other one is then after that testimony comes up, then the
7 State has to prove that Mr. Pope was not predisposed to
8 own, carry, possess, or sell cocaine. I don't have to
9 prove that. They have to prove that he was not
10 predisposed.

11 And what I'm going to tell you is the testimony is
12 going to show you that Mr. Pope didn't have any dope.
13 Mr. Pope had to be called several times by Mr. Harris.
14 And there's going to be no evidence that since 1989
15 Mr. Pope had ever even been arrested. Ladies and
16 gentlemen, at the end of the case, there's going to be a
17 hole in the bottom of the box and you're going to find
18 entrapment. Thank you so much for your time.

19 THE COURT: Mr. Hall.

20 MR. HALL: May it please the Court.

21 OPENING STATEMENTS BY MR. HALL

22 MR. HALL: I need more. I need more. I need more.
23 Ladies and gentlemen, this case that's before you, that's
24 the question as jurors you're going to be asking yourself,
25 demanding as this case goes forward. I need more. I need

1 more. I need more. I need more evidence. I need more
2 evidence. I need more evidence.

3 You deserve more evidence. You deserve more evidence
4 to convict a citizen of this state of a very serious
5 crime. In fact, as you've heard from these attorneys, the
6 judge is going to instruct you that you need evidence to
7 prove beyond a reasonable doubt Randy Crosby guilty of a
8 crime. Evidence beyond a reasonable doubt. You're going
9 to be saying I need more. I need more. I need more.

10 We're going to tell you at the end of the case that
11 you deserve more than what you got here today. Because
12 what's happened here today is the State of South Carolina,
13 the power of law enforcement, the tools that they have
14 available to them, brings you a case here where they could
15 have done more. You deserve more.

16 Now, the prosecutor said that Randy Crosby is one of
17 three people in the car. There's not going to be any
18 question that Randy Crosby was riding in a black Ford
19 Expedition that came into Union County on June 24, 2010.
20 He was sitting in the backseat. The prosecutor said that
21 because Pope -- he indicates that Mr. Pope in his argument
22 or his opening orchestrated what happened. He stated that
23 Mr. Brewton was driving the vehicle in which this
24 orchestration took place. And in his words, you can find
25 Randy Crosby guilty if he is holding and having in his

1 possession crack cocaine.

2 There will be no evidence, no evidence, that my
3 client, Randy Crosby, was holding crack cocaine. None.
4 There was crack cocaine found in the police car when he
5 and another -- when he and Mr. Brewton were taken up to
6 the Union Sheriff's Department. You're going to hear the
7 police cars carry -- they arrest people for drugs. You're
8 going to hear that they have many people in the back of
9 police cars that are arrested for drugs. In fact, just an
10 hour or so before this happened, the confidential
11 informant -- or the informant in this case, not that he's
12 confidential -- the guy who set up the deal was in the
13 police car after he had been arrested for selling drugs in
14 Union County.

15 That's the only evidence that the State is going to
16 be able to present against Randy Crosby. And you deserve
17 more. You deserve more, and that's the right question to
18 ask. It's the legal question to ask because you deserve
19 evidence that proves beyond a reasonable doubt my client's
20 guilt. The State is not going to have that evidence. We
21 ask at the conclusion of the case as you're asking that
22 question, why didn't they bring us more, why didn't they
23 do a better job, that you find Randy Crosby not guilty.
24 Thank you.

25 THE COURT: Call your first witness.

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 MR. ANTHONY: Yes, sir. Our first witness will be
2 Lieutenant Sherfield.

3 WHEREUPON, LIEUTENANT JOHN SHERFIELD, having first been
4 duly sworn, testified under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. ANTHONY:

7 Q. Would you state your name, please.

8 A. My name is John Sherfield.

9 Q. Mr. Sherfield, how are you employed?

10 A. I'm a lieutenant with the Union County Sheriff's
11 Office, assigned to narcotics investigation.

12 Q. How long have you worked for the sheriff's office?

13 A. I've been in law enforcement for 22 years. I've been
14 with the Union Sheriff's Office for 18.

15 Q. And how long have you been in narcotics
16 investigation?

17 A. 11 years.

18 Q. I want to take you back to June of last year. Were
19 you working in narcotics at that time?

20 A. Yes, sir.

21 Q. And on June 24th of last year, did you come into
22 contact with a Vincent Harris?

23 A. Yes, sir.

24 Q. And how did you come into contact with him?

25 A. Myself and some other narcotics agents had arrested

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 him for distribution of crack cocaine in the Jonesville
2 community of Union County.

3 Q. And after Mr. Harris' arrest, what developed
4 regarding any kind of further interaction with him?

5 A. I went back to -- after the arrest, it was a
6 uniformed patrol car or marked patrol car came and picked
7 up Mr. Harris and his wife, who had been arrested for
8 distribution of crack. I left the scene and met back with
9 our informant, who had actually purchased the narcotics
10 from Mr. Harris on our behalf. Collected the evidence.
11 Brought that informant back to Union. I went back to the
12 office. While en route back to the office, Sergeant
13 Johnson had informed me that he had received word that
14 Mr. Harris wanted to --

15 MR. ST. PIERRE: Objection, hearsay.

16 THE COURT: I sustain the objection.

17 Q. Without saying specifically what Sergeant Johnson
18 told you, what plan developed after you talked to Sergeant
19 Johnson?

20 A. I learned that there would be -- Mr. Pope --

21 MR. ST. PIERRE: Objection, hearsay.

22 MR. BRANNON: Objection, hearsay.

23 THE COURT: Let the jury go to the jury room just for
24 a minute, take up some matters.

25

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 (WHEREUPON, the jury left open court at approximately
2 11:08 a.m.)

3 THE COURT: Mr. Anthony, they objected on the grounds
4 that the testimony was hearsay. Tell me why that doesn't
5 fall under that category.

6 MR. ANTHONY: Well, I'm just inquiring as to what
7 developed, what plan the sheriff's office commenced that
8 day.

9 THE COURT: Well, he can testify as to what plan he
10 was involved in, his involvement, but the question is
11 whether or not he can go into the information he received
12 for which he -- from which he reached his conclusion.

13 MR. ANTHONY: Well, I would submit that he can
14 testify as to what he was expecting to do, as in he was
15 expecting to go to the north part of Union County and look
16 for a black Expedition that would contain Mr. Pope that
17 would be coming down 176 from Spartanburg. And, you know,
18 I do not think that that violates the hearsay rule. I
19 mean, he could -- just didn't tell me he would -- he could
20 say that I would probably be asking him, you know, based
21 on conversation with Sergeant Johnson, what did you do,
22 what were you looking -- what type of vehicle were you
23 looking for. But that is not going to be the record
24 directly of listing -- he's not going to be directly
25 saying what he was told.

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 MR. BRANNON: It's hearsay on hearsay, Your Honor.
2 If he says black Ford Expedition, that came from Harris
3 through Johnson. It's hearsay on hearsay.

4 MR. ANTHONY: Well, it's just him saying what he was
5 looking for. And he can say that.

6 MR. ST. PIERRE: And furthermore, Your Honor, the
7 only person that can validate that that person was Pope on
8 the other line of the phone was Harris, and there's --

9 THE COURT: I'm not going to let him go into anything
10 like that. Now, I don't have it in front of me. A
11 similar issue came up in a case I tried a week or so ago,
12 and I was presented by the State with some cases that
13 indicated that hearsay could be allowed in regard to
14 police investigations. I don't recall the name of the
15 case, but I'm going to restrict the testimony as to what
16 he did. If he was looking for a black Ford Explorer, I
17 know it's not based indirect -- not directly on hearsay,
18 but I'm going to overrule the objection and allow him to
19 at least testify as to what he was doing. He could be
20 cross-examined, if you wish, as to why he was doing it.
21 But I'm going to allow him to testify as to what he was
22 doing.

23 MR. ANTHONY: And the other thing I would ask to
24 inquire about, I think I should be able to inquire about
25 is with -- I mean, I would ask him what was Sergeant

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 Johnson's role to be. What was Sergeant Johnson doing as
2 part of the operation without him saying what Sergeant
3 Johnson was telling him. I think he can convey to the
4 jury Sergeant Johnson was to be at the jail with
5 Mr. Harris.

6 THE COURT: I think he can testify to that. You
7 object to that?

8 MR. BRANNON: Not that. No, not that.

9 MR. ANTHONY: And that Sergeant Johnson, without
10 going into specifics, Sergeant Johnson would convey to him
11 things that Mr. Harris was telling him, without going into
12 what those things specifically were.

13 THE COURT: Well, there you're getting into -- you're
14 crossing the line. I think you can just say what Officer
15 Johnson's role was and what he actually did. Start with
16 that. You got double hearsay, basically, because you got
17 the officer -- unless you can find that case that your
18 office showed me a week or two ago, I'm going to say, you
19 know, it's hearsay on hearsay. Mr. Johnson -- Officer
20 Johnson saying -- relaying information that was conveyed
21 to him by Mr. Vinson. I know both of those would be --
22 testify would be subject to cross-examination.

23 MR. ANTHONY: Well, I'm not asking him specifically
24 what Sergeant Johnson told him Mr. Harris was saying. I'm
25 just going to ask him what did Mr. -- what was Sergeant

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 Johnson's role and --

2 THE COURT: I've already said you could do that, and
3 then you got into some talking about, well, he was going
4 to tell him what -- I think you went a little beyond that
5 in what I heard.

6 MR. ANTHONY: Well, I would just submit that the role
7 is to convey information from the phone calls. Without --
8 without going into specifics of the phone calls. I think
9 he should be allowed to testify Sergeant Johnson was there
10 with Mr. Harris when Mr. Harris made the call. Sergeant
11 Johnson relayed information to Lieutenant Sherfield.

12 THE COURT: Well, he's testifying that was his role.
13 Whether or not he did it or not, that is whether or not
14 he -- whether or not Officer Johnson accurately conveyed
15 from Mr. Harris, he can't testify to that.

16 MR. ANTHONY: No, sir.

17 THE COURT: He can testify as to Officer Johnson's
18 role.

19 MR. ANTHONY: Yes, sir.

20 MR. BRANNON: Your Honor, I would make another motion
21 as to hearsay because the only way that Lieutenant
22 Sherfield knows that Officer Johnson is with the informant
23 is because Johnson told him he was. He had no personal
24 knowledge that he was.

25 THE COURT: I overrule the objection. Again, I'm

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 going to ask the clerk to see if he can help me find the
2 case. Do you remember what I'm talking about? That has
3 to do with what can be elicited regarding police
4 investigations. But I'm going to allow him to go as far
5 as I told him he could. Bring in the jury.

6 (The jury entered the courtroom at 11:14 a.m.)

7 THE COURT: You may proceed.

8 MR. ANTHONY: Thank you, Your Honor.

9 Q. What -- after -- after Mr. Harris' arrest, what plan
10 did you devise as far as his further cooperation with the
11 sheriff's office?

12 A. After I participated in the arrest of Mr. Harris,
13 myself and Investigator Parker, who was riding with me
14 that day, went back and met with the informant, debriefed
15 the informant about what had occurred with the Harris
16 purchase. We collected the evidence, and we started back
17 to Union. On the way back to Union, I dropped the
18 passenger, Investigator Mickey Parker, off at the county
19 jail, and I went through the drug task force.

20 When I arrived at the drug task force, I contacted
21 Sheriff Taylor, Captain James McNeil, and uniformed
22 deputies and asked them to meet with me that day.

23 Q. At the task force?

24 A. Yes.

25 Q. And what was going to be the purpose of this meeting

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1 at the task force?

2 A. We were going to U.S. 176, just north of Jonesville,
3 and would be doing surveillance, looking for a black Ford
4 Expedition that would be coming into Union suspected of
5 carrying a large quantity of crack cocaine.

6 Q. What was Sergeant Johnson's role in this operation
7 y'all did?

8 A. His role was to be at the Union County Jail to
9 monitor phone calls made from Mr. Harris to another
10 individual and relay information obtained back to me and
11 the other officers.

12 Q. All right. And when you did -- eventually after this
13 meeting at the task force, did you and the other officers
14 assembled there go up to the northern part of the county
15 on 176?

16 A. Yes. After we left the task force office and headed
17 up 176, I then went back by the jail and I picked up
18 Mr. Parker from the jail, and he run with me back up on
19 176.

20 Q. Approximately what time did y'all set out to do this?

21 A. Around 4:30.

22 Q. And --

23 THE COURT: P.m.?

24 THE WITNESS: Yes, sir. Sorry.

25 Q. And when you got up to the northern part of the

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1 county, you and the other officer, did you -- did you
2 receive any further communications from Sergeant Johnson?

3 A. Yes, sir.

4 Q. And based on those communications, what -- what kind
5 of vehicle were you looking for at that time?

6 MR. ST. PIERRE: Objection, Your Honor.

7 THE COURT: Overruled.

8 A. A black Ford Expedition.

9 Q. And where were you looking for it to be coming?

10 A. Towards Union. Southbound lane out of Spartanburg
11 County.

12 Q. And once you received information from Sergeant
13 Johnson, what would you do in regards to the other
14 officers that were out doing the surveillance?

15 A. Some of the information they could hear themselves
16 that was coming over the radio. But the information I
17 received from Sergeant Johnson over the telephone, I
18 relayed it to them over the radio, over a secured channel
19 on the radio to let them know that the vehicle was coming
20 from Spartanburg, at a location that we thought it was at,
21 and the type of vehicle.

22 Q. And who were you expecting to be in the vehicle?

23 A. Mr. Pope.

24 Q. At some point during the surveillance did you see the
25 Expedition?

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1 A. Yes.

2 Q. And where did you see it?

3 A. On 176 near Cedar Grove Road, just south of the
4 Disney plant.

5 Q. Just south of where?

6 A. The Disney plant.

7 Q. And once you saw the Expedition go past Cedar Grove
8 Road, what did you do?

9 A. I noticed that Captain McNeil was already behind this
10 vehicle -- not right behind it, but he was following at a
11 distance behind it. I went to a crossing in the median, a
12 paved crossing. I crossed over and got in behind this
13 vehicle and radioed Sheriff Taylor, who was near Sams
14 Road, parked in the median, that I had seen the vehicle
15 and its location and that it was approaching him.

16 Q. And what happened after you made that call to Sheriff
17 Taylor?

18 A. At about that time it was -- the vehicle was right at
19 Sheriff Taylor. I notice the sheriff pull out, and he
20 activated his blue lights in an attempt to stop the
21 vehicle.

22 Q. And did the vehicle stop?

23 A. Yes, sir.

24 Q. And where did it stop? What was it close to? What
25 landmark or road was it close to?

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1 A. The vehicle pulled into the median. Part of the
2 vehicle was still on the roadway, but most of the vehicle
3 was in the median. Instead of pulling off to the right,
4 it pulled to the left hand in the median.

5 Q. And was it near any particular road?

6 A. Near Sam's Road.

7 Q. And is that in Union County?

8 A. Yes, sir.

9 Q. All right. When the vehicle was stopped, what did
10 you do once you got to the black Expedition? What did you
11 do?

12 A. I exited my patrol car. Went to the driver's side of
13 the black Ford Expedition. I spoke with the driver of the
14 vehicle, who was Mr. Brewton, one of the defendants, and I
15 asked him to exit the vehicle.

16 Q. And who else -- you said three people were in the
17 vehicle?

18 A. Yes, sir.

19 Q. Who else was in the vehicle?

20 A. Mr. Pope, the defendant seated in the middle was in
21 the front passenger seat; Mr. Crosby, the defendant on the
22 right, far right, was seated in the back on the right-hand
23 side.

24 Q. As you approached the vehicle, did you notice any
25 movement in the vehicle?

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1 A. Yes. As we were stopping the vehicle, I noticed
2 Mr. Crosby was seated in the back, kind of leaned over and
3 then raised back up and then he turned and was watching
4 us.

5 Q. All right. And what -- what happened in regards to
6 the three occupants of the vehicle? What did you do as
7 far as interacting with them or instructing them to do
8 anything?

9 A. I asked Mr. Brewton to exit the vehicle, and he did.
10 I told him I was placing him in handcuffs, that he was
11 being detained, he was not under arrest. I then advised
12 him of his Miranda rights.

13 Q. As far as the other two people in the vehicle,
14 Mr. Crosby and Mr. Pope, what occurred with them?

15 A. Officers got them out on the other side of the
16 vehicle. I don't know which officers actually removed
17 them from the vehicle.

18 Q. I'm sorry?

19 A. Officers got them out of the other side of the
20 vehicle. I'm not sure which officers actually got them
21 out of the vehicle.

22 Q. After you had all three of them out of the vehicle,
23 what did you do in regards to the Expedition?

24 A. I searched the Expedition.

25 Q. And during the course of the search, did -- what did

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1 you find?

2 A. I found some gray digital scales that was under the
3 rear passenger seat where Mr. Crosby was seated.

4 Q. And did you make any observations about the scale?

5 A. Yes. While looking at the scale, I removed the top
6 from the scales and noticed a white residue on it that I
7 believed to be cocaine or crack cocaine.

8 Q. And once you found the scales with the substance on
9 it, what did you do in regards to the three people that
10 were in the vehicle?

11 A. I told the suspects and the officers there they were
12 all to be placed under arrest for possession of cocaine.

13 Q. And after they were placed under arrest, were any
14 searches conducted of the three of them?

15 A. Yes. We further searched them by actually going into
16 their pockets. I searched Mr. Brewton, the driver.
17 Removed his wallet and seized some money from his wallet.
18 We searched the best that we could on the roadside.

19 Obviously we couldn't do a very thorough, such as removing
20 clothing, nothing on the side of the main highway.

21 Q. What was the amount of money you found on
22 Mr. Brewton?

23 A. I found a quantity of money. It was \$280 that I took
24 from Mr. Brewton.

25 Q. Were any drugs found on any of the three of them?

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1 A. No, sir.

2 Q. Okay. After the search of Mr. Brewton and

3 Mr. Crosby, what happened with them?

4 A. \$570 was seized from Mr. Crosby. After we had placed
5 them in custody, at some point in time we radioed for some
6 uniformed deputies that were nearby to come to the scene
7 to transport. The reason we do that is their vehicles
8 have actual cages in them and the door locks in the back
9 where the doors can't be opened and stuff. Just more
10 secure as far as our unmarked vehicle that don't have
11 cages in them.

12 So those deputies arrived. I told Deputy Vinson, who
13 was driving a marked patrol car, to please transport
14 Mr. Brewton and Mr. Crosby, and I advised him that we was
15 looking for a quantity of crack cocaine but we had not
16 been able to actually locate it and that he needed to
17 search his vehicle, as our policy with the sheriff's
18 office also says that you have to do.

19 Q. And then as far as the search of Mr. Pope went, was
20 anything found on his person that was taken into evidence?

21 A. Seized a cell phone, and that was it for Mr. Pope.

22 Q. After Mr. Crosby and Mr. Brewton were taken from the
23 scene by Corporal Vinson, did you receive any
24 communication from Corporal Vinson?

25 A. Yes. While we was up there, we did not tow the

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1 vehicle. We intended on seizing the vehicle. Because of
2 the large quantity of crack cocaine, I had -- Investigator
3 Parker was going to drive --

4 MR. BRANNON: Objection.

5 THE COURT: I sustain the objection. Disregard the
6 testimony about a large quantity of cocaine. There's no
7 testimony regarding that.

8 A. Mr. Parker, who was riding with me, was going to
9 drive that vehicle back to our task force, and while en
10 route back to Union, I received information from Sergeant
11 Johnson that he would be out with Mr. Harris at the jail.
12 Or I'm sorry -- I'm getting confused on the case. While
13 en route back to Union, I received information from
14 Corporal Vinson, who transported Mr. Brewton and Crosby to
15 jail, that upon his arrival --

16 MR. BRANNON: Object, hearsay.

17 THE COURT: I sustain the objection.

18 Q. Without saying what Corporal Vinson told you --

19 MR. BRANNON: Object. Move to strike, Your Honor. I
20 mean, he's already said it.

21 THE COURT: Just move to the next question.

22 Q. Without saying what Corporal Vinson told you, what
23 did you do based on communication you had with him?

24 A. I went to the jail and met with Corporal Vinson.

25 Q. And when you got to the jail, what happened -- what

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1 did Corporal Vinson have to give to you or say to you?

2 A. He gave me a small piece of yellow plastic bag which
3 contained a quantity of a white-rock-like substance that I
4 believed to be crack cocaine.

5 Q. I'm going to hand up what's been marked for
6 identification as State's Exhibit Number 2. I'd ask if
7 you could identify the item inside that sealed bag.

8 A. This is the white-rock-like substance that I obtained
9 from Corporal Vinson at the Union County Jail. This
10 substance was in this yellow bag.

11 Q. What did you do with the substance when it was given
12 to you by Corporal Vinson?

13 A. Drove back to my office and secured it in this best
14 evidence pack here to be sent to SLED for analysis.

15 Q. And what did you put on that bag, on that interior
16 bag to identify these as the substance that you took from
17 Corporal Vinson that night?

18 A. I put the agency, Union County Sheriff's Office; the
19 date it was sealed, which was 6/24/2010; I print my name,
20 sign my name. And inside the bag there's paperwork that
21 you have to fill out describing the evidence and the
22 suspects or individuals arrested that associated with the
23 evidence.

24 Q. All right. And then what did you do once you put the
25 substance in that bag? What did you do with the bag to

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1 secure it?

2 A. This bag right here is -- has -- this green strip,
3 which is a glue strip, you peel a piece of plastic off
4 over the top of it and it secures -- it locks it as
5 tamper-proof. Then I secure them in a paper manila
6 envelope with a clip on it. Then I secure it in a vault
7 at the drug task force.

8 Q. And who would have access to the vault where it's
9 secured?

10 A. I do.

11 Q. And once -- after it was placed in that vault -- when
12 did you put it in the vault? What day?

13 A. That night.

14 Q. June 24th --

15 A. Yes, sir.

16 Q. -- the night that the substance was taken?

17 A. Yes, sir.

18 Q. Okay. And after you put it in the vault on
19 June 24th, when was the next time that you would have
20 retrieved it?

21 A. I actually transported the evidence down to SLED for
22 analysis, along with several other best bags from other
23 cases, on September the 21st, 2010. But there is a --
24 our lab prelog-in paper here that I have to fill out, and
25 I probably -- saying "probably" because I don't remember,

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1 but usually what I do is the day before I take the stuff
2 to SLED, you have to go online, log on to a SLED website
3 which is password protected, enter the information and the
4 description of the drugs. And basically what you're doing
5 is e-mailing them and telling them that you're going to be
6 running a drug down on a specific date, and it gives them
7 a idea of how many personnel they need to have working
8 that day so they can sufficiently log this stuff in in a
9 timely manner.

10 So I would say if I took it down on September the
11 21st, I probably got it out on the 20th, just looked
12 through it so I could get the information off of it
13 without breaking the seal on the bag, and then put it back
14 in the vault on that same day. Then the next day when I
15 came in to work, left and took it and several other best
16 bags to SLED for analysis.

17 Q. And when you retrieved it either time, either when
18 you pulled it out, put the information in the computer or
19 when you got it out maybe the next day to take it to SLED,
20 what was the condition of the bag on either of those
21 occasions?

22 A. It's sealed. Once I seal it, it stayed sealed.

23 Q. When you took it to SLED, where specifically did you
24 take it to SLED?

25 A. SLED evidence intake.

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1 Q. And what do you once you get -- when you took the
2 best bag with the substance to evidence intake at SLED,
3 what did you do then?

4 A. There was a lady there, an evidence clerk sitting --
5 she actually takes custody of this evidence and logs it
6 into SLED evidence. At some point in time, they
7 distributed the drugs for -- to be analyzed to a chemist
8 within SLED who analyzes it and gives a final report of
9 what they found.

10 Q. And who did you submit it to on that day?

11 A. Ms. Nicki Perry, a forensic technician there at
12 intake.

13 Q. Now, going back to the actual June 24th incident.
14 After this substance was turned over to you by Corporal
15 Vinson, what did you do in regards to making charges
16 against Mr. Brewton, Mr. Pope, and Mr. Crosby?

17 A. Signed arrest warrants charging them with trafficking
18 crack cocaine.

19 Q. All right. And were you involved in dealing with
20 Mr. Harris' bond situation in -- pertaining to his
21 cooperation in this incident?

22 A. No, sir.

23 Q. I'm showing you now what's been marked for
24 identification as State's Exhibit Number 3. I'd ask if
25 you recognize this item.

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MR. ANTHONY

1 A. Yes. These are the scales that were found under
2 Mr. Crosby's seat in the black Ford Expedition.

3 Q. And what -- what was done with that scale after it
4 was recovered from the Expedition?

5 A. I took it to my office down here in Union at the drug
6 task force, placed it in a plastic bag, and I put it in a
7 cabinet where we keep other scales that we received.

8 Q. Did you do anything to identify as the scale you had
9 seized on this particular day, June 24th?

10 A. Yes, sir. I used a label maker, and I put the case
11 number across the top of the scale.

12 Q. And is that scale -- had -- how has that appearance
13 of that scale changed, if at all, from how it appeared
14 when you took it on June 24th?

15 A. There's a battery missing. The back was not on it,
16 but there's a battery missing.

17 Q. Other than that, does it still have the same
18 appearance?

19 A. Yes, sir.

20 Q. Okay.

21 MR. ANTHONY: We move Exhibit Number 3 into evidence.

22 THE COURT: Mr. St. Pierre?

23 MR. ST. PIERRE: Quick voir dire?

24 THE COURT: No, just do you object?

25 MR. ST. PIERRE: Yeah, I definitely object.

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MR. ANTHONY

1 THE COURT: Mr. Brannon?

2 MR. BRANNON: Object.

3 MR. MCKINNON: Yes, Your Honor.

4 THE COURT: Over objection, I'll allow it into
5 evidence.

6 (State's Exhibit Number 3 was admitted into evidence.)

7 Q. Did you -- after taking the scale, did you do
8 anything to try to make a determination if there were any
9 fingerprints on the scale?

10 A. Yes, sir. Later on -- I can't give you a specific
11 date -- but approximately three months ago you asked me to
12 do a fingerprint analysis on it. I attempted to do that.
13 I could not get any fingerprints.

14 THE COURT: Keep your voice level up. You kind of
15 tend to trail off at the end of the sentence.

16 Q. And based on your experience and training, what is
17 the normal relevance of a scale to a drug sale?

18 A. It's usually used to weigh out a proper amount of
19 illegal narcotics to sell someone or either when you
20 purchase them, you want to weigh it and make sure you're
21 getting what you're paying for. Or that you're selling
22 what the customer is buying.

23 Q. I'm handing up what's been marked for identification
24 State's Exhibit Number 1. I'd ask if you recognize that
25 item.

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 A. This is a phone that Mr. Pope had when we stopped him
2 on 176.

3 Q. And what did you do with that phone after Mr. Pope
4 was stopped on 176?

5 A. I took it into evidence and secured it at my office,
6 the drug task force, in a cabinet there where we keep
7 numerous cell phones.

8 Q. All right. And did you examine the contents after
9 making the stop?

10 A. Yes. I noticed that there were several individuals
11 there. I looked through the contacts. He had a gentleman
12 that he had identified in here under the name Vince.
13 There were 14 incoming calls and I believe there were 5
14 outgoing calls.

15 Q. All right. And is that -- have you looked at the
16 phone recently?

17 A. Yes.

18 Q. And are the contents of those -- are the internal
19 contents of the phone the same now as they were when you
20 examined it after the stop?

21 A. Yes, sir.

22 MR. ANTHONY: We move Exhibit Number 1 into evidence.

23 MR. ST. PIERRE: I object on the grounds that he
24 testified he didn't even search Pope. So I don't even
25 know how he can get the phone.

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MR. ANTHONY

1 MR. BRANNON: I do not object.

2 MR. McKINNON: No objection.

3 THE COURT: In over objection on behalf of
4 Mr. Brewton.

5 (State's Exhibit Number 1 was admitted into evidence.)

6 MR. ANTHONY: Your Honor, we would ask to publish the
7 scales and the phone to the jury at this time.

8 THE COURT: That'd be fine.

9 MR. ANTHONY: If I could ask the witness to step
10 down.

11 THE COURT: Yes.

12 Q. Lieutenant Sherfield, what I'd ask you to do first is
13 just take the scale before we go to the phone. Take the
14 scale, and if you would, show the jury how that scale
15 would operate.

16 A. The scale?

17 Q. Yes, sir. Just if you could show them how it opens
18 up, what you do to use it.

19 A. What you do is just open the scale, take the top off,
20 place these little drugs here.

21 THE COURT: Keep your voice up, please.

22 A. You'll take the top off. You would turn the scale
23 on. You would zero the scale, make sure it's zeroed in.
24 Place the drugs on here. It would determine the weight
25 that was on the scale.

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 Q. All right. Thank you. And then go ahead and turn
2 the phone on. I'm pulling up a chair here so you can sit
3 down. And can we turn -- dim these top lights, please.

4 Let's go, if you would, find the part of the call log
5 of the phone where Mr. Harris calls Mr. Pope.

6 A. I know you can't see it on the screen, but I'm going
7 under all calls here.

8 Q. We could probably get it to where they can. Okay.
9 Hold on. Now, what are we looking at right there?

10 A. This has the name Vince wrote on it, showing 14 calls
11 out to the side.

12 Q. Okay. And if you could go ahead and --

13 A. This first one here is from March 2nd, 2005, at 9:46.
14 The second one here is February 11, 2005, at 10:23. We
15 did not see these were associated any way with what
16 happened on the 24th of June. There's another one there
17 from January the 1st, 2005 --

18 MR. BRANNON: Your Honor, I object.

19 THE COURT: I sustain the objection. I sustain the
20 objection. We're concerned about June 24th, 2010.

21 MR. ANTHONY: Yes, sir. Yes, sir.

22 Q. If we could just go to the June 24th calls,
23 Lieutenant.

24 A. Here's a call, June the 24th, 2010, at 6:33 p.m.
25 This call was incoming and lasted for 27 seconds. Another

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 call, June the 24th, 2010, 6:17 p.m. This call lasted
2 for 36 seconds. Another call here, June 24, 2010,
3 6:11 p.m., zero seconds.

4 Another call, June 24, 2010, 6:03 p.m., zero seconds.

5 Another call, June 24, 2010, 6:00 p.m., for two seconds.

6 Another call, June 24, 2010, 5:59 p.m. at two seconds.

7 Another call, June the 24th, 2010, 5:58 p.m., one

8 second. Another call, June 24, 2010, 5:57 p.m., one

9 second. Another call, June 24, 2010, 5:57 p.m., one

10 second. Another call, June 24, 2010, 5:56 p.m., one

11 second. Another call, June the 24th, 2010, 5:18 p.m.

12 This call was for 1 minute and 27 seconds.

13 Q. And are these calls from Vince to Mr. Pope or

14 Mr. Pope to Vince?

15 A. These are received from the contact identified as

16 Vince on Mr. Pope's phone. They're incoming calls.

17 Q. Would you check that, please.

18 A. I'm sorry. That's outgoing calls. I'm sorry.

19 Q. So those are calls where the person who owned the

20 phone called the person Vince?

21 A. Yes, as indicated by the arrow beside the phone.

22 Those are outgoing.

23 Q. And then are there also located on the phone calls

24 where Vince has called Mr. Pope?

25 A. Yes. Here there are indication of five incoming

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 calls from an individual identified under the contacts in
2 this phone as Vince. This call was June the 24th, 2010,
3 at 6:04 p.m. This call lasted 1 minute and 22 seconds.
4 The next call was June 24, 2010, at 5:51 p.m. This call
5 lasted for 18 seconds.

6 Next call was June the 24th, 2010, at 5:35 p.m. This
7 call lasted for 27 seconds. Another call from June the
8 24th, 2010, at 5:20 p.m. This call lasted for a minute
9 and 21 seconds. Another call, June the 24th, 2010, at
10 4:39 p.m. This call lasted for 40 seconds.

11 Q. All right. Okay. Thank you.

12 MR. BRANNON: Excuse me, Your Honor. Can you give me
13 the time again?

14 THE WITNESS: On which one?

15 MR. BRANNON: That last one.

16 THE WITNESS: June the 24th, 2010, at 4:39 p.m.
17 Lasted for 40 seconds.

18 Q. Thank you. You can go ahead and take your seat back.

19 Lieutenant Sherfield, is Mr. Pope here in the
20 courtroom?

21 A. Yes, sir.

22 Q. Could you point him out, please.

23 A. He's the defendant there. Bald head, bigger guy in
24 the middle.

25 Q. Is Mr. Brewton in the courtroom?

LIEUTENANT JOHN SHERFIELD - DIRECT EXAMINATION BY
MR. ANTHONY

1 A. Yes, sir.

2 Q. Could you point him out, please.

3 A. The gentleman there with the white collar, brown
4 sweater.

5 Q. Is Mr. Crosby in the courtroom?

6 A. Mr. Crosby is on the right next to his attorney in
7 the striped shirt.

8 MR. ANTHONY: Your Honor, I'd ask the record reflect
9 he's identified all three defendants. And that's
10 everything on direct.

11 THE COURT: Members of the jury panel, y'all got a
12 couple quick breaks, but we have not. So before we get
13 into cross-examination, because we do anticipate it taking
14 a little while, we're going to take a short break just to
15 get refreshed because we hadn't had a break. So the
16 attorneys and myself and defendants can have a short
17 break. So go to the jury room, and we'll send for you in
18 just a few minutes.

19 (WHEREUPON, the jury left open court at approximately
20 11:48 a.m.)

21 THE COURT: Take about a 10-, 12-minute break, get
22 refreshed.

23 (A recess was taken from 11:48 a.m. to 12:07 p.m.)

24 (The jury entered the courtroom at 12:07 p.m.)

25 THE COURT: Mr. St. Pierre.

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 MR. ST. PIERRE: Thank you, Your Honor. May it
2 please the Court.

3 CROSS-EXAMINATION

4 BY MR. ST. PIERRE:

5 Q. Lieutenant Sherfield, you worked with Sergeant
6 Johnson on the Vincent Harris buy; is that correct?

7 A. Yes, sir.

8 Q. Okay. And where is Sergeant Johnson?

9 A. Seated right there.

10 Q. Okay. All right.

11 THE COURT: Let me make one suggestion. If he's
12 facing that way, it's hard for the jury to hear him, so --
13 you kind of station yourself over here, if you don't mind.

14 Q. And your testimony is that after Harris was arrested,
15 he was transported by uniformed patrol officer to the
16 jail; is that right?

17 A. Yes, sir.

18 Q. And you testified that uniformed patrol officer could
19 have been Corporal Vinson; is that correct?

20 A. I don't know who it was.

21 Q. But it could have been Corporal Vinson, correct?

22 A. Could have been anybody.

23 Q. But you also testified that you told Corporal Vinson
24 to search his car, right?

25 A. That was before he transported Mr. Brewton and

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 Crosby.

2 Q. Okay. Do you -- so you don't remember the details of
3 the Harris arrest?

4 A. Not who transported, I don't.

5 Q. Okay. But you remember who transported him -- who
6 transported my client just a few hours later, right?

7 A. Yes.

8 Q. Okay. You went back to the task force until a new
9 buy was set up; is that right?

10 A. Basically, yes.

11 Q. Okay. And when you got -- when you stopped the car,
12 the Ford Expedition, you testified earlier that you asked
13 to speak with the driver and asked him to get out of the
14 car, right?

15 A. When I went up, told everyone to put their hands up
16 where we could see them, I opened the door and asked the
17 driver, Mr. Brewton, your client, to exit the vehicle.

18 Q. Okay. And did you have your gun pulled and pointed
19 at him at that point?

20 A. I don't remember.

21 Q. You don't remember that?

22 A. No, sir.

23 Q. Okay. Would that be normal in a stop like this, to
24 have your gun pointed at someone? Would that be abnormal?

25 A. Would not be abnormal.

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1 Q. So then you testified that, I quote, you arrested my
2 client and then read him his Miranda rights, right?

3 A. No, that is not what I testified to.

4 Q. You sure?

5 A. Yes.

6 Q. We can have the court reporter check that.

7 A. Okay. Have her check.

8 MR. ST. PIERRE: If you don't mind, Your Honor.

9 THE COURT: You want to tell her where you think it
10 is.

11 MR. ST. PIERRE: It was on direct at the search of
12 the car right at the stop.

13 THE COURT: See if we can find it. You might need to
14 kind of look over her shoulder.

15 Q. I withdraw that. I misunderstood that.

16 You, in fact, told him that you were detaining him
17 and he was not under arrest?

18 A. Correct.

19 Q. But you read him his Miranda rights anyways, right?

20 A. I did, yes.

21 Q. And then you said you searched Mr. Brewton as good as
22 you could, right?

23 A. I did a pat-down search initially for weapons. He
24 was in handcuffs that time. Then I searched the vehicle.

25 Q. But yesterday you testified you searched him as good

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1 as you could, correct?

2 A. After I found the scales in the vehicle, advised them
3 that they were all under arrest, went back and searched
4 them as good as I could on the side of the road there as I
5 could.

6 Q. Okay. And you've been in narcotics for 11 years,
7 correct?

8 A. Yes, sir.

9 Q. And what -- you were looking for a specific type of
10 drug, weren't you?

11 A. Yes, sir.

12 Q. In your 11 years of law enforcement, you know where
13 to look for these types of drugs, don't you?

14 A. In their underwear.

15 Q. In their underwear?

16 A. Yes, sir.

17 Q. And did you look for them? Did you pat them down?

18 A. Patted them down the best I could, but I couldn't
19 remove his underwear on the side of the road.

20 Q. So you patted him down, didn't feel anything, right?

21 A. Right.

22 Q. And weapons are usually held right here, right, in
23 the back in the underwear section, guns?

24 A. In their back, in the front waistband.

25 Q. Okay. And, again, you found no drugs on Mr. Brewton,

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1 right?

2 A. Correct.

3 Q. Okay. Now, after that, you left and went back to --
4 where'd you -- where'd you go after the patrol car took
5 him away?

6 A. Investigator Parker was driving the vehicle back down
7 to task force. We was en route back to the drug task
8 force.

9 Q. Drug task force?

10 A. That's where we were en route to, and then on the way
11 I was asked to come to the jail by Corporal Vinson.

12 Q. Okay. What'd you do after you left the jail?

13 A. Went back to the drug task force. Went to my office.

14 Q. Then what'd you do?

15 A. Secured the evidence in a best bag, the crack.

16 Q. Then what?

17 A. Put the -- labeled the telephone and the scale with
18 the case number and the name, put them in a file cabinet.

19 Q. Okay. Then what?

20 A. I don't remember. I met with the magistrate at some
21 point in time and signed the arrest warrants.

22 Q. Okay. Then what?

23 A. Don't know. I don't recall.

24 Q. Okay. What time did you get home that night?

25 A. I don't recall. I'm thinking we might have had

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1 another operation. I can't remember. That was a year and
2 a half ago.

3 Q. I understand that. What'd you do the following day?

4 A. Not sure.

5 Q. You're the lead investigator in this case, right?

6 A. Yes.

7 Q. And part of that is collecting all of the evidence,
8 good or bad, right?

9 A. Yes, sir.

10 Q. And writing incident reports, right?

11 A. Yes, sir.

12 Q. Now, you never mentioned that you wrote an incident
13 report this day.

14 A. No, sir, I didn't mention it was in the mid-80s,
15 overcast sky, but it was on a Thursday evening.

16 Q. Excuse me?

17 A. I said there's a lot of stuff I didn't mention. I
18 didn't mention it was a Thursday evening in the mid-80s
19 and overcast skies, but it was.

20 Q. So you remember that, right, but you don't know what
21 time you went to bed or what time you got home, right?
22 But you remember the temperature and the overcast sky,
23 right?

24 A. Correct.

25 Q. So did you write an incident report on the 24th?

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1 A. I wrote a incident report. I believe it was on the
2 24th.

3 Q. Well, it was 80 degrees outside?

4 A. On a Thursday night.

5 Q. Okay. Did you write a supplemental incident report
6 too?

7 A. Did a general sessions summary.

8 Q. Okay.

9 MR. ANTHONY: May I approach, Your Honor?

10 Q. Is that a supplemental incident report?

11 A. Yes, that is a supplemental of the original, yes.

12 Q. Did you prepare that?

13 A. Yes, sir.

14 Q. Okay. Can you tell me what date you prepared that.

15 A. 6/3/2010 on this one.

16 Q. Okay. So 21 days before the incident?

17 A. Just a typo on this supplemental.

18 Q. Can you tell me about the incident report?

19 MR. ANTHONY: Can I -- I'm sorry. Can I see what he
20 handed him?

21 A. The --

22 THE COURT: Wait..

23 Q. Do you know what the case number of this case is on
24 the 24th? Case number on the 24th? 80 degrees.

25 What's the case number?

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- 1 A. It's 1100013949.
- 2 Q. Okay. Can you tell me the incident number on the
3 supplemental report that you prepared 21 days earlier.
- 4 A. It says 1149.
- 5 Q. Okay. Thank you. And on your incident report, you
6 list things that were seized; is that right?
- 7 A. Yes, sir.
- 8 Q. And you noted that you got \$600 worth of crack,
9 correct?
- 10 A. Yes, sir.
- 11 Q. Okay. And then that was in type. That was typed out
12 by the computer, right?
- 13 A. Yes, sir.
- 14 Q. And then you wrote in "money, 850," right?
- 15 A. Yes, sir.
- 16 Q. Okay. In your own handwriting?
- 17 A. Yes, sir.
- 18 Q. And then you added that up to equal 1450, right?
- 19 A. \$600 worth of crack and \$850, yes, sir.
- 20 Q. Okay. And at some point you used the white-out on
21 this report, right?
- 22 A. Over on the 1450, yes, sir.
- 23 Q. And on some point you used white-out on the report
24 that you did 21 days earlier, right?
- 25 A. The supplemental was done on the same day. Yes, sir.

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1 Same place, 1450.

2 Q. Nowhere in your report does it say you seized any
3 scales, does it?

4 A. No, sir.

5 Q. Okay. Now, as a narcotics investigator, you have the
6 opportunity to use audiovisual recording devices, right?

7 A. Yes, sir.

8 Q. To record purchases of drugs, right, drug
9 transactions?

10 A. We use them sometimes. Not all the time.

11 Q. Okay. What would be the advantage -- let me rephrase
12 that. An advantage of using the recording devices is to
13 help prove the case, right?

14 A. Correct.

15 Q. And you also have at your access cameras, correct?

16 A. We have body-worn cameras, yes, sir.

17 Q. Excuse me?

18 A. Body-worn cameras.

19 Q. What about a digital camera or a film camera?

20 A. We have a camera to take photos, yeah, still
21 pictures.

22 Q. Now, during this, the stop that you had been planning
23 since 4:30 p.m, okay, that actually happened at 7:00 p.m.,
24 you didn't take the time to either get any kind of
25 recording device going or you didn't take any photographs

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1 of the incident, did you?

2 A. No, sir.

3 Q. You didn't take photographs of the scales you
4 allegedly took, did you?

5 A. No, sir. I had the scales.

6 Q. But you didn't take photographs of it, right?

7 A. No, sir.

8 Q. We'll get to the scales in a little bit.

9 Did you take any photographs of the money you
10 allegedly took?

11 A. No, sir.

12 Q. But you did take the time to fill out a chain of
13 custody form for the money, didn't you?

14 A. For the money, yes, sir.

15 Q. And can you tell me -- you told me that was a
16 Thursday, overcast skies, 80 degrees. Can you tell me if
17 you went in to work the next day?

18 A. Went in to what?

19 Q. Went in to work on the next day, Friday?

20 A. Yeah. Yes, sir.

21 Q. You did?

22 A. Yes, sir.

23 Q. Now, what did you do with the money Thursday night?

24 A. Secured it in a vault at my office.

25 Q. Okay. Why did you wait until Monday morning to hand

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1 the money over that's coming out?

2 A. Because I had several cases I had to write incident
3 reports and stuff, evidence I had to gather and collect
4 and do. The next day was a Friday and then a Saturday and
5 a Sunday. I couldn't deposit in the treasurer's office
6 here at the courthouse because it was closed.

7 Q. The courthouse was closed?

8 A. On Saturday and Sunday.

9 Q. But not Friday?

10 A. Right.

11 Q. And this evidence vault you speak of, Union County
12 Sheriff's Office has an evidence custodian, don't they?

13 A. Yes.

14 Q. But the narcotics officers, they don't have to go
15 through him, do they? They've got their own system,
16 right?

17 A. Any firearms and stuff like that we turn over and
18 they put in the actual sheriff's office vault here in the
19 courtroom. Far as evidence that we're going to be
20 transporting to SLED, we keep ourselves. And the reason
21 that we do that, we transport our evidence ourselves down
22 there to keep from adding several people in the chain,
23 which would mean we would have to bring them to court
24 during trial.

25 Q. So the difference between a firearm and drugs is that

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1 the firearm doesn't necessarily have to be tested, but the
2 drugs do, right?

3 A. Right.

4 Q. So why didn't you bring the scale to the evidence
5 room here in the courthouse?

6 A. The scales was not a formal character in this
7 investigation after I got all the facts, so we just leave
8 the scales at the office.

9 Q. Okay. Along with dozens of other scales in a filing
10 cabinet, right?

11 A. Right.

12 Q. Okay. Now, the evidence vault, testimony from the
13 sheriff said that the narcotics officers have access to
14 this vault; is that right?

15 A. That's right.

16 Q. So -- I withdraw that, that "so."

17 You testified that -- describe this vault, please.

18 A. This vault is probably like a 12- or 1500-pound file
19 cabinet that is suited with a combination lock.

20 Q. Okay.

21 A. Made out of steel that we got from the military.

22 Q. And the drugs that were found sat in this vault for
23 three months, nearly three months, right?

24 A. Yes, sir.

25 Q. All right. Now, since you've been doing this for 11

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1 years, let me ask you about the CI, confidential informant
2 process, especially as it pertains to this case. You sent
3 an undercover operative to buy some dope from Vincent
4 Harris, who we'll see in a minute, right?

5 A. Right.

6 Q. Okay. And this was a \$20 rock?

7 A. I can't remember right off the top of my head how
8 much we bought from him. I'm thinking maybe 100, but I'm
9 not sure.

10 Q. Okay.

11 A. I don't really remember. I feel confident that it
12 was more than \$20. He wouldn't have come from Spartanburg
13 to Union for \$20.

14 Q. So it's fair to say he had a substantial amount of
15 crack cocaine on him in Union County?

16 A. Yes.

17 Q. All right. And a distribution -- that's considered a
18 distribution of crack cocaine, right, when someone sells
19 or gives crack to another, right?

20 A. Correct.

21 Q. Okay. Do you know what the punishment for that is?

22 MR. ANTHONY: Objection.

23 THE COURT: I overrule the objection.

24 A. Depends on what offense, I guess.

25 Q. Depends on what offense?

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- 1 A. Yes, sir.
- 2 Q. Okay. Let's say the first offense.
- 3 MR. ANTHONY: Objection.
- 4 THE COURT: Overrule the objection.
- 5 A. I'm not sure.
- 6 Q. You're in law enforcement, and you don't know the
- 7 law?
- 8 MR. ANTHONY: Objection.
- 9 THE COURT: I sustain the objection on that.
- 10 A. I know it's against the law.
- 11 Q. Would you be surprised if it carried zero to 15
- 12 years?
- 13 A. No, I would not.
- 14 MR. ANTHONY: Objection.
- 15 THE COURT: I'll overrule the objection.
- 16 Q. Okay. And do you know if it's illegal to purchase
- 17 crack cocaine?
- 18 A. Yes, it is illegal for an individual to purchase
- 19 crack cocaine.
- 20 Q. And, in fact, it's the same penalty to purchase it as
- 21 to distribute it, isn't it?
- 22 A. Correct.
- 23 Q. So you sent someone in to do something just as
- 24 illegal than what the seller did, right?
- 25 A. No.

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1 Q. No?

2 A. No.

3 Q. In order to get this job done, the person who you
4 sent in has to gain the trust of the person selling it,
5 the narcotics, right?

6 A. Right.

7 Q. Okay. And trust that he's not working for law
8 enforcement, right?

9 A. Correct.

10 Q. Okay. And do you ever do undercover stings?

11 A. Yes, I have.

12 Q. And you have to gain the trust of those people
13 selling it to you, right?

14 A. Yes.

15 Q. Okay. So this is a big circle of deceit, is it not?

16 A. Yes.

17 Q. Okay. Now, going back to your incident report that
18 you wrote on 80 degree Thursday, overcast skies. Is that
19 accurate, truthful, and complete?

20 A. It has some errors in it, yes, sir.

21 Q. Let me ask you if an error is did you put where you
22 confiscated everyone in the black Expedition's cell phone?
23 Did you put that?

24 A. I did confiscate everybody that had a cell phone.

25 Q. You didn't put that in the report, did you?

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1 A. I said I confiscated everyone's cell phone.

2 Q. And you only confiscated two cell phones, didn't you?

3 A. That was everyone that had one.

4 Q. But you didn't put that in your report, did you?

5 A. Said "everyone."

6 MR. ST. PIERRE: One moment, Your Honor.

7 Q. Did you not put cash received from Brewton, cash
8 received from Crosby, along with everyone's cell phone?

9 A. Yes.

10 Q. Okay. And did you not put that you seized a set of
11 scales?

12 A. I did not write that I seized a set of scales.

13 Q. And you also put in your report that Vinson, Corporal
14 Vinson confiscated drugs from his car, didn't you?

15 A. Yes.

16 Q. Earlier you testified that you filled out a prereport
17 on ILab; is that correct?

18 A. Yes, sir.

19 Q. And you think you did that the day before, right?

20 A. The day before I took it to SLED, which was probably
21 around September the 20th.

22 Q. Would you be surprised if you did it on September the
23 15th?

24 A. No.

25 Q. And in this prereport, you have to tell -- you have

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1 to give a lot of information about what's coming up in the
2 next couple days, right? What's coming to SLED to be
3 analyzed, right?

4 A. I have to notify them that -- what it does, it's
5 automatic -- when I fill out the information, it lets SLED
6 know that I'm going to be bringing some evidence on a
7 certain day.

8 Q. But you've got to enter in some information, right?

9 A. Yeah, I got to enter a description of the evidence on
10 the suspect's information or arrestee's information.

11 Q. And you have to do that with reasonable certainty and
12 honesty, right?

13 A. Yes, sir.

14 Q. Okay. With all the information available to you at
15 that time, right?

16 A. Right.

17 Q. Okay. Why did you put that you collected this
18 evidence at 1:30 p.m. on June 24th, 2010?

19 A. Because when you're filling out an ILab, the pre --
20 when you're filling out this ILab submission information,
21 there's certain things on that web page that you cannot
22 change. For instance, I can go in and I can write the
23 date that I actually collected, which I put 6/24/2010. It
24 don't let me change that time. I don't -- it don't give
25 me an option to put like 8:00 that night, 10:00 that

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1 night. It automatically puts in there the time that I'm
2 actually sitting in front of the computer and I send the
3 submission papers to SLED. That's why it shows it was at
4 1:30 p.m. because evidently that was the time I was
5 sitting at the computer and actually sent this paperwork
6 to SLED via the computer.

7 Q. So that's out of your control? That's your
8 testimony --

9 A. Yes.

10 Q. -- it's out of your control?

11 A. Yes.

12 Q. But going back to your incident report, that's in
13 your control, right?

14 A. Yes.

15 Q. And that's an honest incident report, right?

16 A. With an honest mistake.

17 Q. Okay. And you actually signed an affidavit, did you
18 not?

19 A. Yes, sir.

20 Q. And that -- a letter you sent to SLED for the
21 analysis, didn't you?

22 A. On the chain of custody, I put that I seized it from
23 Randy Crosby, Lashad Brewton, and Roderick Pope. When in
24 fact, I didn't. I got it from Corporal Vinson.

25 Q. Okay. So you're telling two different honest

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1 stories, aren't you?

2 A. Well, I believe that the drugs came from Randy

3 Crosby, Lashad Brewton, and Roderick Pope.

4 Q. So that's good enough for chain of custody, that you
5 believe it came from them?

6 A. Well, I believe that officer will testify to whatever
7 he needs to. He will clear it up.

8 Q. But this is a lie, isn't it?

9 A. I did not seize it specifically personally from Randy
10 Crosby, Lashad Brewton, and Roderick Pope. I got the
11 drugs from Russell Vinson.

12 Q. But an affidavit requires you take an oath that what
13 you put on the affidavit is true?

14 A. Yes.

15 Q. And it's not true, is it?

16 A. No, that's not --

17 Q. And it's notarized, isn't it?

18 A. It's what?

19 Q. It's notarized, is it not?

20 A. Yes, sir.

21 Q. Who is it notarized by?

22 A. By Sergeant James Johnson.

23 Q. And that's him right here, right?

24 A. Yes, sir.

25 Q. Let's get back to these scales. These are the scales

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1 you allegedly found in the back of the Expedition, right?

2 A. Not allegedly. I did.

3 Q. Okay. And these are the scales that didn't have to
4 go into the normal evidence locker with things like guns,
5 right?

6 A. Correct.

7 Q. Okay. And these are the -- and this is the scale
8 that you didn't test for fingerprinting for a year?

9 A. Correct.

10 Q. Okay. To determine whose scales these were, right?

11 A. Correct.

12 Q. Okay. And these are the scales that were in a filing
13 cabinet with other scales, right?

14 A. Yes, sir.

15 Q. Okay. And these are the scales that are -- it's
16 actually missing a battery, right?

17 A. It's missing a battery, yes, sir.

18 Q. So this filing cabinet isn't really a secure place.

19 A. It's in a concrete building with two steel doors
20 covered by steel bars. It's very secure, I think.

21 Q. But it's a black hole for batteries, right?

22 A. It's a what?

23 Q. A black hole for batteries.

24 A. Got a battery right here if you want.

25 Q. Great. Where was it yesterday?

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1 A. I didn't say that was the battery that was in there.

2 Q. In fact, this isn't even the same bag --

3 A. No, that one --

4 Q. -- that you had the scale in, is it?

5 A. No, sir.

6 Q. What happened to the other bag?

7 A. It fell off the counter.

8 Q. Why did you feel the need to get a new bag?

9 A. Because as you can see, that bag right there is a
10 different kind of bag and the glue strips on it not
11 reliable, and it had came open while it was inside the
12 filing cabinet, and the normal battery had slipped out of
13 it, apparently. So I put it in another bag and sealed it
14 up until yesterday morning when I showed it to you before
15 court.

16 Q. Why didn't you put it in a best bag if you were
17 worried about the seal?

18 A. Can't put that in a best pack.

19 Q. Why?

20 A. Because best packs are issued to us by SLED for drug
21 analysis evidence only, and I was not sending that to
22 SLED.

23 Q. Why didn't you tape it?

24 A. Because when I initially sealed it, it sealed.

25 Q. Okay. And this is in a filing cabinet in the

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1 narcotics office, right?

2 A. Yes, sir.

3 Q. Okay. Where all the narcotics agents have access to,
4 right?

5 A. The three of us.

6 Q. And there's a portion on there or a space on the bag
7 for people to sign it in and sign it out, right?

8 A. Yes.

9 Q. And it hasn't been signed in or signed out, right?

10 A. I didn't give it to anyone. No one to sign.

11 Q. Okay. But this is not evidence appropriate for
12 normal evidence, right?

13 A. I'd say that's not a formal character, in my opinion,
14 as far as something I would send to SLED.

15 MR. ST. PIERRE: No further questions, your Honor.

16 THE COURT: Probably break for lunch at this time.

17 It's almost quarter to one. We'll break until 2:15. I

18 anticipate we got two more attorneys to do

19 cross-examination. It will take us well on into the

20 afternoon, so have a pleasant lunch. Be back and we'll

21 probably start promptly at 2:15 if we can.

22 (WHEREUPON, the jury left open court at approximately
23 12:38 p.m.)

24 THE COURT: Yes, sir.

25 MR. ANTHONY: Your Honor, we had Investigator Parker

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1 this morning. Unless there's some objection from the
2 defense, I'd ask that he be allowed to go back to work.

3 THE COURT: Long as he's available.

4 MR. HALL: I did speak with Investigator Parker. I
5 don't intend to call him as a witness.

6 THE COURT: So he can be released for good?

7 MR. HALL: Yes, sir.

8 THE COURT: Appreciate you coming.

9 I did not put on the record, I don't believe, we
10 discussed Mr. Hall's concern about the discovery violation
11 regarding the scales and -- put into evidence. I never
12 made any ruling, but I find there was no discovery
13 violation by the State in regard to notifying defense
14 counsel that the scales were somewhere. I'm not sure say
15 exactly where, but scales were available. So I find there
16 was no discovery violation.

17 All right. We'll see y'all back at 2:15.

18 (A recess was taken from 12:40 p.m. to 2:17 p.m.)

19

20 THE COURT: State ready?

21 MR. ANTHONY: Yes, sir, we're ready.

22 THE COURT: Mr. St. Pierre?

23 MR. ST. PIERRE: Yes, sir, Your Honor.

24 MR. BRANNON: Yes, Your Honor.

25 THE COURT: Mr. Hall?

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1 MR. HALL: We're ready, Your Honor, except our
2 client.

3 THE COURT: Okay.

4 (The jury entered the courtroom at 2:17 p.m.)

5 THE COURT: Wait, wait, wait, wait. I'm sorry.
6 Y'all go back to the jury room.

7 (WHEREUPON, the jury left open court at approximately
8 2:17 p.m.)

9 THE COURT: Now you can get the jury.

10 (The jury entered the courtroom at 2:18 p.m.)

11 THE COURT: Mr. Brannon.

12 MR. BRANNON: Thank you.

13 CROSS-EXAMINATION

14 BY MR. BRANNON:

15 Q. Good afternoon, Lieutenant. How you doing?

16 A. Doing good, sir.

17 Q. I want to go back to June 24, 2009 -- excuse me,
18 2010, let's say noon. Okay. And I believe you testified
19 that you and other narcotics officers had had a
20 confidential informant that was going to make a controlled
21 buy from somebody, correct?

22 A. Yes, sir.

23 Q. Okay. Who was the somebody that they were allegedly
24 going to buy from?

25 A. Vincent Harris.

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1 Q. Okay. Vincent Harris. All right.

2 And did they, in fact, make a buy of drugs from

3 Mr. Harris?

4 A. Yes, sir.

5 Q. Okay. And when they did that, when that confidential

6 informant did that, did you supply the money for that

7 purchase to be made?

8 A. Yes, sir.

9 Q. And how did you know it was the money that you gave

10 the CI? I mean, were there any special markings or

11 anything like that?

12 A. We recorded the serial numbers off the bills.

13 Q. So you gave him a series of bills, and you wrote down

14 each of the serial numbers; is that correct?

15 A. Right.

16 Q. And then when you arrested Mr. Harris, did you find

17 the money?

18 A. Yes, sir.

19 Q. And did you compare the money that you found on

20 Mr. Harris by serial number to those serial numbers that

21 you wrote down as the money that you'd given to your CI?

22 A. Yes, sir.

23 Q. Now, when your CI went to make this purchase, what

24 type of equipment did your CI have? Other than the cash,

25 what did he have on him?

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- 1 A. The CI that day had a body-worn camera.
- 2 Q. I'm sorry, say that a little louder.
- 3 A. A body-worn camera, video recorder.
- 4 Q. A camera worn on his body that video -- did it also
- 5 audio the transaction?
- 6 A. Yes, sir.
- 7 Q. So little tiny camera that took both picture and
- 8 sound, correct?
- 9 A. Yes, sir.
- 10 Q. Now, I'm not asking you to disclose anything that you
- 11 wouldn't normally disclose, but your CI, obviously you
- 12 knew the sex of this individual, correct?
- 13 A. Yes, sir.
- 14 Q. Okay. Did you know if this was a Caucasian or
- 15 African-American or Hispanic?
- 16 A. Yes, sir.
- 17 Q. Okay. Did you know where this person lived?
- 18 A. Yes.
- 19 Q. Did you know what this person's telephone number was?
- 20 A. Yes.
- 21 Q. Did you know if this person had a job?
- 22 A. Yes.
- 23 Q. Did you know where he hung out?
- 24 A. Sometimes.
- 25 Q. Okay. Had you in the past -- before June 24, 2010 --

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1 ever used this CI in another drug transaction?

2 A. Yes.

3 Q. Had this individual ever given you tips that led to
4 other arrests?

5 A. Yes.

6 Q. Had you ever had the occasion to contact this
7 informant to ask he or she questions about maybe a
8 criminal activity that you had gotten wind of?

9 A. Yes.

10 Q. When you asked these questions, if, in fact, this
11 person gave you information, did the information that he
12 or she gave you turn out to be credible?

13 A. Yes.

14 Q. Okay. When this person made drug buys for you on the
15 department's behalf, did he or she always do what you
16 expected them to do?

17 A. Well, sometimes in the middle of a drug transaction,
18 a meeting place may get changed, a time may get changed.
19 But yes, you know.

20 Q. Certainly I understand that circumstances may change
21 and --

22 A. Right.

23 Q. -- and even they can't be positive. But as far as
24 expect, you expected them to meet someone someplace and
25 purchase drugs, correct?

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1 A. Yes, sir.

2 Q. And did each and every time that occur?

3 A. Well, there was, I'm sure, a couple times they
4 probably went to buy drugs and wasn't able to call the
5 individual beforehand and just showed up and they might
6 not have it right then. May have to leave and come back
7 later.

8 Q. But when something like that might have occurred,
9 that CI would come back to you and say, "Here's your money
10 back," right?

11 A. Yes.

12 Q. So you had reason to trust this person that you sent
13 to a convenience store in Jonesville on June 24 to buy
14 drugs from Vincent Harris, correct?

15 A. Yes.

16 Q. Okay. Now, before you met with this CI and gave the
17 money to go and buy drugs from Vincent Harris, had you
18 ever heard the name Vincent Harris?

19 A. No, sir.

20 Q. Okay. So who did you get your information from that
21 led you to know the name Vincent Harris?

22 A. My informant only knew him as Vince. He didn't know
23 his last name.

24 Q. Okay. Good, good.

25 But this is the informant that you knew and had

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1 previous dealings with, correct?

2 A. Yes.

3 Q. Okay. So prior to this person saying the name Vince,
4 you'd never heard of Vince Harris, correct?

5 A. No, sir.

6 Q. Did you go so far as to ask your informant if Vince
7 Harris was a white guy or black guy?

8 A. Yes.

9 Q. You did? Okay.

10 Did you ask your informant questions about how he or
11 she knew Vince Harris?

12 A. Yes.

13 Q. Okay. And that stuff kind of panned out, right?

14 A. Yes.

15 Q. Okay. Good, good.

16 Did you know where Vince Harris worked?

17 A. No.

18 Q. Did you know if he had a job?

19 A. No.

20 Q. Did you know what kind of car he would be driving?

21 A. The informant did tell us the car, but I don't
22 remember that now. I don't have that file in front of me.

23 Q. But that wasn't my question, and it was probably a
24 poorly phrased question. Your informant told you about a
25 car, right?

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1 A. Right.

2 Q. But before your informant told you that, did you know
3 what kind of car he drove?

4 A. No.

5 Q. Is Vince Harris from Union?

6 A. No.

7 Q. Is he from Spartanburg?

8 A. Yes.

9 Q. What -- that's where he lived at the time, but was he
10 born in Spartanburg?

11 A. I don't know.

12 Q. Don't know.

13 Did you know if Vince Harris had a criminal record?

14 A. No.

15 Q. Okay. So prior to this drug buy on June 24, 2010,
16 Vincent Harris could have walked in the back door and you
17 wouldn't have known him, right?

18 A. That's correct.

19 Q. And let's just say that Vincent Harris walks in the
20 back door of the courtroom and he says "Lieutenant
21 Sherfield" -- he wouldn't know your name, but he's, "Hey
22 you sitting on the witness stand, there's a guy outside
23 with a gun." Let's just say he said that, right? What
24 would you do?

25 A. I'd go out there and see if the guy had a gun.

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1 Q. Go out there and see if the guy had a gun, right?

2 A. Yes.

3 Q. Would you go out there and arrest the first guy that
4 you saw standing on the sidewalk?

5 MR. ANTHONY: Objection. That's irrelevant.

6 THE COURT: I'll overrule. It's cross-examination.

7 A. No.

8 Q. You would go out there, and you'd be looking for a
9 guy with a gun, right?

10 A. Yes.

11 Q. Okay. All right. I'm going to change the subject.
12 Going to change the subject a little bit here. When you
13 were a kid, did you have a wagon?

14 A. Yes.

15 Q. Now, I did this from time to time just because I'm
16 slow, but did you ever get behind your wagon and push it
17 rather than pull it?

18 A. I suppose I did.

19 Q. Did you ever have that happen -- it did to me a
20 couple times -- where I'm pushing my wagon and the
21 handle's laying on the ground, I'm pushing the wagon,
22 handle hits something. The next thing you know, the
23 wagon's doing a wheelie and my face is up against the bed
24 of the wagon. Did you ever have that happen to you?

25 A. I probably did. I had a lot of accidents when I was

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1 younger.

2 Q. Now, if you remember a while ago, you said something
3 about after you stopped this black Expedition in the
4 median on Highway 167, you said that you didn't have it
5 towed because you were going to seize it. You remember
6 that?

7 A. Yes, sir.

8 Q. And do you remember I said "object." The Court, he
9 sustained my objection. Do you remember that?

10 A. Yes, sir.

11 Q. I want to withdraw my objection now. Do you remember
12 saying you were going to seize it because of a large
13 quantity of cocaine?

14 A. Yes.

15 Q. Okay. Good. Keep that in mind. And remember the
16 little red wagon? You push it and then boom, it hits you
17 in the face. Do you know why it hits you in the face?

18 A. I don't know.

19 Q. Because you were behind the wagon instead of in front
20 of the wagon, right?

21 A. If you say so.

22 Q. Well, if you're pushing it and the wagon and the
23 handle hits something, it pops up, that's why it hits you
24 in the face, right?

25 A. Yes, sir.

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MR. BRANNON

1 MR. ANTHONY: And once again, this is completely
2 irrelevant..

3 THE COURT: It's cross-examination. I'll allow it.

4 Q. Now, you stop this black Expedition, right?

5 A. Yes.

6 Q. Okay. And you say that you pulled up and I believe
7 you got further into the median than the Expedition,
8 right?

9 A. Yes.

10 Q. Your car was complete -- you were behind the
11 Expedition but to the -- I guess looking at the back of
12 it, you would have been farther to the left of it, right?

13 A. Yes.

14 Q. And then I think you said you exited your vehicle and
15 you went and you spoke to the driver, Mr. Brewton, right?

16 A. I did.

17 Q. You asked him to get out of the car, right?

18 A. Yes.

19 Q. Okay. And you said you don't remember if your gun
20 was drawn, but it wouldn't be unusual for you to draw a
21 gun in this situation, right?

22 A. That's correct.

23 Q. And you searched -- you did a pat-down initially,
24 right, to check for weapons, correct?

25 A. Correct.

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- 1 Q. And then after the other two gentlemen were removed
2 from the car, you searched the car, right?
- 3 A. Yes.
- 4 Q. Okay. What did you find?
- 5 A. Scales with white residue on it.
- 6 Q. Gotcha. Where's the large quantity of cocaine?
- 7 A. I figured they had it.
- 8 Q. Okay.
- 9 A. I --
- 10 Q. Where did you --
- 11 A. They didn't drive here to see Mr. Harris and say we
12 see you in jail. I mean, it's my logic.
- 13 Q. Your logic, but how do you know that?
- 14 A. Got a lot of experience. Arrested 328 people this
15 year since January of November. 368 last year.
- 16 Q. But I'm going to ask just one more time. Where was
17 the drugs?
- 18 A. I think they were on Mr. Crosby.
- 19 Q. Okay. Were there any drugs in that vehicle?
- 20 A. Not after they got out.
- 21 Q. Sir, that's -- I said were there any drugs in that
22 vehicle?
- 23 A. I believe that there were when it was coming down the
24 road.
- 25 Q. Let me be more specific. When you searched the black

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1 Expedition, were there any drugs in the vehicle?

2 A. I did not remove any drugs from the vehicle.

3 Q. And then at some point that vehicle was taken to the
4 drug task force office, right?

5 A. Yes, sir.

6 Q. I bet somebody went through it again, didn't they?

7 A. I don't know. I didn't.

8 Q. You didn't? Okay.

9 So we're going to seize this black Expedition because
10 of a large quantity of crack, right?

11 A. Correct.

12 Q. Weren't you kind of pushing the wagon down the road,
13 sir?

14 A. Well, we didn't know actually whose it was. We found
15 out later I believe it was registered to Ms. Barbara Pope.
16 She come and got it the next day. We gave it back to her.

17 Q. But you're going to seize a vehicle because of a
18 large quantity of crack, and when you're standing on
19 Highway 176 in Jonesville next to a black Expedition, you
20 don't have a large quantity of crack, do you?

21 A. No, I hadn't found it yet, but I was pretty sure it
22 was there.

23 Q. Didn't find it in the car, did you?

24 A. No.

25 Q. Didn't find it on Mr. Brewton, did you?

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- 1 A. No.
- 2 Q. Didn't find it on Mr. Pope, did you?
- 3 A. No, sir.
- 4 Q. Didn't find it on Mr. Crosby, did you?
- 5 A. No, sir.
- 6 Q. But by golly, we're going to seize this truck, right?
- 7 A. We can always give it back. Actually saved them a
- 8 wrecker bill.
- 9 Q. Did you ever find a weapon in the truck or on any of
- 10 the codefendants?
- 11 A. No.
- 12 Q. Now, you testified earlier that you saw that scale
- 13 and based on your 18 years at Union County and 11 years as
- 14 a narcotics officer and all your training and all your
- 15 experience that a scale such as the one that you took is
- 16 commonplace in drug trade, correct?
- 17 A. Yes.
- 18 Q. What else is commonplace in drug trade?
- 19 A. Money, firearms.
- 20 Q. That's the one right there. Firearms, right? Did
- 21 you find a firearm?
- 22 A. No, sir.
- 23 Q. None of them had a gun, right?
- 24 A. No, sir.
- 25 Q. Okay. Now, is \$280, is that like a magic number? If

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- 1 somebody's got \$280 in their pocket, are they a drug
2 dealer?
- 3 A. Could be.
- 4 Q. No, I said are they?
- 5 A. Not necessarily.
- 6 Q. Okay. And if somebody has \$520 in their pocket, are
7 they automatically a drug dealer?
- 8 A. No, not automatically.
- 9 Q. Okay. This was a Thursday, right?
- 10 A. Yes, sir.
- 11 Q. Some people get paid on Thursday, don't they?
- 12 A. If you got a job.
- 13 Q. Well, some people get paid on Thursday, don't they?
- 14 A. Yes, sir.
- 15 Q. Some people draw unemployment, right?
- 16 A. Yes, sir.
- 17 Q. And some people get their unemployment check on a
18 Thursday, don't they?
- 19 A. Not on the 24th.
- 20 Q. How do you know?
- 21 A. I just know, I think.
- 22 Q. Do you know -- do you know the day that every
23 individual on unemployment gets their check?
- 24 A. No, sir.
- 25 Q. So you can't say that nobody got their check that

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1 day, can you?

2 A. No, sir, I can't say that.

3 Q. So the fact that somebody riding in a car that
4 doesn't have a gun and doesn't have drugs on them but has
5 a little bit of cash doesn't mean that they're a drug
6 dealer, does it?

7 A. No, not necessarily.

8 Q. Okay. Good. All right.

9 You went through a whole list of phone calls,
10 incoming and outgoing, on a phone, right?

11 A. Yes, sir.

12 Q. Would you agree with me that the very first phone
13 call made between the phone that you allege is Roderick
14 Pope's and the phone that you allege is Mr. Vincent
15 Harris's, the very first phone call was made by Vincent
16 Harris to the phone that you allege came from my client at
17 4:39 p.m.?

18 A. I believe that's correct, according to that phone.

19 Q. All right. And that phone call lasted 40 seconds,
20 right?

21 A. I don't have it in front of me, but that sounds
22 right.

23 Q. I wrote it down.

24 A. Yes, sir.

25 Q. Would you trust my notes? I wrote down every single

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1 phone call, and there's that one. Call five, 40 seconds.

2 A. I don't know.

3 Q. Okay. All right. Now, at 4:39 p.m, where was
4 Vincent Harris?

5 A. At the jail.

6 Q. Whose jail?

7 A. Union County.

8 Q. Union County. What was he there for?

9 A. For -- he was placed under arrest for distribution of
10 crack cocaine.

11 Q. He was placed under arrest because he just sold your
12 CI some dope, right?

13 A. Right.

14 Q. Now, when you arrested these three men, you claim in
15 your incident report that you took everyone's cell phone,
16 right?

17 A. Took everyone that had a cell phone.

18 Q. And did you ever give it back?

19 A. No.

20 Q. But yet here's a guy that just sold your CI dope.
21 He's sitting in your jail, and he's got his cell phone.
22 Why did he have his cell phone?

23 A. So he could call Mr. Pope.

24 Q. Why did he want to call Mr. Pope?

25 A. To get him to bring some drugs to Union.

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MR. BRANNON

1 Q. That's not why. Why did he call --

2 MR. ANTHONY: Objection. He answered.

3 THE COURT: Just ask the question again. Don't argue
4 with him at this point.

5 MR. BRANNON: Forgive me, Your Honor.

6 Q. He was offered some assistance by one of your fellow
7 officers, wasn't he?

8 A. Yes.

9 Q. Okay. In fact, the same officer that offered him
10 some assistance is the one who handed him his phone back,
11 correct?

12 A. Yes.

13 Q. All right. Do you have any idea where Roderick Pope
14 was at 4:39 p.m. on June 24, 2010, when somebody allegedly
15 called him?

16 A. No.

17 Q. Okay. Do you know what he was doing?

18 A. No.

19 Q. Do you know if he had any dope on him at the time?

20 A. No, sir.

21 Q. Okay. But Vincent Harris was working for Union
22 County Sheriff's Department when he made that phone call,
23 wasn't he?

24 A. Yes, sir.

25 Q. Thank you.

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MR. BRANNON

1 All right. Now, many of these questions have already
2 been asked, so I'm going to go real fast. It does say the
3 money that you took along with everyone's cell phone,
4 right?

5 A. Right.

6 Q. Now, I understand that you took everyone who had a
7 cell phone, correct?

8 A. Right.

9 Q. And the phones that you took, you still got them,
10 right?

11 A. Yes, sir.

12 Q. Okay. Never gave them back?

13 A. No, sir.

14 Q. Okay. All right. And it also says -- let's see.
15 Corporal Vinson searched his vehicle after removing
16 Brewton and Crosby, and he located a yellow plastic bag
17 which contained a quantity of crack, correct?

18 A. Yes.

19 Q. That's what it says. So who found the crack?

20 A. Corporal Vinson.

21 Q. Where did Corporal Vinson find the crack?

22 A. In his patrol car.

23 Q. Do you recognize your signature on that document?

24 A. Yes, sir.

25 Q. All right. Now, this says, would you agree with me,

LIEUTENANT JOHN SHERFIELD - CROSS EXAMINATION BY
MR. BRANNON

1 it says, "This is to certify that I, Lieutenant John
2 Sherfield, am employed by the Union County Sheriff's
3 Office and that on 6/24/2010, I seized from Randy Crosby,
4 Lashad Brewton, and Roderick Pope pursuant to a traffic
5 stop yellow plastic bag containing white rock-like
6 substance." Does that say that?

7 A. Yes, sir.

8 Q. That's your signature, right?

9 A. Yes, sir.

10 Q. And it's notarized, right?

11 A. Yes, sir.

12 Q. Sworn statement, right?

13 A. Yes, sir.

14 Q. Did you find a yellow plastic bag on Roderick Pope?

15 A. No, sir.

16 Q. Did you find one on Brewton?

17 A. No, sir.

18 Q. How about Crosby?

19 A. No, sir.

20 Q. In fact, you didn't find a yellow plastic bag on
21 anybody, did you?

22 A. No, sir.

23 Q. In fact, you didn't find a yellow plastic bag period,
24 did you?

25 A. No, sir.

LIEUTENANT JOHN SHERFIELD - CROSS EXAMINATION BY
MR. BRANNON

1 Q. Let's go back to the scale. You say based on your
2 experience, you saw what looked like white powder residue,
3 right?

4 A. Yes, sir.

5 Q. And based on white powder residue, in your
6 experience, you arrested those three guys for possession
7 of cocaine or crack, right?

8 A. That and some other stuff.

9 Q. That and some -- okay. All right. I don't know what
10 you mean, but did you send the white powder residue to be
11 tested?

12 A. On the scale?

13 Q. Did you send the powder residue on the -- that you
14 say was on the scale to SLED to be tested?

15 A. No, sir.

16 Q. Okay. Do you have the residue in a bag somewhere
17 that I can look at?

18 A. There's still some on the scale.

19 Q. But you never had it tested?

20 A. I don't know how I can answer that, Mr. Brannon.
21 I've been told I can't say that.

22 Q. My question is: Did you send anything to SLED?

23 A. Yes.

24 MR. ANTHONY: Well, I -- I'm sorry, that was no
25 objection.

LIEUTENANT JOHN SHERFIELD - CROSS EXAMINATION BY
MR. BRANNON

1 THE COURT: He said did you have it tested.

2 Q. Did you have it tested?

3 A. Not by a certified chemist.

4 Q. Okay. But it's not -- there's no -- there's no
5 material that was sent off to be tested that was sent back
6 that we can show this jury, correct?

7 A. That crack in that best bag.

8 Q. Talking about the scale. I'm sorry. There's nothing
9 from the scale that was sent off to be tested by SLED that
10 has been sent back with results that we can show this
11 jury, right?

12 A. No, sir.

13 Q. Okay. All right. Earlier today you had a battery in
14 your pocket. Do you still have that battery in your
15 pocket?

16 A. Yes, I do.

17 Q. Can I see it? That's not the same battery -- that's
18 not a match battery to that, is it?

19 A. I told Mr. St. Pierre it's not that battery but if he
20 wanted one I would give him one.

21 Q. Where's the battery that was in it?

22 A. I guess it fell out.

23 Q. Where did it fall out?

24 A. It fell out in a drawer in that office, I guess. I
25 don't need it.

LIEUTENANT JOHN SHERFIELD - CROSS EXAMINATION BY
MR. BRANNON

1 Q. Well, now -- no, maybe we don't need it, but this is
2 evidence in a case, right?

3 A. Batteries just don't work the scale, Mr. Brannon.

4 Q. But aren't you supposed to maintain evidence in such
5 a manner that it can't be tampered with?

6 A. Mr. Brannon, any residue found on there is not going
7 to enhance or decrease the trafficking charge of your
8 client. That's not even relevant, in my opinion.

9 Q. Okay. I appreciate that. I understand that, but
10 that's not an answer to my question. My question was:
11 Aren't you supposed to maintain evidence in such a manner
12 that it can't or is not tampered with?

13 A. Yes.

14 Q. Did you do that in this case?

15 A. I put it in a bag, the bag came open, it fell out,
16 the batteries fell out. That is the original scale. It
17 was documented that date with a case number on the front.
18 That's the scale.

19 Q. Just a couple more questions. Do you have a cell
20 phone bill from that phone that you showed the pictures
21 of?

22 A. No, sir.

23 Q. Do you have a cell phone bill from the phone that you
24 allege is Vincent Harris's cell phone?

25 A. No, sir.

LIEUTENANT JOHN SHERFIELD - CROSS EXAMINATION BY
MR. BRANNON

1 Q. When you searched Mr. Brewton, you took him out of
2 the car and you searched him. You found his cell phone,
3 right?

4 A. Yes, sir.

5 Q. But you didn't take Mr. Pope out of the car, right?

6 A. No, sir.

7 Q. Do you know who did?

8 A. No, sir.

9 Q. Did you walk around the car and take a cell phone
10 from Mr. Pope?

11 A. No, I didn't take it from Mr. Pope. When he -- when
12 they got him out, apparently he left it on his seat. I
13 got it out of his seat.

14 Q. You got a cell phone out of a seat in a car?

15 A. When I walked up to the car, Mr. Pope had that cell
16 phone there, the gray one, in his hand. When we told him
17 to put his hands up, he laid the phone down. Apparently
18 when he got out, he left it in the seat. While searching
19 the vehicle, I collected that cell phone along with the
20 set of scales that I found in the back.

21 Q. Okay. I understand that in your incident report
22 there's some typographical errors and maybe some
23 omissions. But it doesn't say that anywhere in this
24 incident report, does it?

25 A. No, sir.

LIEUTENANT JOHN SHERFIELD - CROSS EXAMINATION BY
MR. BRANNON

1 Q. So you found a cell phone in the seat of a car,
2 right?

3 A. That I saw Mr. Pope -- in his hand, yes.

4 Q. But, again, what you just said would be the first
5 time that I've ever heard that, right?

6 A. Yes, I guess.

7 MR. BRANNON: I don't have anything further. Thank
8 you so much.

9 THE COURT: Mr. Hall, Mr. McKinnon.

10 MR. MCKINNON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MCKINNON:

13 Q. Lieutenant Sherfield, I'm going to be very brief
14 since there's been a lot of testimony today. I just want
15 to clarify a few things with you.

16 A. Yes, sir.

17 Q. We go back to the time when you pulled over the
18 vehicle or your task force pulled over the vehicle. I
19 think we've heard this testimony, but I want to clarify.
20 You came up to the car and talked to Mr. Brewton?

21 A. Yes, sir.

22 Q. Pulled him out and you handcuffed him?

23 A. Yes, sir.

24 Q. You did not do the same thing with Mr. Crosby?

25 A. No.

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. MCKINNON

1 Q. Did you see who did?

2 A. No, sir.

3 Q. But you're confident someone in your task force did
4 that?

5 A. Yes. I know that someone handcuffed him because when
6 the uniformed patrol car got there, Corporal Vinson got
7 there, before he was put in the police car, I noticed that
8 all three of them were handcuffed.

9 Q. Did you put Mr. Brewton in the police car -- sorry,
10 Corporal Vinson's police car?

11 A. I walked him over to Corporal Vinson's car next to
12 the door, and then Corporal Vinson opened the door and put
13 him in.

14 Q. Okay. When you put him in there, was anybody else in
15 the car?

16 A. Be honest, I don't recall.

17 Q. You don't recall?

18 A. I don't think so.

19 Q. Do you remember any sort of other order about when --
20 let's say when Mr. Crosby was put in that car?

21 A. It was around the same time. I'm not sure which
22 one --

23 Q. You don't recall --

24 A. -- we put in there the first time that first -- I
25 don't know.

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. MCKINNON

1 Q. You're supervising all this, and you're telling
2 people what to do, right?

3 A. I don't have to tell these people what to do. Every
4 one of these at least -- have at least ten years'
5 experience that we've talked to.

6 Q. So you don't know who was put in in what order?

7 A. No, sir.

8 Q. You talked about that you could not do a full search
9 because you were in the middle of the median, a complete
10 search?

11 A. Yes.

12 Q. And you said what was left out?

13 A. Well, you can't undress people on the side of the
14 road. I mean, they were placed under arrest there. When
15 they get to the jail, they're either going to be strip
16 searched and changed out. I can't do that on the side of
17 the road.

18 Q. And you said drugs typically are put where?

19 A. Lately what we've been finding with crack cocaine
20 is -- cocaine users, when you stop them, they don't have
21 it right in their pocket. They put it in their underwear.
22 If it's a female, she usually puts it in her bra or her
23 panties. Or either in a body cavity, several times.

24 Q. Okay. If that is where a package or drugs are
25 stored, what would that also be up against in addition to

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. MCKINNON

1 the underwear?

2 A. What do you mean?

3 Q. I'm sorry. What else would that be touching if it's
4 inside one's underwear?

5 A. Their private parts.

6 Q. Right. And what is covering the private parts? What
7 part of your body, I guess?

8 A. The pants, I guess.

9 Q. What part of -- I'll just ask you directly, then.
10 That would be up against skin?

11 A. Right.

12 Q. Perhaps hair?

13 A. Yes.

14 Q. Perhaps if the person is perspiring, there would be
15 sweat?

16 A. Possibly.

17 Q. Okay. And for any of these defendants, did you do a
18 swab on any of them?

19 A. No, sir.

20 Q. And by "swab," that is the -- DNA swab is what I
21 mean.

22 A. Right.

23 Q. Did you test any possible hair, skin, perspiration
24 that would have been found on this yellow package?

25 A. No, sir.

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. MCKINNON

1 Q. On the -- I think earlier you testified to this
2 alleged drug set-up or transaction, that there was to be a
3 \$600 purchase.

4 A. Yes. It was -- well, Vincent was calling it
5 two-quarters. Which is a half ounce.

6 Q. Half ounce.

7 A. Which is 14 grams. The deal was that was going to
8 cost \$600, plus \$50 for gas.

9 MR. ST. PIERRE: Objection. That's hearsay.

10 Q. You answered my question. What I want to know is --

11 THE COURT: Wait, wait, wait.

12 MR. MCKINNON: Sorry.

13 MR. ANTHONY: He was answering the question, Your
14 Honor.

15 THE COURT: I'll overrule the objection.

16 Q. I'll just rephrase and try to be brief about it. The
17 transaction, \$600 for half an ounce, which is also how
18 many grams?

19 A. 14.

20 Q. 14. Okay. And the amount that you recovered in this
21 patrol vehicle was what?

22 A. A little over 11 grams, I believe.

23 Q. About 11. Okay.

24 Let's talk about your vault very briefly. Who --
25 again, who has access to the vault?

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. MCKINNON

1 A. All -- myself, Sergeant Johnson, and Investigator
2 Jermaine Smith, who's a narcotics gang officer, all work
3 out of that building. We store our evidence in that
4 vault. I am the only one that can open it.

5 Q. And you said it's a combination?

6 A. Yes.

7 Q. So you're the only person with the combination?

8 A. That particular vault, I could give you the
9 combination and you couldn't open it. There's a certain
10 way you have to do it. It's not like a regular
11 combination vault.

12 Q. So you're saying four or five people have access to
13 it, but it's a special...

14 A. There's a certain way that you have to turn the knob.
15 It's not just like one turn then back -- from right, left,
16 right. It's not like that. It's not...

17 Q. But Sheriff Taylor says other people have access.
18 You say other people have access.

19 A. They use it. I will open it for them. They put
20 their evidence in there.

21 Q. This is the vault where the drugs are kept?

22 A. Yes.

23 Q. The cell phone --

24 A. Just the drugs that are going to SLED. Now, the
25 marijuana is turned in to our evidence custodian here at

LIEUTENANT JOHN SHERFIELD - CROSS-EXAMINATION BY
MR. McKINNON

1 the sheriff's office because that same person analyzes
2 marijuana.

3 Q. One final question. How many cell phones did you
4 recover total?

5 A. That day?

6 Q. Yes, that day.

7 A. We recovered two. One from Mr. Brewton and one from
8 Mr. Pope.

9 Q. And on your case file summary, did you not write you
10 recovered cell phones from everyone?

11 A. Yes, sir.

12 MR. McKINNON: That's all the questions I have.

13 THE COURT: Redirect?

14 MR. ANTHONY: May we approach for a moment?

15 THE COURT: Yes.

16 (WHEREUPON, a bench conference was held in the
17 presence but not within the hearing of the jury.)

18 MR. ANTHONY: If I could just have one moment.

19 THE WITNESS: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. ANTHONY:

22 Q. Just one question. The drugs that you were given by
23 Corporal Vinson, did you see any hair on those drugs --

24 A. No, sir.

25 Q. -- or in that bag?

LIEUTENANT JOHN SHERFIELD - REDIRECT EXAMINATION BY
MR. ANTHONY

1 A. I did not see.

2 Q. Did you see anything -- any skin in the bag?

3 A. No, sir.

4 MR. ANTHONY: Thank you. That's everything.

5 THE COURT: Mr. St. Pierre?

6 MR. ST. PIERRE: No further questions.

7 THE COURT: Brannon?

8 MR. BRANNON: Just a few.

9 RECROSS-EXAMINATION

10 BY MR. BRANNON:

11 Q. Can you see skin cells?

12 A. No, sir.

13 Q. Didn't think you could. Can you -- describe the
14 search that you were able to do on Mr. Brewton that day?

15 MR. ANTHONY: Objection. That's beyond the scope of
16 redirect.

17 MR. BRANNON: It is -- forgive me, Your Honor,
18 it's --

19 THE COURT: What was the question again?

20 MR. BRANNON: Describe the search that he did on
21 Mr. Brewton, and it's in response to a question asked by
22 Mr. McKinnon.

23 THE COURT: I'll allow it.

24 A. Which search? There was two of them.

25 Q. Describe both of them.

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

- 1 A. The first search was just a quick pat-down search to
2 make sure he didn't have any guns, knives, hand grenades,
3 as we say. Anything that was very -- explosive device,
4 anything like that. Just a pat down real quick around
5 clothing, around the waistband, socks, anything like that.
6 I secured his hands, placed him in handcuffs, advised him
7 of his Miranda rights, told him he was being detained,
8 that he was not under arrest. Then when we searched the
9 vehicle, found the scales, placed him under arrest for the
10 possession of cocaine. Went back, and then I searched the
11 inside of his pockets and got his wallet out and seized
12 the money. I did a little bit more thorough search.
13 Still did not go inside his pants, underwear, body
14 cavities, nothing like that.
- 15 Q. Did you reach in his pockets?
- 16 A. Yes.
- 17 Q. Did you -- did you feel him like this?
- 18 A. The best I could.
- 19 Q. Did you feel him like this?
- 20 A. The best I could, yes, sir.
- 21 Q. Did you feel his arms?
- 22 A. Yes, sir.
- 23 Q. Chest?
- 24 A. Best I could, yes.
- 25 Q. Back?

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

- 1 A. Yes, sir.
- 2 Q. Looked at his socks?
- 3 A. Yes, sir.
- 4 Q. Put your hands around his ankles?
- 5 A. Yes, sir.
- 6 Q. When you handcuffed him, where did you cuff him?
- 7 A. Behind his back?
- 8 Q. Behind his back. Okay.
- 9 Did you look in his hands before you cuffed him?
- 10 A. Yes.
- 11 Q. Okay. So you know that when you put Mr. Brewton in
- 12 the cop car, he was handcuffed like this, right?
- 13 A. Yes.
- 14 Q. You checked his pockets, correct?
- 15 A. Yes.
- 16 Q. You checked his socks, correct?
- 17 A. Yes, sir.
- 18 Q. Patted around the groin area, right?
- 19 A. Yes, sir.
- 20 Q. Checked his belt -- his waistband all the way around,
- 21 right?
- 22 A. Yes, sir.
- 23 Q. Checked his chest and his pockets and everything like
- 24 that?
- 25 A. Yes.

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

1 Q. Now, who taught you how to search someone like that?

2 A. South Carolina Criminal Justice Academy.

3 Q. Did he go to the South Carolina Criminal Justice
4 Academy?

5 A. Yes, sir.

6 Q. Did every officer that was there that day when you
7 stopped that black Ford Expedition go to the same South
8 Carolina Criminal Justice Academy?

9 A. Yes, sir.

10 Q. So do you think that each officer that searched
11 Roderick Pope and Mr. Crosby searched them exactly the
12 same way you did?

13 A. I didn't see that, Mr. Brannon. I can't tell you,
14 you know.

15 Q. I didn't ask you if you saw it. I said: Do you
16 think they searched the same way you did?

17 A. Mr. Brannon, everybody's taught the same, but they
18 don't always do the same.

19 Q. But you think they checked the pockets?

20 A. I would think so.

21 Q. Okay. Do you think they checked the socks?

22 A. I would hope so.

23 MR. ANTHONY: Objection. This is asked and answered.

24 THE COURT: I -- let's move on. We can't ask him if
25 he thinks he does. That's not --

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

1 MR. BRANNON: I'll move on.

2 THE COURT: -- important.

3 Q. I know that you didn't cuff Mr. Crosby, but you saw
4 him being put in the car by some officer, correct?

5 A. Yes.

6 Q. To the best of your recollection, was he handcuffed
7 in the front or the back?

8 A. The back.

9 Q. Okay. And did you see Mr. Pope get put into the
10 other car?

11 A. I don't remember seeing him get put in the car. I'm
12 sure he was because he end up at the jail. But I did see
13 him. He was handcuffed behind his back.

14 Q. Behind his back. Okay.

15 So they're sitting in a car. They're handcuffed like
16 this. You've checked their hands, correct?

17 A. Yes.

18 Q. Okay. You've checked their pockets, right?

19 A. I checked Mr. Brewton.

20 Q. Okay. You checked Mr. Brewton's hands, right?

21 A. Yes, sir.

22 Q. Okay. Can we pretty much say there was no crack in
23 anybody's hands when they were placed in a car?

24 A. Yes.

25 Q. And their hands are cuffed behind their back, right?

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

1 A. Yes, sir.

2 Q. Okay. When they got to the Union County Detention
3 Center, had any of them mysteriously slid their hands
4 under their butt, around their leg such that they were
5 handcuffed in front when they got to the jail?

6 A. I wasn't there when they got there, sir.

7 Q. Did you have a report from anybody that any of the
8 three defendants were able to manipulate themselves so
9 that their hands that once were handcuffed behind them are
10 now in front of them?

11 A. No one told me that.

12 Q. So with their hands cuffed behind their back, they
13 can't reach their front pockets, can they?

14 A. Some people that are slimmer than me can. I've had
15 them be handcuffed behind their back and smoke a
16 cigarette.

17 Q. Did they light the cigarette, or did somebody --

18 A. No. We lit it, but they smoked it.

19 Q. But these are three pretty big guys, aren't they?

20 A. Yes, sir.

21 Q. Chances are good they can't reach their front
22 pockets, right?

23 A. I wouldn't think so.

24 Q. Certainly can't reach their feet or their socks, can
25 they?

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

1 A. Sitting down, you might could reach down behind your
2 back and reach the back of your foot. I don't know.

3 Q. Okay. All right. Can't reach their front chest
4 pockets, though, can they?

5 A. No.

6 Q. Okay. All right. You were asked by Mr. McKinnon
7 about any biological testing of the yellow plastic bag.
8 Remember those questions?

9 A. Yes.

10 Q. Okay. Some three months ago, you tested the scale
11 for fingerprints, right?

12 A. Yes, sir.

13 Q. Who did -- I -- did you physically --

14 A. Yes, sir.

15 Q. -- do the test?

16 A. Yes, sir.

17 Q. So you know how to fingerprint, then, right?

18 A. I know how to fingerprint. I'm not certified to
19 fingerprint.

20 Q. Did you happen to test the yellow bag for
21 fingerprints?

22 MR. ANTHONY: Objection. This is beyond the scope of
23 redirect.

24 THE COURT: Well --

25 MR. BRANNON: He asked him about tests.

LIEUTENANT JOHN SHERFIELD - RECROSS-EXAMINATION BY
MR. BRANNON

1 THE COURT: Yeah, I'll allow it. Go ahead.

2 Q. Did you happen to test the yellow bag for
3 fingerprints?

4 A. No, sir.

5 Q. Now, can you check that for my fingerprints?

6 A. I can't. Not right now. I don't have --

7 Q. Do you have the ability to test that for
8 fingerprints?

9 A. Yes, sir.

10 Q. Do you have the ability to test this bag for my
11 fingerprints?

12 A. Yes, sir.

13 Q. So you had the ability to test that yellow bag for
14 fingerprints, didn't you?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. BRANNON: I'm done. Nothing further.

18 THE COURT: Anything, Mr. McKinnon?

19 MR. McKINNON: Nothing, Your Honor.

20 THE COURT: Please step down, take your seat.

21 Call your next witness.

22 MR. ANTHONY: We call Captain McNeil.

23 WHEREUPON, CAPTAIN JAMES McNEIL, having first been duly

24 sworn, testified under oath as follows:

25 DIRECT EXAMINATION

CAPTAIN JAMES McNEIL - DIRECT EXAMINATION BY MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. Would you state your name, please.

3 A. James P. McNeil, Jr.

4 Q. Mr. McNeil, how are you employed?

5 A. Union County Sheriff's Office.

6 Q. What's your position there?

7 A. Captain.

8 Q. And what part of the sheriff's office are you the
9 captain over?

10 A. Criminal investigation.

11 Q. How long have you worked for the Union County
12 sheriff?

13 A. Almost three years now.

14 Q. And how long have you been in law enforcement
15 altogether?

16 A. Little over 22 years.

17 Q. Where did you work before you worked for the Union
18 sheriff?

19 A. Chester County.

20 Q. Were you working back on June 24th of last year?

21 A. I was.

22 Q. And were you involved in the operation to make the
23 stop on the black Expedition?

24 A. I was.

25 Q. How did you get involved in that?

CAPTAIN JAMES McNEIL - DIRECT EXAMINATION BY MR. ANTHONY

1 A. First we debriefed at the local narcotics task force.
2 My job was to go up 176 to the Lighthouse Restaurant Fish
3 Camp and observe a vehicle, a black vehicle come -- Ford
4 Expedition coming into Union County. I was en route to do
5 that when I got to the intersection of Highway 150 in the
6 Pacolet area. And I observed the black vehicle --
7 correction. I got information that this vehicle was
8 passing the Fish Camp, the Lighthouse Fish Camp, and I
9 knew I wasn't going to make it in time. When I looked
10 into the incoming lane heading to Union, I observed a
11 black Ford Expedition. I immediately radioed that
12 information to the officers.

13 Q. And then what did you do after you saw it?

14 A. When I saw it, I turned around there at the
15 intersection of Highway 150 and 176.

16 Q. And which direction did you head after turning right?

17 A. Turned around, headed back towards Union, the
18 Jonesville area.

19 Q. And did you come upon the vehicle stopped?

20 A. I did.

21 Q. All right. Once you got there -- when you arrived
22 there, who was already there?

23 A. Lieutenant Sherfield, Sheriff Taylor. I believe
24 Investigator Parker was there.

25 Q. And what was -- what was your involvement in the stop

CAPTAIN JAMES MCNEIL - DIRECT EXAMINATION BY MR. ANTHONY

1 of the vehicle?

2 A. Basically the vehicle was already stopped when I got
3 there. I got in my vehicle, approached the vehicle, and
4 got the gentleman out the rear right side passenger seat.

5 Q. Okay. And what did you do in regards to the man in
6 the backseat?

7 A. Got him out. Handcuffed him. Done a pat-down search
8 of him. And later I was advised it was going to be an
9 arrest.

10 Q. Let me just stop you. When you did the pat-down
11 search, did you locate anything? What were you searching
12 for when you did the pat-down search?

13 A. Weapons.

14 Q. Did you locate any weapons on the man from the
15 backseat?

16 A. No, I did not.

17 Q. And then after doing the pat down, what did you do --
18 what was the next thing that happened in your interaction
19 with the backseat passenger?

20 A. Lieutenant Sherfield advised me they was under
21 arrest. I actually did another pat down and actually
22 searched his pants pockets.

23 Q. All right. And when you searched the back
24 passenger's pants pocket, what did you find?

25 A. It was some currency, money.

CAPTAIN JAMES McNEIL - DIRECT EXAMINATION BY MR. ANTHONY

1 Q. How much money did you find?

2 A. I don't recall exactly how much it was, but it was
3 money.

4 Q. What did you do with the money that you located?

5 A. We put the money on the -- I believe it was the front
6 of my vehicle. It was a vehicle. Put the money there.
7 And Lieutenant Sherfield actually counted it.

8 Q. And this was Mr. Crosby you were searching; is that
9 correct?

10 A. That's correct.

11 Q. And when you searched Mr. Crosby pursuant to the
12 arrest, what parts of his body did you search?

13 A. I searched his -- the outer part, outer pants,
14 clothing. I did not go inside his clothing, meaning the
15 inner garments of his clothing.

16 Q. So -- okay. And did you have any other involve --
17 well, let me ask you. After you had completed the pat
18 down, located the money on Mr. Crosby, what did you do in
19 regards to him?

20 A. He was later escorted over to a car and placed in a
21 car.

22 Q. What type of car?

23 A. It was a marked unit, one of our sheriff's office
24 vehicles.

25 Q. All right. And then did you have any other

CAPTAIN JAMES McNEIL - DIRECT EXAMINATION BY MR. ANTHONY

1 involvement in the stop of the Expedition?

2 A. No, sir.

3 Q. If I could have one moment.

4 Thank you.

5 MR. ANTHONY: That's everything on the direct.

6 CROSS-EXAMINATION

7 BY MR. ST. PIERRE:

8 Q. Captain McNeil, real quick, do you know who drove the
9 black Expedition from the crime scene?

10 A. No, I don't.

11 Q. How many people have you arrested this year?

12 A. I don't have that number.

13 Q. How about last year?

14 A. I can't tell you that.

15 Q. You had no conversation with my client, Mr. Brewton,
16 did you?

17 A. No.

18 Q. Thank you.

19 THE COURT: Brannon?

20 CROSS-EXAMINATION

21 BY MR. BRANNON:

22 Q. Captain McNeil, that day you pulled up, and I think
23 you said you would have been the fourth car there; is that
24 correct?

25 A. Maybe the third, maybe.

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. BRANNON

1 Q. What we know from previous testimony is that the
2 sheriff pulled in behind the car but kind of to the right
3 of the car. Lieutenant Sherfield was behind the car to
4 the left of the car.

5 A. Uh-huh.

6 Q. Who was in front of the car?

7 A. I'm not sure. I'm not sure who was in front of the
8 car. I can tell you where I was.

9 Q. I appreciate you can't tell me who it was, but was
10 there a car in front of this black Ford Expedition?

11 A. I can't recall.

12 Q. Okay. And you were -- you would have been behind
13 Sherfield and Sheriff Taylor, right?

14 A. That's correct.

15 Q. So there's at least three cars behind this black Ford
16 Expedition, right?

17 A. That's correct.

18 Q. Y'all got lights flaring?

19 A. That's correct.

20 Q. And did you pull your gun?

21 A. Very possible.

22 Q. Okay. All right. Did Sherfield pull his gun?

23 A. I'm not sure.

24 Q. All right. After the three occupants of the vehicle
25 were removed, did other cars show up?

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. BRANNON

1 A. Can't recall. I know the marked units came, yes,
2 sir.

3 Q. Right. And we know that there were two of them,
4 right?

5 A. I can recall seeing a marked unit. I can't tell you
6 how many it was.

7 Q. We know that two people rode in one marked car, and
8 the other person, the third defendant, rode in another
9 marked car, right?

10 A. I can't testify that. I can tell you I remember
11 seeing a marked car. Yes, sir.

12 Q. But there were a bunch of cars at this traffic stop,
13 right?

14 A. More than three.

15 Q. Okay.

16 A. Four.

17 Q. All right. Now, a typical traffic stop usually just
18 takes one, right?

19 A. Yes, sir.

20 Q. Okay. Good. Okay.

21 You did a light -- we're going to -- a Terry pat
22 search of Mr. Crosby initially, right?

23 A. Yes, sir.

24 Q. And you're looking for a weapon, correct?

25 A. Yes, sir.

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. BRANNON

1 Q. After Lieutenant Sherfield said there's going to be
2 an arrest, you did a more detailed search, right?

3 A. Yes, sir, I did.

4 Q. And I understand you didn't take anybody's clothes
5 off.

6 A. No.

7 Q. But you felt in the pockets, right?

8 A. Yes, sir.

9 Q. And then after you did that -- well, back up. At
10 what point did you cuff Mr. Crosby?

11 A. He was cuffed got him out of the vehicle.

12 Q. Okay. So did you cuff him before the initial pat
13 search, the Terry search looking for a weapon?

14 A. Yes, sir. He was cuffed then.

15 Q. So he was cuffed from -- basically from the moment he
16 stepped out of the vehicle, right?

17 A. That's correct.

18 Q. And did you cuff him in front or back?

19 A. In the back.

20 Q. In the back.

21 Now, did you put your hands in the back pockets of
22 Mr. Crosby's pants?

23 A. Yes, on the second search, I did.

24 Q. You did. And did you find anything?

25 A. Not in his back. I found the money in the front.

CAPTAIN JAMES MCNEIL - CROSS-EXAMINATION BY MR. BRANNON

1 Q. I gotcha. But when you searched the back pockets,
2 you didn't find anything, right?

3 A. No, sir.

4 Q. Now, how tightly did you cuff him?

5 A. I put the handcuffs on him. I can't tell you how
6 many clicks it was, but I put the handcuffs on him.

7 Q. Any fear that he was going to get out of them cuffs?

8 A. No, sir.

9 Q. If his ear started to itch, with his handcuffs behind
10 his back as tightly as you cuffed him, could he scratch
11 his ear with his finger?

12 A. I can't answer that question. I don't know.

13 Q. If you were cuffed that tightly behind your back and
14 your ear started to itch, could you itch it?

15 A. I couldn't.

16 Q. You couldn't. Okay. All right.

17 The second search of Mr. Crosby, did you look at his
18 socks?

19 A. No, sir.

20 Q. Didn't check his shoes?

21 A. No, sir.

22 Q. Okay. When you cuffed him, when you put him in the
23 car, could he reach his shoes?

24 A. I didn't put him in the car.

25 Q. You've been in the backseat of a car, though, right?

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. BRANNON

1 A. Yes, sir.

2 Q. And you know he rode in the backseat of a car to the
3 detention center, right?

4 A. Yes, sir.

5 Q. While in the backseat of a car, handcuffed the way
6 you handcuffed Mr. Crosby, could he have touched his
7 shoes?

8 A. I can't answer that question.

9 Q. Could you have?

10 A. No, sir.

11 Q. Did you find a gun?

12 A. No, sir.

13 Q. Did you find any dope?

14 A. No, sir.

15 Q. You ever heard of a guy named Vincent Harris before?

16 A. No, sir -- yes, I heard of him yesterday.

17 Q. Yesterday?

18 A. Yes.

19 Q. June 24, 2010, did you know him?

20 A. Didn't know him.

21 Q. If somebody told you he had dope, would you have had
22 reason to believe it?

23 A. I don't know him.

24 Q. Okay. If a guy walked up to you who later turned out
25 to be Vincent Harris and he said, "I know somebody who's

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. BRANNON

1 got dope," would you have had reason to believe him?

2 A. I don't know Vincent Harris.

3 Q. There you go. Thanks.

4 A. Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. HALL

7 Q. Captain McNeil, let me try to clear up something. Is
8 the Lighthouse Restaurant in Union County or Spartanburg
9 County?

10 A. It's in Spartanburg County.

11 Q. It's in Spartanburg County.

12 And when you first saw the black Ford Expedition when
13 you were at the intersection, I believe you testified, of
14 Highway 150 and what else?

15 A. And 176.

16 Q. And 176.

17 A. Yes, sir.

18 Q. And is that in Spartanburg County or Union County?

19 A. It's in Spartanburg County.

20 Q. In Spartanburg County?

21 A. Yes, sir.

22 Q. So is that -- is the -- is the Disney distribution
23 center between Highway 150 and the Lighthouse Restaurant,
24 or is it -- where is it in relation to where you were at
25 150?

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. HALL

1 A. It was back towards Jonesville.

2 Q. It was behind you?

3 A. That's correct.

4 Q. But the truth of it is you were not at the Lighthouse
5 Restaurant when you saw a black Ford Expedition?

6 A. That's correct.

7 Q. You received information that a black Ford Expedition
8 was passing the Lighthouse Restaurant, but you never saw a
9 black Ford Expedition pass the Lighthouse Restaurant?

10 A. No, sir.

11 Q. How far is it from the intersection of 150 and 176
12 and the Lighthouse Restaurant?

13 A. Probably a mile, mile and a half maybe.

14 Q. Mile, mile and a half.

15 Do you know if there were any other black Ford
16 Expeditions that came behind you after you got behind the
17 one that you saw?

18 A. No, I don't.

19 Q. It's possible that there could have been one?

20 A. Could have been.

21 Q. And when you pulled in behind the car, the black Ford
22 Expedition, you didn't run a tag number?

23 A. Never got that close to it.

24 Q. You never determined the ownership of the car?

25 A. No, sir.

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. HALL

1 Q. And then wouldn't that be typical of a traffic stop
2 is that the -- one of the first things police officers do
3 is to run a tag to determine who the car may be registered
4 to --

5 A. Yes.

6 Q. -- or if the car may be stolen or if the tag fits the
7 description of the vehicle?

8 A. Yes.

9 Q. That would be standard on a traffic stop?

10 A. Yes.

11 Q. And as far as you know, nobody did that in this case?

12 A. I didn't.

13 Q. You didn't do it?

14 A. No, sir.

15 Q. Do you recall -- and you -- you searched my client,
16 Randy Crosby?

17 A. Yes, sir.

18 Q. Put him in handcuffs behind his back?

19 A. Yes, sir.

20 Q. And I believe you testified you escorted him to the
21 car?

22 A. Yes, sir.

23 Q. Did you put him in the car?

24 A. No, I don't think I did. I can't recall.

25 Q. Sir?

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. HALL

1 A. I can't recall putting him in the car.

2 Q. You can't recall. You don't know if you did or not?

3 A. That's right.

4 Q. Do you have any recollection about was there anybody
5 else in the -- was it Corporal Vinson's car that you took
6 him to?

7 A. I'm not sure.

8 Q. You don't know that?

9 A. No.

10 Q. You just took him to one of the marked patrol cars?

11 A. That's correct.

12 Q. And how many marked patrol cars do you remember being
13 there?

14 A. I remember one.

15 Q. You remember one? Could there have been two?

16 A. Very possibly.

17 Q. But you remember one?

18 A. Yes, sir.

19 Q. Where did you take him exactly at the car?

20 A. To the back, to the rear.

21 Q. To the rear. But you did not put him in the car?

22 A. I can't recall putting him in the car.

23 Q. Okay. All right. One further question,

24 Captain McNeil. From Highway 160 (sic) at the

25 intersection of 176 to light -- you couldn't see the

CAPTAIN JAMES McNEIL - CROSS-EXAMINATION BY MR. HALL

1 Seafood Lighthouse, could you?

2 A. No, sir. No, sir.

3 Q. Thank you.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. ANTHONY:

7 Q. Just to be clear, the lighthouse is on 176; is that
8 right?

9 A. It's on 176, yes, sir.

10 Q. And if you were traveling south on 176, you would
11 come to that intersection of 176 and 150; is that correct?

12 A. That's correct.

13 Q. And your testimony was that's about a mile away?

14 A. About a mile away, yes, sir.

15 Q. Thank you.

16 MR. ANTHONY: That's everything.

17 THE COURT: Stay up there for a minute. You said
18 "that is about a mile away." When you say "that," what do
19 you mean?

20 MR. ANTHONY: I was referring to -- the question was
21 the intersection --

22 THE COURT: A mile away from what?

23 MR. ANTHONY: The Lighthouse.

24 Q. Is that correct? The intersection was a mile away
25 from the Lighthouse?

CAPTAIN JAMES McNEIL - REDIRECT EXAMINATION BY MR. ANTHONY

1 A. That's correct.

2 THE COURT: Mr. St. Pierre.

3 MR. ST. PIERRE: Thank you, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. ST. PIERRE

6 Q. And the Lighthouse Restaurant in Pacolet and the
7 place where you came and arrested Mr. Crosby, that's about
8 7 miles apart, right?

9 A. Yes, sir.

10 Q. And there's speed limits that range from a 55 to 45
11 in between those two sections, right?

12 A. I'm not sure on those.

13 Q. Okay.

14 THE COURT: Mr. Brannon?

15 MR. BRANNON: I don't have anything.

16 THE COURT: Mr. Hall?

17 MR. HALL: Nothing further, Your Honor.

18 THE COURT: You can step down, have a seat.

19 MR. ANTHONY: Next witness is Corporal Vinson. Your
20 Honor, can Captain McNeil be excused?

21 THE COURT: Objection?

22 MR. ST. PIERRE: No objection.

23 THE COURT: Yes, sir.

24 WHEREUPON, CORPORAL RUSSELL VINSON, having first been duly
25 sworn, testified under oath as follows:

CORPORAL RUSSELL VINSON - DIRECT EXAMINATION BY

MR. ANTHONY
DIRECT EXAMINATION

1

2 BY MR. ANTHONY:

3 Q. Would you state your name, please.

4 A. Russell Vinson.

5 Q. Mr. Vinson, how are you employed?

6 A. I'm a corporal at Union County Sheriff's Office.

7 Q. How long have you worked for the sheriff's office?

8 A. I've been at sheriff's office for approximately eight
9 years.10 Q. And were you working in -- with the sheriff's office
11 as a patrol deputy back on June 24th of last year?

12 A. Yes.

13 Q. And I want to just take you back to that day. What
14 were you -- what were you doing around 6:00 that evening?15 A. I were sitting up on Sprouse Road. I'd been
16 contacted by Lieutenant Sherfield that they were doing a
17 drug buy and for me to be in the area, to be ready in
18 case -- when it went down.19 Q. And was there any particular vehicle you were looking
20 for?

21 A. A black Ford Expedition.

22 Q. And where were you expecting the vehicle to be
23 headed?24 A. It was supposed to be coming south from Spartanburg,
25 headed toward Jonesville.

CORPORAL RUSSELL VINSON - DIRECT EXAMINATION BYMR. ANTHONY

1 Q. On what highway?

2 A. 176.

3 Q. After -- as you were positioned there, did you get
4 word of the stop actually being made?

5 A. Yes. On the -- through radio traffic I heard they
6 had made a traffic stop before they had gotten to where I
7 was at on Sprouse Road.

8 Q. What did you do?

9 A. I proceeded going to the traffic stop where they were
10 at.

11 Q. And when you arrived there, what did you do?

12 A. When I arrived, I pulled over. They had the car
13 pulled over into the median. When I arrived, I had to
14 cross over into the median because I was going north and
15 they were coming south. I positioned my vehicle in the
16 median in front of their vehicles and got out and just
17 basically observed what was going on around the scene.

18 Q. So after you arrived there, what -- what were you
19 asked to do?

20 A. After I arrived, I -- once I got there, I observed
21 the scene. Once Lieutenant Sherfield had made the
22 determination that arrest was going to be made, he asked
23 me to check the back of my patrol car, that he needed me
24 to transport two prisoners. So I went back and checked
25 the back of my patrol car to make sure nothing was in

CORPORAL RUSSELL VINSON - DIRECT EXAMINATION BYMR. ANTHONY

1 there, and at that point, ~~the two~~ suspects were placed in
2 my car and transported to the jail.

3 Q. Was there anything in your car when you checked it?

4 A. No.

5 Q. Who were the two people placed in your car?

6 A. Mr. Brewton and Mr. Crosby.

7 Q. And where did you take them again?

8 A. Took them to the Union County Jail.

9 Q. And once you got them to the jail, what happened?

10 A. Once I got them to the jail, we pulled into the sally
11 port. A jail officer had came and met me outside. Got
12 Mr. Crosby and Mr. Brewton out of the car. They were
13 turned over to the jail officer. He took them inside.
14 And then I went back to my vehicle and searched it, and
15 that's when I found the crack cocaine.

16 Q. You found it in the backseat?

17 A. Yes, sir. Under my seat.

18 Q. I'm sorry?

19 A. Under the seat of my backseat.

20 Q. And then once you found the drugs, what did you do
21 with them?

22 A. Once I found the drugs, I contacted Lieutenant
23 Sherfield and told him what I had found. Then I went back
24 into the jail and -- actually, I didn't know which of the
25 defendant -- I didn't know their names when they were

CORPORAL RUSSELL VINSON - DIRECT EXAMINATION BYMR. ANTHONY

1 placed in the car. I just knew which one was seated and
2 where I had found it. And I went back inside to look at
3 their booking sheet to see which one -- actually the
4 cocaine, which side it was found on. And that's when I
5 called Lieutenant Sherfield and advised him to where I
6 found the crack and what side it was on.

7 Q. Who were you able to determine had been sitting where
8 the crack was spotted?

9 A. Mr. Crosby.

10 Q. And then what did you do with the crack which you
11 recovered?

12 A. I placed it into an evidence bag and didn't seal it
13 up but just kept it there until Lieutenant Sherfield
14 arrived, and I give it to him.

15 Q. And had he -- Lieutenant Sherfield came to the jail?

16 A. Yes.

17 Q. And you turned it over to him?

18 A. Yes, sir.

19 Q. You turned the crack over to him?

20 A. Yes, sir.

21 Q. Had you transported anybody else to jail that day?

22 A. No, sir.

23 MR. ANTHONY: If I could have one moment.

24 Thank you. That's everything.

25 THE COURT: St. Pierre.

CORPORAL RUSSELL VINSON - DIRECT EXAMINATION BYMR. ANTHONY

1 MR. ST. PIERRE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ST. PIERRE:

4 Q. Corporal Vinson, you testified that your police car
5 was pointed north in front of the Expedition facing south,
6 right?

7 A. It wasn't parked in front of it. I was going north
8 and the car was coming south, so I pulled over in the
9 northbound median but not directly in front of where the
10 Expedition was.

11 Q. The testimony is is that the Expedition was in the
12 median, right?

13 A. Yes, but there's two side. There's actually a ditch,
14 a waterway ditch in between.

15 Q. Would someone have to walk in front of your car in
16 order to be placed in the backseat of your car from that
17 position?

18 A. No, sir.

19 Q. No?

20 A. No, sir.

21 Q. How is that?

22 A. If the car is sitting here and my car is sitting
23 here, they can be walked around this way to the back of
24 the door and never have -- coming from my car.

25 Q. Is it your testimony that no one walked in front of

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 your car once you got there?

2 A. I can't answer that.

3 Q. So I'm talking about defendants, law enforcement
4 officers.

5 A. I'm not sure if they did or not.

6 Q. Is it quite possible that someone could have walked
7 in front of your car?

8 A. It's possible.

9 Q. And there was testimony that your car has a video
10 recorder on it, right?

11 A. Yes, sir.

12 Q. And with that video recorder, you have a body
13 microphone, right?

14 A. Yes, sir.

15 Q. And the body microphone is synched with the video
16 recorder, right?

17 A. Yes, sir.

18 Q. So anything that you said or someone said in front of
19 you or around you would have been captured on a video
20 recording containing audio, right?

21 A. If my tape is on. If my video is recording.

22 Q. It would also make sounds that you make if you
23 allegedly search the back of your car, right?

24 A. Yes.

25 Q. Okay. It would -- it would display sounds as opening

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 and closing a door and stuff like that, right?

2 A. If it's on.

3 Q. If it's on. So I take it your testimony is your
4 video recorder wasn't on, right?

5 A. No.

6 Q. With no video recorder on, there's no video to give
7 the Solicitor's Office or to Lieutenant Sherfield, right?

8 A. Right.

9 Q. When you found what you allege is crack cocaine in
10 the back of your car, were -- and you brought it back into
11 the jail, right?

12 A. No, sir. I never took it into the jail.

13 Q. What did you -- did you have it -- what kind of --
14 what kind of bag did you put it in?

15 A. I put it in the evidence bag, but I did not seal it.
16 One of the smaller evidence bags. If I'm not mistaken,
17 it's like the one the scale was in, the second one.

18 Q. Where did you go get that?

19 A. I didn't seal it up. I have them in the trunk of my
20 car.

21 Q. The trunk of your car.

22 So you waited outside of the jail?

23 A. At the -- in the sally port.

24 Q. In the sally port?

25 A. What I actually did is when I got it, I set it in my

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 car -- I mean I put it in the bag and put it in the trunk
2 of my car, and then I went in. That's when I looked at
3 the booking sheet to actually identify which suspect where
4 the crack was found.

5 Q. And when you turned it over to Mr. Sherfield, did you
6 sign any paperwork as far as chain of custody or anything
7 like that?

8 A. No.

9 Q. Were you asked to sign any paperwork, chain of
10 custody, anything like that?

11 A. No.

12 Q. Were you running to get to the scene once you were
13 called?

14 A. No, sir.

15 Q. Why not?

16 A. They told me it wasn't approximately about a mile
17 from where they were at. And there was already several
18 cars, two or three cars there.

19 Q. And you've been in law enforcement for eight years,
20 right?

21 A. About 10 to 11 years.

22 Q. I'm sorry. Eight here?

23 A. Eight here at the sheriff's office.

24 Q. And you have -- you deal with evidence in your job
25 as -- in law enforcement, right?

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 A. Yes.

2 Q. And do you agree that video evidence helps a jury
3 understand what's happening?

4 A. Yes.

5 Q. Okay. And you had the opportunity to flick on your
6 blue lights, didn't you?

7 A. Yes.

8 Q. And that would have triggered the camera, right?

9 A. Yes.

10 Q. But you didn't do that?

11 A. Correct.

12 MR. ST. PIERRE: No further questions.

13 THE COURT: Brannon?

14 CROSS-EXAMINATION

15 BY MR. BRANNON:

16 Q. Corporal Vinson, you pulled into the median but did
17 not activate your blue lights?

18 A. Yes, sir. I was out of the line with traffic
19 coming -- or coming back up the road, was coming up the
20 road. I was out of the roadway into the median.

21 Q. When you went to the academy, they didn't train you
22 when you're involved in a traffic stop in any way that
23 you're supposed to turn on your blue lights?

24 A. I didn't initiate traffic stop, sir. I came after
25 the traffic stop was already initiated.

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 Q. I understand you didn't initiate it, but I believe --
2 I may be mistaken, but I believe one of the training
3 seminars is on proper traffic stop protocol, correct?

4 A. That's correct.

5 Q. And proper traffic stop protocol involves blue
6 lights, doesn't it?

7 A. If you initiate the traffic stop.

8 Q. Where did you find the drugs in your car?

9 A. Under my seat, the backseat.

10 Q. And I'm -- you say under your seat. Does that mean
11 under the driver's seat in the back, or does that mean
12 under the backseat?

13 A. No, sir. It -- in the Crown vehicle, the way we do,
14 they have covers over them in case somebody gets sick --

15 Q. Right. Right.

16 A. -- or whatever else. As much as we -- we have to
17 check them. Our procedure says that we check them before
18 and after each shift and before we transport and after
19 transporting prisoners. So when we sit in our seat in
20 there, it's not secured. It's kind of loose. All right.
21 So when you pull it up, there's two -- there's a little
22 nook in the middle and there's two, like, hollowed out
23 places on each side. And I found the crack on the
24 passenger side on the back.

25 Q. Under the seat?

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 A. Under the seat. It's metal. It's all under there.

2 There's a little hook where you can actually hook the seat
3 in.

4 Q. I gotcha. I gotcha.

5 When you arrived at the detention center, was
6 Mr. Crosby still handcuffed?

7 A. Yes.

8 Q. Did it appear that he had altered his handcuffs at
9 all?

10 A. No.

11 Q. What about Mr. Brewton? Did he appear to have
12 altered his handcuffs at all?

13 A. No.

14 Q. Okay. Did you ever notice either of them moving
15 about in the seat kind of strangely?

16 A. No. The way my mirror is sitting -- is positioned or
17 set, I can actually -- I couldn't see both of them; I
18 could just see one of them's head.

19 Q. But if somebody were fiddling around in the back or
20 moving around, that probably would have caught your
21 attention, right?

22 A. Yes.

23 Q. Now, you also have the ability to take that camera
24 and turn it around, don't you?

25 A. Yes.

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 Q. Didn't do it, did you?

2 A. No.

3 Q. Tell me what else is in your trunk.

4 A. What else is in my trunk?

5 Q. Yeah. You got --

6 A. There's evidence bags. There's the vault where you

7 put your video camera. I think I had a shotgun, a

8 camera -- for me to take pictures with. I had a rod to

9 open up a car if somebody gets locked, locked their keys.

10 Traffic cones. Just other stuff that we need for the job.

11 Coat.

12 Q. I'm sorry?

13 A. Coat.

14 Q. A coat? Gotcha.

15 Now, when you pulled up to the traffic stop location,

16 were the three defendants already handcuffed?

17 A. Yes, sir.

18 Q. Okay. Did you see any or all of the three defendants

19 being searched by Lieutenant Sherfield or Officer McNeil

20 and then some third officer? Did you see any of them

21 being searched?

22 A. I don't -- I remember them being searched, but it

23 wasn't the pat down, the initial pat down. Like it was

24 the --

25 Q. The second search?

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 A. Yes, sir.

2 Q. And you were here when Officer McNeil testified,
3 right?

4 A. Yes.

5 Q. And you heard him say that some money was found in
6 Mr. Crosby's pockets, I think, right?

7 A. I think that's what he said.

8 Q. And then did you hear him say that they took the
9 money and they put it on the hood of his car and
10 Lieutenant Sherfield counted it?

11 A. I heard him say that, yeah.

12 Q. And you got a camera in the truck of your car, right?

13 A. The vault where you put the tape in is in the trunk.

14 Q. Thought you said you had a camera. You did this
15 (indicating).

16 A. Oh, yeah.

17 Q. Yeah. You got a camera in your trunk, right?

18 A. Yeah.

19 Q. Have you ever seen a drug case where they allegedly
20 seized money and they take pictures of the money? Have
21 you ever seen that?

22 A. Yeah.

23 Q. You didn't do that in this case, did you?

24 A. No. That's not my job. I don't do that.

25 Q. If that's not your job, why do you have a camera?

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 A. If I was asked to do that, then I would do that. But
2 I was not asked to do it.

3 Q. Did you hear Lieutenant Sherfield say something at
4 any point about having found a scale in the back of this
5 Ford Expedition?

6 A. I can't recall. Because I was kind of standing back
7 and I wasn't -- I mean, I wasn't up where they were at,
8 listening to what they were actually saying.

9 Q. Let me ask you this. Is it standard procedure for
10 Union County Sheriff's Department to have a camera like
11 you've got in the back of your patrol car in the other
12 patrol cars?

13 A. Yes.

14 Q. And Lieutenant Sherfield's worked for Union County
15 for 18 years, right?

16 A. Right.

17 Q. So he knows what's in the trunk of a patrol car,
18 right?

19 A. Right.

20 Q. So he knew there was a camera there, right?

21 MR. ANTHONY: Objection. That calls for speculation.

22 THE COURT: He can't testify to what he knew.

23 Q. It's department policy to have a camera in the back
24 of the patrol car, right?

25 A. Yes.

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 Q. Sherfield's been here 18 years, right?

2 Were you ever asked to photograph anything on the
3 interior of this Expedition?

4 A. No.

5 Q. Were you asked to do anything other than transport
6 two people to the jail?

7 A. No.

8 Q. I understand you got the median and then there's the
9 kind of ditch down at the bottom. And you're parked
10 facing Spartanburg, correct?

11 A. Correct.

12 Q. On that side of the road in the median, so you're up
13 above the ditch kind of in the grassy area, right?

14 A. Correct.

15 Q. Was there another car that would have been to your
16 left, another police car?

17 A. I don't think so. But I'm not sure.

18 Q. Okay. When you pulled up, how many cars did you see?

19 A. I don't recall. I just know that Captain McNeil,
20 Lieutenant Sherfield, and Investigator Parker were there.
21 And Sheriff Taylor.

22 Q. Did they all have their own car?

23 A. I'm not sure.

24 Q. Okay. But you would at least be the fourth car,
25 correct?

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. BRANNON

1 A. Correct.

2 Q. Okay. And is it department policy to transport
3 people who have been arrested in marked patrol cars?

4 A. Not necessarily. I mean, we do transport in unmarked
5 cars as well.

6 Q. You took two, right?

7 A. Correct.

8 Q. Somebody else took Mr. Pope, right?

9 A. Correct.

10 Q. Was he transported in a marked or an unmarked car?

11 A. I'm not sure.

12 Q. Thank you.

13 MR. BRANNON: Nothing further.

14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Corporal Vinson, what time did you start work that
17 day, on June 24?

18 A. I'm not really sure. Probably our shift at that
19 time, we have changed shifts, so I'm not sure if it was --
20 before we went from eight to eight and then we changed
21 from six to six is what currently now. So I'm not really
22 sure when that time change was, so I'm not sure. It's
23 either six or eight.

24 Q. All right. So if somebody -- if this arrest took
25 place at 7:00, then you would have been coming in to work

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. HALL

1 at six?

2 A. Possibly.

3 Q. You would not have -- is -- you weren't involved in
4 the arrest of Vincent Harris earlier that day?

5 A. No, sir.

6 Q. And you didn't trans -- could that be because you
7 were not working at that time?

8 A. Possibly could. Possibly couldn't, maybe. When they
9 were doing -- when they're doing their buys, I'll be on
10 patrol. I don't know what they're doing, so they don't
11 always contact us and let us know what they're doing.

12 Q. Let me ask you this. It appears that it had to have
13 been the six-to-six shift. Well, you don't know whether
14 you were -- whether -- it doesn't have to be the
15 six-to-six shift. But you were working at 6:00 p.m. on
16 that day, obviously.

17 A. Yes, sir.

18 Q. Or at least around seven, when this arrest took
19 place. What time did you get in your car? If you were
20 working a six-to-six shift -- and when you mean six to
21 six, would you have been working the night shift or the
22 day shift?

23 A. I'm not sure. Because I could have come in early. I
24 mean, when we come in at 6:00, we actually sign on before
25 six. We sign on -- like when you get ready and get in

CORPORAL RUSSELL VINSON - CROSS-EXAMINATION BY MR. HALL

1 your patrol car at your residence, most times you come in,
2 you sign on between 5:30 and 15 to six.

3 Q. Let me talk about the crack under the seat. You
4 couldn't put your hand underneath the seat and feel
5 anything; isn't that correct?

6 A. Talking about me or --

7 Q. You or anybody.

8 A. Yes. It's actually loose. You can get your hands
9 down between the seat and the back part of it.

10 Q. But you testified that the crack was found underneath
11 the seat, which meant you had to lift the whole seat up,
12 right?

13 A. Yes, sir.

14 Q. I mean, you had to physically lift the seat up and
15 find the crack underneath the seat?

16 A. Yes, sir.

17 Q. So obviously the crack was not in the floorboard?

18 A. No, sir.

19 Q. And it was not laying on top of the seat?

20 A. No, sir.

21 MR. HALL: No further questions, Your Honor.

22 THE COURT: Redirect.

23 MR. ANTHONY: If I could have one moment.

24 REDIRECT EXAMINATION

25

CORPORAL RUSSELL VINSON - REDIRECT EXAMINATION BY
MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. Is it possible to slide something down in the crack
3 between the backseat, the part of the seat you sit on and
4 the part that your back goes against?

5 A. Yes, it's possible because as much as we take that
6 backseat out to check it, it's loose. It's not tight in
7 there. It's very possible to slide something down in
8 between there.

9 MR. ANTHONY: Thank you. That's everything.

10 THE COURT: Mr. St. Pierre.

11 MR. ST. PIERRE: Nothing further.

12 MR. BRANNON: Nothing further.

13 RECROSS-EXAMINATION

14 BY MR. HALL:

15 Q. When you look at the back of your patrol car, when
16 you got the plastic on the seats, you actually have seat
17 belts coming up out, right?

18 A. Yes, sir.

19 Q. And there's space around the seat belt?

20 A. Not a lot. It's kind of tight. There's slots cut on
21 each side that the two seat belts fit up in.

22 Q. But there is no space between the bottom seat and the
23 back of the seat. That's jammed up, right?

24 A. No, sir. That bottom part moves like it is, there's
25 some space.

CORPORAL RUSSELL VINSON - RECROSS-EXAMINATION BY MR. HALL

1 Q. So is it your testimony that your seat is so loose --
2 does it rattle?

3 A. No, sir, it don't rattle.

4 Q. When you put it back down, do you snap it shut?

5 A. No, sir.

6 Q. It does not snap shut in your car?

7 A. It does, but I do not -- because we have to check it
8 so much.

9 Q. So your testimony is once you check under the seat
10 and you put it down, you don't snap it shut?

11 A. No, sir.

12 Q. All right.

13 MR. HALL: Nothing further.

14 THE COURT: All right. You can step down.

15 MR. BRANNON: Your Honor, I --

16 THE COURT: You've already --

17 MR. BRANNON: I understand that. I don't want to ask
18 him any more questions. I have a motion for the Court.

19 THE COURT: I'm going to let this witness step down.
20 We'll take a break.

21 MR. BRANNON: Okay.

22 THE COURT: Members of the jury panel, I'm going to
23 let you go to the jury room. Let you go to the jury room
24 and have your afternoon break. It sounds like I've got
25 some work to do in here, so I can't promise how long it

1 will be, but we'll send for you fairly promptly. We'll
2 take at least ten minutes to get refreshed.

3 (WHEREUPON, the jury left open court at approximately
4 3:40 p.m.)

5 THE COURT: Before we break, Mr. Brannon, be glad to
6 hear you.

7 MR. BRANNON: Your Honor, I actually have two
8 motions. The first one, Your Honor, is to renew motion to
9 suppress based on the testimony that was derived last
10 night versus what just came from this witness stand. Your
11 Honor, I believe last night that we heard that Officer
12 Vinson was sitting up near the Lighthouse Restaurant and
13 confirmed that the black --

14 THE COURT: That'd be McNeil. Captain McNeil.

15 MR. BRANNON: I'm wrong, forgive me.

16 THE COURT: But you're right that somebody was
17 supposedly up at the Lighthouse.

18 MR. BRANNON: My second motion would be, Your Honor,
19 to allow the jury to see Officer Vinson's patrol car.
20 It's probably here someplace. I know the weather is not
21 the greatest in the world, but I'd like them the
22 opportunity to see this -- for them to see the backseat of
23 this car.

24 THE COURT: We'll deal with that. Anybody else got
25 anything?

1 MR. MCKINNON: Yes, Your Honor, I got the exact same
2 motions.

3 THE COURT: Mr. Anthony, I'm a little concerned
4 myself. I went back and looked at my notes because --
5 when Officer McNeil testified. I went back and looked at
6 my notes, and no one asked him the Lighthouse question,
7 which we all know. I was basing my determination about
8 the car being seen at the Lighthouse on what I believed to
9 have been Officer Sherfield's testimony, and if I recall
10 it correctly, basically they -- he was notified that Pope
11 had said he was at the Lighthouse and that Sherfield was
12 notified by McNeil, McNeil saw him at the Lighthouse.

13 And now McNeil says he was a mile away and could not
14 see the Lighthouse. I'm very concerned about that because
15 my corroboration was based, for lack of a better way to
16 put it, kind of a three-legged stool -- that is, a
17 black -- they were expecting a black Ford Expedition; that
18 there was more than one person in the car, which was
19 confirmed by Officer Sherfield when he followed the car
20 and saw somebody in the back; and that the car was
21 coordinated to be at the Lighthouse when Mr. Pope said it
22 was by an officer. That's exactly what my notes say.
23 They're very cryptic. They don't say it like it's a city.
24 But I got my third peg of the stool was called by Pope at
25 Lighthouse, seen by officer at Lighthouse. Now I

1 understand that that's not the correct information.

2 MR. ANTHONY: Yes, sir. I understand that
3 discrepancy.

4 THE COURT: I think it's more than a discrepancy.
5 It's a crucial fact in the decision I reached.

6 MR. ANTHONY: Well, sir, the Lighthouse, as Captain
7 McNeil testified, is a mile in the same direction on 176
8 from the -- where -- the location where Mr -- where
9 Captain McNeil testified he saw the vehicle is a mile from
10 the Lighthouse --

11 THE COURT: Outside.

12 MR. ANTHONY: -- on the same road that the vehicle
13 was to be traveling on. And it's in the same direction as
14 the vehicle was to be traveling. So while I understand
15 the Court's concern, insofar as the analysis the Court did
16 in regards to corroboration is basically a distinction
17 without a difference.

18 THE COURT: Well, I got to make the distinction
19 whether it's a distinction without difference. You can't
20 tell me whether it's a distinction without a difference.

21 MR. ANTHONY: Oh, I understand --

22 THE COURT: I mean, I'm the one who's got to make
23 that determination because I relied on something that --
24 that now is factually incorrect.

25 MR. ANTHONY: Our position would be that in a

1 session, the corroboration, that the corroboration is
2 essentially the same -- the CI reported that Mr. Pope said
3 he had gone past the Lighthouse. Captain McNeil saw him a
4 mile south of the Lighthouse in the direction the vehicle
5 was to be traveling.

6 THE COURT: My notes say Pope called and said he was
7 at the Lighthouse -- and we can look back at the
8 testimony -- and that he was seen by officer at the
9 Lighthouse. That's my cryptic notes. Of course,
10 that's -- all you get to have that.

11 MR. ANTHONY: Yes, sir. And my -- the State's
12 position would be -- and I understand that the discrepancy
13 exists, but the fact whether you are -- whether Captain
14 McNeil actually saw him at the restaurant or whether it's
15 Captain McNeil saw him a mile south of the restaurant
16 heading in the direction that the vehicle was to be
17 traveling is not -- the corroboration is there regardless.

18 THE COURT: What if it had been 2 miles?

19 MR. ANTHONY: Well, at 2 miles, corroboration would
20 still be there, as long as he's headed down 176 into Union
21 County.

22 THE COURT: So the Lighthouse doesn't really matter,
23 then, as long as he's headed south?

24 MR. ANTHONY: Well, the Lighthouse, that's just a way
25 to know that he's on his way, on the right road, headed in

1 the right direction.

2 THE COURT: Mr. Brannon.

3 MR. BRANNON: Just kind of announcing the Court's
4 ruling already that Mr. Harris is not a CI. You've made
5 that determination. You said you find that he is not a
6 confidential informant. And this is a pretty big
7 discrepancy, Your Honor.

8 THE COURT: Well, I'd already been going back through
9 my notes as soon as I heard the testimony, so obviously
10 I'm concerned about it. And I will give it some thought.
11 Also, what do you say about letting the jury crawl around
12 the police car?

13 MR. ANTHONY: Well, he's not driving the same vehicle
14 anymore that he was driving that day.

15 THE COURT: Does that vehicle exist?

16 MR. ANTHONY: It does. I don't know if they can
17 determine which one it was.

18 THE COURT: Why don't you do it on break. I'm not
19 making a ruling now because I have some concern about what
20 the jury is going to be able to tell literally without
21 crawling in the car, looking in the windows and all that
22 kind of stuff. Just opening the doors and peeping in.
23 Probably not going to be of any benefit to them. I can
24 get that first and make a decision as to whether or not I
25 think it would be a benefit to them, but I need to know if

1 we got the right car. And also it's been 18 months almost
2 since, so I think I got -- I think I've got some concern.
3 But I've got some concern as to whether or not the
4 condition of the car, nobody has testified, number one,
5 it's not his car. Been no testimony the car is the same
6 today as it was --

7 MR. ANTHONY: Yes, sir.

8 THE COURT: -- the day of the arrest. So I have some
9 real great concerns about viewing of the scene, so to
10 speak, that is, viewing of the car. And I got to wrestle
11 with this other one.

12 Anything else? I want to hear all you have to say,
13 Mr. Anthony, because this is, like I said, kind of a
14 three -- I was looking at it, three-legged stool and one
15 of the legs is, if not broken, bent.

16 MR. ANTHONY: I don't think that what the -- Captain
17 McNeil's testimony as to what he saw being different from
18 what Lieutenant Sherfield reported he was told by Captain
19 McNeil. That's what we're dealing with is a
20 differentiation. Captain McNeil testified he saw them a
21 mile south of the Lighthouse. I believe the testimony
22 from the State's witness yesterday was that there -- he
23 was observed at the Lighthouse. But it doesn't go to what
24 Mr. Harris reported at all. It would still corroborate
25 what Mr. Harris reported because to get to a mile south of

1 the Lighthouse on 176, you actually would have had to go
2 past the Lighthouse.

3 MR. BRANNON: I disagree 100,000 percent, Your Honor.

4 THE COURT: Number one, I don't know whether there
5 are any road -- no testimony as to whether there are any
6 other roads in or out -- not in or out. Couldn't be in,
7 they'd go out. Whether there any roads -- and I know
8 where the Lighthouse is. I drive that way a lot to go to
9 Spartanburg. But I don't know whether there are any --
10 between the Lighthouse and the 1 mile where the
11 intersection is, whether there are driveways, houses,
12 whether there are businesses, whether there are other
13 places the vehicle could have pulled out from, whether
14 there are streets that come in there, whether or not there
15 are turnarounds where somebody going north below -- the
16 Lighthouse could have turned around and then come south.
17 MR. BRANNON: Your Honor, I can tell you that I am
18 familiar with at least two roads between the Lighthouse
19 Restaurant and 1 mile beyond there. And -- but I didn't
20 think about turnarounds and driveways. But I drive that
21 here and back every day that I come to Union. And that
22 doesn't include the road that intersects right at the
23 Lighthouse. So there's three roads within 1 mile that I
24 know of for a fact.

25 MR. ST. PIERRE: I would like to join in this motion

1 and ask that this Court take judicial notice of the
2 fact -- if Your Honor would like to look at a map and look
3 at all the intersections within 1 mile radius of that
4 location.

5 THE COURT: I'll make a decision about that.

6 Anything, Mr. McKinnon, Mr. Hall?

7 MR. McKINNON: No, Your Honor.

8 THE COURT: Let's take a break, but I would like the
9 record to reflect that Mr. Brannon has conceded that I
10 outthunk him on something.

11 (A recess was taken from 3:51 p.m. to 4:10 p.m.)

12 THE COURT: As to the car, I'm going to find that
13 we're not going to put the car into evidence. I think
14 even if you find the right one, it's been 18 -- well,
15 we're not quite 18 months. 17 months. 16, 17 months.
16 And I am going to still not grant the motion to suppress.
17 I am, as you can probably tell, disturbed about the way
18 this has fallen into place. Officer McNeil testified
19 yesterday, and I don't think anybody asked him one way or
20 the other about that issue. Can't fault him about it, but
21 it would certainly have been helpful maybe in my analysis.
22 I think -- I know now I would have reached the same
23 conclusion.

24 I looked at my note from Sheriff Taylor, and he said
25 he got the call or -- from McNeil that the car had -- and

1 this is not a quote because I don't have that in front of
2 me -- but from my notes had just passed the Fish Camp,
3 which would be more in line with what McNeil testified to
4 as it being found below. That is the information
5 related -- again, looking at corroboration related through
6 Mr. Harris to Mr. Johnson to the other officers, was that
7 Mr. Pope indicated he was at the Lighthouse Fish Camp and
8 that as soon as this was relayed to McNeil, he saw the
9 described car on 176 headed south and immediately turned
10 around. Based on the timing of the report by Pope to
11 Harris to Johnson to law enforcement in general and the
12 observations of the described car within a mile of --
13 south of the Lighthouse, while not as strong a
14 corroboration as the testimony that I thought we were
15 going to hear, I still find it is sufficient -- sufficient
16 nexus in time and place to establish the settlement
17 corroboration of Harris's testimony as I found yesterday.
18 But -- so we -- the motion to -- again, motions to
19 suppress are again denied on behalf of all three
20 defendants. I'm -- I imagine all three -- Mr. Brannon
21 made it, and I think Mr. St. Pierre joined in.

22 MR. ST. PIERRE: Yes, sir.

23 THE COURT: And Mr. McKinnon.

24 MR. MCKINNON: Yes, sir.

25 THE COURT: You joined in also.

1 MR. ST. PIERRE: As part and parcel of that, I would
2 just like to renew my objection to the hearsay on hearsay
3 on hearsay as that we don't think that that information is
4 allowable under the hearsay rules and exceptions, and I
5 believe that the probable cause is being based on this
6 information that we don't believe is allowed.

7 THE COURT: I understand. All right. You ready for
8 jury?

9 MR. ANTHONY: I have two matters. First of all, I
10 ask that Corporal Vinson be excused.

11 THE COURT: He can be excused.

12 MR. ANTHONY: Also, the State's next witness would be
13 Mr. Harris. We had some discussion earlier about
14 Mr. Harris' record. I inquired with probation, and I
15 determined that -- or I was advised by probation that he
16 actually was released from incarceration in 1999, but he
17 did remain on probation until 2004. So given the fact
18 that I think I do have to have some degree of consistency
19 in the position I would take on these cases, I will not
20 argue to the Court probation doesn't amount to confinement
21 because I'll expect one day I probably will argue that it
22 does.

23 So that said, I think looking at his criminal
24 history, it would appear to me that he could be impeached
25 with the conviction that came out of this incident, which

1 was distribution of crack. And then it also appears to me
2 in 1994 he had three possession with intent to distribute
3 cracks, a distribution of cocaine, a distribution of crack
4 all on the same day. So I think that he could be
5 impeached with those convictions. I do not think he could
6 be impeached with anything else. So if there's a dispute
7 as to that, I'd ask to have that dealt with.

8 THE COURT: Any other impeachable offenses in your
9 opinion, Mr. St. Pierre?

10 MR. ST. PIERRE: I would ask that the -- a 1989
11 conviction for trafficking cocaine be allowed as it
12 pertains directly to this case and my client's right to a
13 defense and a complete defense and the due process of
14 right to a fair trial.

15 THE COURT: I deny the motion. I will not allow you
16 to impeach him on that.

17 MR. ST. PIERRE: Thank you.

18 THE COURT: All right.

19 MR. BRANNON: Your Honor, I'm satisfied with what --
20 the '94 conviction and the most recent one. I do have one
21 issue that I'd like to take up with you after --

22 THE COURT: Okay.

23 MR. MCKINNON: Your Honor, we have no further
24 impeachable offenses.

25 THE COURT: Back to you, Mr. Brannon.

1 MR. BRANNON: Lieutenant Sherfield I think almost
2 unsolicited in his direct testimony said that when
3 Mr. Harris was arrested, his wife was also arrested. I
4 think the State has opened the door for us to talk about
5 his wife's arrest.

6 THE COURT: I didn't write that down. I don't take
7 quite as copious of notes when -- I take fairly copious
8 notes when I've got to make a ruling. I do not take quite
9 as copious of notes, so I don't have a note one way or the
10 other on that. But if his testimony in the record
11 pertaining through direct testimony about -- through any
12 testimony about State, during the State's case, I think
13 that opens the door.

14 MR. ANTHONY: We disagree. It doesn't make the
15 disposition of her case any more relevant than it does the
16 disposition of his. He wasn't doing anything for his wife
17 when he was making that call. He was just trying to make
18 a bond. That takes me back to my original point. They
19 shouldn't be able to go into what happened with his case
20 other than the fact that he was convicted.

21 THE COURT: Well, I think the door has been opened.
22 I'll allow it.

23 MR. BRANNON: Thank you, Your Honor.

24 THE COURT: Bring in the jury.

25

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 (The jury entered the courtroom at 4:17 p.m.)

2 THE COURT: Call your next witness.

3 MR. ANTHONY: We call Mr. Harris. If you could get
4 him out of...

5 WHEREUPON, VINCENT HARRIS, having first been duly sworn,
6 testified under oath as follows:

7 DIRECT EXAMINATION

8 BY MR. ANTHONY:

9 Q. Would you state your name, please.

10 A. Vincent Harris.

11 Q. And Mr. Harris, where are you from?

12 A. Spartanburg.

13 Q. And where are you currently staying?

14 A. Wateree Correctional Institution.

15 Q. And back on June 24th of last year, did you come to
16 Union on that day?

17 A. Yes, sir.

18 Q. And what happened on that day?

19 A. I got arrested.

20 Q. And what did you get charged with?

21 A. Distribution of crack cocaine.

22 Q. Okay. After you were arrested, where did you go?

23 A. To the County jail.

24 Q. And after you went to the County jail, did you make
25 any approach or have any conversation with anybody in

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 Union County law enforcement?

2 A. Yes, sir.

3 Q. Okay. What -- who did you talk to?

4 A. I think Jimmy.

5 Q. Is it this man here --

6 A. Yes, sir.

7 Q. -- over -- sitting here?

8 A. Yes, sir.

9 Q. And did you -- what did you talk to him about?

10 A. I told him I had to go to work the next day and I
11 needed to try to get a bond to get out.

12 Q. And what were you requested to do in order to help
13 get a bond?

14 A. Help myself, make a buy.

15 Q. And so after talking with Sergeant Johnson about
16 that, who did you call?

17 A. Roderick Pope.

18 Q. And how long have you known Mr. Pope?

19 A. I guess about ten years.

20 Q. When you called Mr. Pope, what did you tell him?

21 A. I told him that I wanted to get two quarters.

22 That's -- two quarter ounce of crack cocaine. That's a
23 half an ounce.

24 Q. And when you called him the first time and told him
25 that was what you wanted, what did he say?

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 A. He told me he didn't have any. He had to find it and
2 call me back.

3 Q. When you were making the call, when you made this
4 call and the calls after this call, who was present?

5 A. Mr. Jimmy Johnson right there.

6 Q. So after you made the first call to Mr. Pope and told
7 him what you were looking for, what happened after that?

8 A. He called me back.

9 Q. What did he tell you?

10 A. He told me that he had it.

11 Q. Told you what now?

12 A. He had it, got it.

13 Q. That he had --

14 A. Yes, sir.

15 Q. -- had the crack?

16 A. Had the crack, yes, sir.

17 Q. Did he tell you anything else at that time?

18 A. Yeah. He told me it was going to cost me about
19 600 -- \$650.

20 Q. All right. And at that point in time, did he give
21 you a -- did he tell you where he was?

22 A. No, sir.

23 Q. What did you tell him?

24 A. I told him that -- call me back when he get to 176
25 because I'll be down by the Disney. Past Disney.

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 Q. And what kind of vehicle did Mr. Pope have?

2 A. Black Expedition.

3 Q. And so after he -- you had this conversation where he
4 called, told you he had it and you told him where to meet
5 you, what happened after that?

6 A. He called me back, and my wife had the telephone down
7 in the lobby. Was trying to call the bondsman. And there
8 was -- one of the officers brought the phone back to me
9 and told me that -- said I had a missed call. And I
10 called him back, and he was -- let me know his location.

11 Q. Where did he tell you he was?

12 A. At the Lighthouse Fish Camp on 176. And I told him
13 just come on down past Disney and come up to the store on
14 the hill on the left and I'll be there.

15 Q. All right. And was it -- was it at this point that
16 he told you how much the price was or --

17 A. Yes, sir. Because he said as it normally comes, it's
18 going to cost you.

19 Q. During this conversation, were you able to hear other
20 people in the vehicle besides Mr. Pope --

21 A. I just heard some voices. I don't know who they
22 were.

23 Q. All right. And once you had this conversation with
24 Mr. Pope where he told you that he was at the Lighthouse,
25 who did you pass that information on to?

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 A. Mr. Johnson right there.

2 Q. Okay. And the information concerning the price and
3 hearing the voices, what did -- who did you pass that
4 information on to?

5 A. Jimmy.

6 Q. Now, Mr. Harris, did you know Lashad Brewton?

7 A. No, sir.

8 Q. And did you know Randy Crosby?

9 A. No, sir.

10 Q. And other than having these calls with Mr. Pope, did
11 you have anything else to do with this operation the
12 sheriff's office conducted on June 24?

13 A. No, sir.

14 Q. Okay. After you made these calls, what was done in
15 regards to your bond?

16 A. It was reduced.

17 Q. And do you recall what -- what it was set to?

18 A. Set to \$2,000.

19 Q. Okay. And other than having your -- having the
20 reduction in the bond, was anything else done for you in
21 return for your cooperation on June 24?

22 A. No. I just got out on bond.

23 Q. And then the distribution of crack charge that you
24 took back in May on this -- I'm sorry, back in June on
25 this day, what has -- have you been to court on that

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 charge?

2 A. Yes, sir.

3 Q. And what did you do?

4 A. Plead guilty.

5 Q. And what kind of sentence did you receive?

6 A. Got three years.

7 Q. All right. Is that what you're serving now?

8 A. Yes, sir.

9 Q. I want to take you back to 1994.

10 A. Yes, sir.

11 Q. Did you go to court on some drug charges in 1994?

12 A. Yes, sir.

13 Q. At that time, were you convicted of distribution of
14 cocaine, distribution of crack, and three counts of
15 possession of crack within --

16 A. Yes, sir.

17 Q. Within --

18 A. Yes, sir.

19 MR. ANTHONY: If I could have one moment.

20 Q. You said you've known Mr. Pope since 2001?

21 A. Yeah, about 2001, yes, sir.

22 Q. And did you have his phone number?

23 A. Yes, sir.

24 Q. Okay. And when you were making these conversations,
25 how certain were you the person you were talking to was

VINCENT HARRIS - DIRECT EXAMINATION BY MR. ANTHONY

1 Roderick Pope?

2 A. I got his name in my phone.

3 Q. And did you recognize his voice when you talked to
4 him?

5 A. Yes, sir.

6 Q. And how sure were you that's who you were talking to?

7 A. Positive.

8 Q. Thank you very much.

9 THE COURT: Mr. St. Pierre.

10 MR. ST. PIERRE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. ST. PIERRE:

13 Q. Mr. Harris, you mentioned that you -- your wife was
14 in the lobby of the jail, correct?

15 A. Yes, sir.

16 Q. And that's because she was arrested with you on the
17 distribution of crack cocaine, right?

18 A. Yes, sir.

19 Q. Right?

20 A. Yes, sir.

21 Q. You said that your bond was set at \$2,000?

22 A. Yes, sir.

23 Q. For your help in this.

24 And how much did you actually pay to get out on bond?

25 A. I think 200.

VINCENT HARRIS - CROSS-EXAMINATION BY MR. ST. PIERRE

- 1 Q. \$200. Okay.
- 2 When did you have your bond hearing?
- 3 A. Same day, June 24.
- 4 Q. Yeah. Do you remember what time?
- 5 A. It was about six, something like that. Six or seven.
- 6 I don't know. 6:30, something like that.
- 7 Q. Six or 6:30?
- 8 A. Something like that.
- 9 Q. Okay. And who was present at the bond hearing?
- 10 A. Excuse me?
- 11 Q. Who was present at your bond hearing?
- 12 A. The judge and Mr. Jimmy Johnson right there.
- 13 Q. Mr. Johnson was at your bond hearing?
- 14 A. Yes, sir.
- 15 Q. Now, you were pulled over -- after you sold some
- 16 crack cocaine to a confidential informant, you were pulled
- 17 over along with your wife?
- 18 A. Yes, sir.
- 19 Q. You were transported to the jail in what kind of car?
- 20 A. A marked car.
- 21 Q. A marked car?
- 22 A. A marked police car.
- 23 Q. Were you and your wife in the same car?
- 24 A. No, sir.
- 25 Q. In different cars?

VINCENT HARRIS - CROSS-EXAMINATION BY MR. ST. PIERRE

- 1 A. Yes.
- 2 Q. Okay. And how much dope did you sell?
- 3 A. I guess about -- probably about two and a half grams.
- 4 Q. Two and a half grams? Got money terms?
- 5 A. \$240. \$240.
- 6 Q. \$240?
- 7 A. Yes.
- 8 Q. Okay. How much -- how many grams are in a half
- 9 ounce?
- 10 A. How many grams in a half ounce? About 14.
- 11 Q. 14 grams.
- 12 You are in the Department of Corrections, and you
- 13 pled guilty to a distribution of crack cocaine first
- 14 offense, right?
- 15 A. Yes, sir.
- 16 Q. And you became parole eligible last month, didn't
- 17 you?
- 18 A. Yes, sir.
- 19 Q. And your scheduled max-out date is before next
- 20 Christmas, isn't it?
- 21 A. Yes.
- 22 Q. And, in fact, if you didn't help these people, you
- 23 were facing 10 to 30, weren't you?
- 24 A. Yes, sir.
- 25 Q. And you've already had 15-year sentences for crack

VINCENT HARRIS - CROSS-EXAMINATION BY MR. ST. PIERRE

1 cocaine, haven't you?

2 A. Yeah, 15 suspended to 10.

3 Q. And then probation afterwards, right?

4 A. Five years' probation.

5 Q. And if you messed up on probation, you got another 15
6 hanging over your head, right?

7 A. Yes, sir. I did all that.

8 Q. So a man who sold \$240 worth of crack such as
9 yourself spent a total of five hours in jail?

10 A. Yes.

11 Q. Facing 10 to 30 years?

12 A. Yes, sir.

13 MR. ANTHONY: Objection to the amount of time he was
14 facing.

15 MR. ST. PIERRE: He answered the question.

16 THE COURT: I'll overrule it.

17 MR. ST. PIERRE: No further questions.

18 CROSS-EXAMINATION

19 BY MR. BRANNON:

20 Q. Mr. Harris, when you got arrested that day, you had
21 apparently sold some drugs to a confidential informant,
22 right?

23 A. Yes, sir.

24 Q. When you got arrested, did they take your money from
25 you?

VINCENT HARRIS - CROSS-EXAMINATION BY MR. BRANNON

1 A. Yes, sir.

2 Q. What about your wife? Did they take the money from
3 her?

4 A. Yeah, I don't know if she had any or not.

5 Q. I'm sorry?

6 A. Yes, sir, she's the one that had the money.

7 Q. So they took what money you and your wife had from
8 you, right?

9 A. Yes, sir.

10 Q. Who did you call to help you make bond?

11 A. She was calling someone.

12 Q. Okay. Where did you get the money to -- where did
13 you get the \$200?

14 A. My son-in-law.

15 Q. Your son-in-law came and brought you \$200?

16 A. Then I had to bring the \$200 back.

17 Q. I gotcha.

18 Is your wife in jail today?

19 A. No, sir.

20 Q. Okay. Did she plead guilty to anything?

21 A. No, sir.

22 Q. So her charge went away?

23 A. I guess.

24 Q. And in 1994, you pled guilty to a total of five drug
25 charges?

VINCENT HARRIS - CROSS-EXAMINATION BY MR. BRANNON

1 A. Yes, sir.

2 Q. Sentenced to 15, suspended to 10 with 5 years'

3 probation, right?

4 A. Yes, sir.

5 Q. And then you get arrested in June of 2010 in Union

6 County. And what you said to this officer right here is,

7 "I got to get a bond because I got to go to work

8 tomorrow," right?

9 A. I told him I had to go to work, yes.

10 Q. All right. And what did he say to you?

11 A. Help myself.

12 Q. To help yourself?

13 A. Yes, sir.

14 Q. Now, when you said to him, "I need to go to work, I

15 need to get a bond" and then he said "help yourself,"

16 where was your cell phone?

17 A. I think he had it.

18 Q. Right. Police had it, right? So he gave you the

19 phone back, right?

20 A. Yes, sir.

21 Q. Okay. And you say that the first time you called the

22 phone that you -- you -- the first time you made a phone

23 call to the person you allege was Roderick Pope, that

24 person on the other end of the phone said, "I don't have

25 any drugs."

VINCENT HARRIS - CROSS-EXAMINATION BY MR. BRANNON

1 A. Yes, he said, "I don't have any now."

2 Q. Don't have any drugs. Thank you.

3 MR. BRANNON: Nothing further.

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q. You walked out of the jail with your phone, didn't
7 you?

8 A. Yes, sir.

9 Q. You went home with your phone?

10 A. Yes, sir.

11 Q. And the police didn't take your phone?

12 A. No, sir.

13 Q. They didn't take any pictures of your phone?

14 A. Not as I know of.

15 Q. And obviously you don't have that phone with you
16 today because you're incarcerated?

17 A. No. It's at home.

18 Q. Now let's talk about where you were at the jail. You
19 just testified that you were taken out to the Union County
20 jail, the detention center; is that right?

21 A. Yes, sir.

22 Q. And you and your wife were taken in?

23 A. Yes, sir.

24 Q. And were you taken back and put in a cell?

25 A. No, sir.

VINCENT HARRIS - CROSS-EXAMINATION BY MR. HALL

1 Q. All right. Where were you when you contacted -- when
2 you said, "I need to talk to an officer"?

3 A. I was sitting in the back.

4 Q. In the back -- where was your wife?

5 A. My wife was in the back with me at first.

6 Q. So y'all were together?

7 A. Yes, sir -- no, no, she was in a holding cell. They
8 separated us.

9 Q. Were you -- you were in holding cells?

10 A. Yes.

11 Q. And so you sent word out that you wanted to talk to
12 an officer?

13 A. Yes.

14 Q. What happened after that?

15 A. I talked with the officer.

16 Q. Where?

17 A. In the back, in the...

18 Q. Was that in the same place you were sitting? Did he
19 come back to you? Did he come back to where you were, or
20 did y'all go somewhere?

21 A. We went into an office, in the office.

22 Q. You went into an office?

23 A. Yeah, in the back, yeah.

24 Q. In the back.

25 And where was your cell phone when you -- was that

VINCENT HARRIS - CROSS-EXAMINATION BY MR. HALL

1 with Officer Johnson?

2 A. Yes.

3 Q. Sergeant Johnson.

4 Where was your cell phone when you and Sergeant
5 Johnson went into that room?

6 A. They had my phone.

7 Q. He had your phone?

8 A. I guess he had the phone. I don't know.

9 Q. And you started making calls?

10 A. Yes, sir.

11 Q. Where was Sergeant Johnson when you were making the
12 phone calls?

13 A. Sitting right there in front of me.

14 Q. Sitting right in front you.

15 But at some point, you gave your wife the phone back?

16 A. Because she wanted to use the phone, the lady came in
17 and got the phone from me. She wanted to use the phone.

18 Q. So there was a time when -- obviously when you
19 believed that your wife had the phone?

20 A. Yeah, she had it.

21 Q. She did have it?

22 A. Yeah. Once he had gave it back to me and once I made
23 the call, I did give it to her.

24 Q. And as far as you know --

25 A. She was calling the bondsman.

VINCENT HARRIS - CROSS-EXAMINATION BY MR. HALL

1 Q. And then that phone came back to you?

2 A. Yeah. She sent the phone back to me.

3 Q. Now, at that time, you didn't know how many calls she
4 had made?

5 A. No, sir.

6 Q. And at that time, did the police ever look at the
7 phone -- did you hand her the phone? How did she get the
8 phone?

9 A. The guy came in and got the phone and took it to her.
10 She wanted to use the phone to call --

11 Q. It wasn't Sergeant Johnson?

12 A. He was sitting in front of me.

13 Q. So it wasn't Sergeant Johnson who got the phone from
14 you and took it to your wife?

15 A. Another officer did.

16 Q. That's what I'm asking.

17 And did that same officer bring the phone back to
18 you?

19 A. Yes.

20 Q. And you continue to make calls?

21 A. No, I just made that one -- that call that I already
22 had made.

23 Q. And you -- did you ever give your phone back to
24 Sergeant Johnson?

25 A. No, sir.

VINCENT HARRIS - CROSS-EXAMINATION BY MR. HALL

- 1 Q. So you took your phone with you to the bond hearing?
- 2 A. Had the bond hearing in the same room?
- 3 Q. Same room. Is that in the office?
- 4 A. Right there, I guess.
- 5 Q. The judge came into the office?
- 6 A. Yes.
- 7 Q. Did he sit behind a desk?
- 8 A. Yes.
- 9 Q. All right. Was there a sign on that door? Is it --
- 10 does it say --
- 11 A. I don't have the slightest idea.
- 12 Q. Did the judge fill out paperwork there?
- 13 A. Uh-huh.
- 14 Q. Did he ask you questions there?
- 15 A. Yes.
- 16 Q. Do you remember?
- 17 A. I don't remember what he asked me. I just remember
- 18 answering questions.
- 19 Q. Now, you testified that you sold two and a half
- 20 grams?
- 21 A. Yes.
- 22 Q. And how many grams in an ounce?
- 23 A. 28.
- 24 Q. How many grams are in half an ounce?
- 25 A. 14.

VINCENT HARRIS - CROSS-EXAMINATION BY MR. HALL

1 Q. 14 grams. So if one had a 14-gram rock of crack and
2 you pinched off two and a half to sell, how many grams
3 would you have?

4 A. 12.

5 Q. Would you have 11 and a half?

6 A. Yes.

7 Q. Do you always take your wife when you go sell drugs?

8 A. No, sir.

9 MR. HALL: No further questions.

10 MR. ANTHONY: What was the last question?

11 THE COURT: Does he always take his wife with him to
12 sell drugs, and the answer was no.

13 Redirect?

14 MR. ANTHONY: Just one question.

15 REDIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q. When were you released from your incarceration?

18 A. When was I released from my last incarceration?

19 Q. Yes.

20 A. January 15th of 1999.

21 MR. ANTHONY: Thank you. That's everything.

22 MR. ST. PIERRE: Nothing further.

23 THE COURT: Mr. Brannon.

24 MR. BRANNON: Nothing.

25 THE COURT: Hall.

1 MR. HALL: Nothing, Your Honor.

2 THE COURT: Step down.

3 Call your next witness.

4 MR. ANTHONY: Next witness will be Sergeant Johnson.

5 THE COURT: Please come up and be sworn.

6 WHEREUPON, SERGEANT JAMES JOHNSON, having first been duly
7 sworn, testified under oath as follows:

8 MR. ST. PIERRE: Judge, I've got a matter for the
9 Court before this witness.

10 THE COURT: Come on up and have a seat. I'll have
11 the jury go the jury room for a few minutes while we take
12 up a matter outside your presence.

13 (WHEREUPON, the jury left open court at approximately
14 4:40 p.m.)

15 THE COURT: All right.

16 MR. ST. PIERRE: Judge, I apologize for the delay.
17 At this time I would renew my...

18 THE COURT: Go ahead.

19 MR. ST. PIERRE: I would renew my motion to suppress
20 based on the fact that the State never elicited from the
21 only person who was on the phone with the alleged Mr. Pope
22 that he would be driving a black Ford Expedition. I may
23 be wrong, but I've checked with co-counsel, and they
24 didn't hear any testimony that a black Ford Expedition
25 would be coming down. And we've heard testimony all this

1 morning about a black Ford Expedition.

2 And my objection is about the hearsay. Have been
3 overruled, but at this point because he's testified and
4 subject to cross-examination and all the other, there's
5 no -- that is hearsay prior testimony about a black Ford
6 Expedition. And I just make my motion regards to that.

7 THE COURT: Motion denied. Bring the jury back in.

8 MR. BRANNON: Your Honor, that --

9 THE COURT: Wait, wait.

10 MR. BRANNON: I understand the ruling, join in the
11 motion.

12 MR. McKINNON: As do we, Your Honor.

13 THE COURT: All right.

14 DIRECT EXAMINATION

15 BY MR. ANTHONY:

16 Q. State your name, please.

17 A. James Johnson.

18 THE BAILIFF: There's a juror missing.

19 THE COURT: This isn't the first time that's
20 happened. That's okay. Thank you. You were sworn? We
21 did get him sworn in, right? Go ahead.

22 Q. Would you state your name, please.

23 A. James Johnson.

24 Q. Mr. Johnson, how are you employed?

25 A. I'm a narcotics investigator for the sheriff's

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 office.

2 Q. And how long have you worked at the sheriff's office?

3 A. 14 years.

4 Q. And how long you been a narcotics investigator?

5 A. Three years in January.

6 Q. Were you working back on June 24th --

7 A. Yes, sir.

8 Q. -- of this year?

9 A. Yes, sir.

10 Q. And did you come into contact that day with Vincent
11 Harris?

12 A. Yes, sir, I did.

13 Q. And how did you come into contact with him?

14 A. We had a confidential informant who was an
15 acquaintance of some type of Mr. Harris. He -- this
16 individual called Mr. Harris, set up a deal, and had
17 Mr. Harris bring an amount of crack cocaine to Union. And
18 we had set up at the Aunt M's on Highway 176 in the
19 Jonesville area. That's where Mr. Harris was advised by
20 the informant to meet him.

21 Once he arrived, a undercover drug purchase took
22 place. And once the informant got the crack cocaine and
23 left the area, we moved in and took Mr. Harris and his
24 wife into custody.

25 Q. And after they were taken into custody, did you hear

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 anything from Mr. Harris later on that afternoon?

2 A. Yes. A short time after he was taken into custody
3 and arrived at the jail, I was notified that he wanted to
4 speak with one of us. I let Mr. Sherfield know that, and
5 I went to the county jail to speak with Mr. Harris.

6 Q. Okay. And what transpired between you and
7 Mr. Harris?

8 A. Mr. Harris stated that he had a job and was very
9 important that he make it to that job the following
10 morning, that he had had that job for some time and he
11 didn't want to lose it. I advised him that if he wanted
12 my help, that he would have to help himself. That's how
13 the narcotics -- when we are conducting our investigations
14 and how we do our job, sometimes we have to have help from
15 individuals who sometimes get into trouble to get to the
16 next level.

17 When I advised him of that, he stated that he had
18 someone that he could contact. He was advised that these
19 individuals, if they were in Spartanburg County that they
20 would have to be willing to bring an amount of cocaine or
21 crack or contraband to Union or into Union county. He
22 stated that he could do that, and he stated that he had an
23 individual he could call.

24 I was in the possession of his cell phone at that
25 time because we always take cell phones as part of when we

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 do make arrests on drug charges like that. He stated that
2 he could call Mr. Roderick Pope, but he would not answer
3 another number. He would answer the phone if he seen
4 Vincent's cell phone number show up on his cell phone.

5 Q. Okay.

6 A. And at that time I give him his cell phone back to
7 allow him to make that telephone call.

8 Q. And what did you tell him you'd do in regards to him
9 being able to go to work the next day?

10 A. I told him that I would go and talk to the magistrate
11 for him and request for the magistrate to lower a bond, a
12 bond that -- that he could possibly make so that he and
13 his wife could get out so he could make it to work the
14 next morning. I advised him that I couldn't promise
15 anything. Only thing I could do is go and talk to the
16 magistrate and make that request.

17 Q. All right. And so who did you notify once you come
18 to this arrangement with Mr. Pope? Who did you notify?

19 A. Lieutenant Sherfield.

20 THE COURT: Not Mr. Pope. I don't think he had an
21 arrangement with Mr. Pope.

22 MR. ANTHONY: I'm sorry. Mr. Harris.

23 Q. Who did you notify?

24 A. I notified Lieutenant Sherfield.

25 Q. And what were your responsibilities in regards to

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 dealing with Mr. Harris and doing this operation

2 concerning Mr. Hope?

3 A. I notified Lieutenant Sherfield of the situation that
4 was at hand, that Mr. Harris was making -- trying to make
5 contact with an individual that would possibly bring more
6 contraband to Union. During that time, my position was to
7 stay there at the jail with Mr. Harris and monitor the
8 phone calls and to pass this information along to
9 Lieutenant Sherfield and the other officers who were out
10 on the road.

11 Q. All right. And so after you advised Lieutenant
12 Sherfield of this, what -- what happened between you and
13 Mr. Harris?

14 A. Well, at that point, Mr. Harris placed a phone
15 call -- during this time we had moved from the front area
16 of the jail where they -- booking area into a separate
17 room where we do a lot of our interviews. So we were in
18 that room to start with. I give Mr. Harris his phone
19 back, and at that time he placed a call to a subject on
20 the other line. I know that he was having a conversation
21 with an individual. This time I didn't know who that
22 individual was. All I know is that it was an individual
23 that Mr. Harris called Roderick Pope. Excuse me.

24 Q. All right. And after the first -- first call, after
25 Mr. Harris made the first call, what information did you

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 relay up?

2 A. I advised Lieutenant Sherfield that a call had been
3 placed, we were waiting for that individual to call back
4 and state whether or not they had the contraband and were
5 going to bring the contraband to Union.

6 Q. After that, was there another contact?

7 A. Yes.

8 Q. Did Mr. Harris receive a call?

9 A. Well, as part of the situation with Mr. Harris and
10 talked to him and doing business with Mr. Harris at this
11 point. The fact that he was trying to get this lined up
12 and get somebody to Union. He seemed to be very confident
13 that he could get something brought to Union and this type
14 of situation. With his wife being in a -- up front or in
15 a separate area, they had someone they needed to contact
16 to try to get someone down there to bring bond money to
17 get them out if this went through.

18 So I allowed one of the jail officers to take the
19 cell phone to her because that's -- had the numbers in it
20 for her to call. She had it a very short time, and when
21 it was brought back, there was one missed call where the
22 individual that he was calling, Mr. Pope, had called and
23 actually had a missed call. So at that point Mr. Harris
24 called -- I think he called him back.

25 Q. And after the call back where Mr. Harris called

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 Mr. Pope back, was -- did you witness a conversation where
2 Mr. Harris was talking on the phone?

3 A. Yes, sir, I did.

4 Q. After witnessing that conversation, did you relay any
5 information to Lieutenant Sherfield?

6 A. Yes. At that time I advised Lieutenant Sherfield
7 that the deal was set up that this -- Mr. Pope or whoever
8 he was talking on the phone with at that time -- he stated
9 that he told me that it was Mr. Pope, said that he
10 would -- that he did have it, that he would be on the way.

11 Q. And what happened after that?

12 A. At that time, a number -- one or two more calls were
13 placed. There was a number of calls placed by Mr. Harris,
14 basically gathering the information as to where they were
15 at, what location they were in. I had asked him if he
16 could tell if anybody else was in the car and that type of
17 thing. He was basically gathering information for me, and
18 I was relaying it to the other officers.

19 I had advised him at one point that I knew a location
20 was the Lighthouse in Pacolet area, the Lighthouse Fish
21 Camp, that they passed it, and I relayed that information
22 to Lieutenant Sherfield and the road officers and also
23 advised them that it was a black Ford Expedition.

24 Mr. Harris had advised me that he had seen it. That's
25 what Mr. Pope is usually in, almost always in, and that

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 Mr. Pope was a black male, described him, and there were
2 other occupants in the car with him. Didn't have any
3 information as to who or how many or any description of
4 those individuals.

5 Q. And did you advise Lieutenant Sherfield of how much
6 crack to look for once the stop --

7 A. Yes.

8 Q. -- was executed?

9 A. It was supposed to be a half ounce of crack cocaine,
10 and the price I advised him we were supposed to be making
11 a deal for 600 -- actually \$650.

12 Q. So after these calls were made, were you advised that
13 there had been a stop made of a vehicle?

14 A. Yes.

15 Q. Did you ever go out to the scene of the stop?

16 A. No, sir.

17 Q. Okay. What did you do in regards to Mr. Harris after
18 you were told that the vehicle stop had been executed?

19 A. Once we found that Mr. Pope was supposed to be on his
20 way, we actually moved to a separate office at that time.
21 It was Mr. Harris, and I had actually gotten -- because I
22 didn't want them in the booking area where his wife was at
23 that time or to be seen by any individuals that were
24 arrested and brought in. So we moved up to the front area
25 of the jail, which is close to where the magistrate's

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 office is located. And there's a separate office up
2 there. It's across from where the magistrate usually does
3 his business. And we staged up in that area until
4 everything went down.

5 At that point, I was notified by Lieutenant Sherfield
6 that they had stopped a black Expedition with Mr. Pope and
7 two other males and he was letting me know that they were
8 taking them into custody at that time. Following that,
9 just as I had advised Mr. Harris I would do, the
10 magistrate, the on-call magistrate had showed up. I spoke
11 with the magistrate, advised him of the situation that we
12 had and advised him what Mr. Harris had done, we had made
13 arrest on this situation, on the incident, and requested a
14 bond set that Mr. Harris could possibly make bail -- make
15 bail on.

16 Q. And was that an initial bond set for Mr. Harris?

17 A. Yes.

18 Q. So he had not had a bond set at a higher amount
19 initially --

20 A. Correct.

21 Q. -- is that correct?

22 A. This was his initial bond.

23 Q. Okay. All right. And other than the assistance or
24 your comment to the magistrate in regard to Mr. Harris'
25 bond, was anything else -- were any other recommendations

SERGEANT JAMES JOHNSON - DIRECT EXAMINATION BY MR. ANTHONY

1 made by the sheriff's office for Mr. Harris for his
2 assistance that night on June 24th?

3 A. No, sir.

4 MR. ANTHONY: If I could have one moment. All right.
5 Thank you. That's everything on the record.

6 THE COURT: Mr. St. Pierre.

7 MR. ST. PIERRE: May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. ST. PIERRE:

10 Q. Mr. Johnson, is the goal of the Union County
11 Sheriff's Office narcotics division to keep Union County
12 drug-free?

13 A. To attempt to, yes, sir.

14 Q. And --

15 A. It's not just Union County, but I guess you'd
16 consider it the state of South Carolina.

17 Q. But you're employed by Union County, right?

18 A. Yes, sir.

19 Q. And instead of offering assistance in the form of
20 drug counseling, you actually arranged for what appeared
21 to be someone bringing 14 grams of crack cocaine from
22 Spartanburg County into Union County, did you not?

23 A. Yes, sir.

24 Q. Okay. Now, Mr. Harris has testified that he sold two
25 and a half grams for \$240; is that right?

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY
MR. ST. PIERRE

- 1 A. That seems right, yes, sir.
- 2 Q. And that -- would you agree that's roughly \$100 a
- 3 gram?
- 4 A. Sounds right.
- 5 Q. And there's 14 grams in a half an ounce?
- 6 A. Yes, sir.
- 7 Q. And \$100 a gram, that would be \$1,400, right?
- 8 A. Yes, sir.
- 9 Q. Okay.
- 10 A. If it was sold -- if that's what it calculated up to.
- 11 Q. Thank you.
- 12 A. But that's not usually the --
- 13 THE COURT: Wait --
- 14 Q. Thank you.
- 15 A. I'm sorry.
- 16 THE COURT: Wait for him to ask you a question.
- 17 THE WITNESS: Sorry.
- 18 Q. You testified yesterday that you've never been to a
- 19 bond hearing in magistrate's court; is that right?
- 20 A. No, sir.
- 21 Q. Okay. But, in fact, that's not right.
- 22 A. Yes, sir, I did testify to that. You're right. No,
- 23 sir, I have not been.
- 24 Q. But, in fact, you went to a bond hearing in this
- 25 particular day, right?

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY
MR. ST. PIERRE

1 A. No, sir, I did not. I went and spoke to the
2 magistrate, and then I left. Mr. Harris spoke with the
3 magistrate, and they had the bond hearing once I left.

4 Q. But you agree that Mr. Harris testified that it was
5 you -- that you were present at his bond hearing?

6 A. I would agree that he testified to that, but I was
7 there, spoke to the magistrate, then left.

8 Q. So are you saying Mr. Harris is unreliable?

9 MR. ANTHONY: Objection.

10 A. I'm not saying that at all.

11 THE COURT: Wait, wait. When I start talking,
12 everybody has to stop. I sustain the objection.

13 MR. ST. PIERRE: No further questions.

14 CROSS-EXAMINATION

15 BY MR. BRANNON:

16 Q. Investigator, when you got wind that Mr. Harris
17 wanted to talk to you, what did you know about him?
18 Before you went in and saw him, what did you know about
19 him?

20 A. I knew that I had just arrested him for selling crack
21 cocaine.

22 Q. Okay. And that's all you knew?

23 A. Pretty much.

24 Q. So --

25 A. That and -- besides what I just learned immediately

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 about him, where he was from and his name and that type of
2 thing.

3 Q. So before you arrested him, what did you know about
4 him?

5 A. I just knew that he was an individual that sold crack
6 and he was from Spartanburg and that my informant had
7 apparently dealt with Mr. Harris prior to that. That's
8 how we had contact.

9 Q. Right. Now, you knew that the informant told you
10 that Mr. Harris dealt crack, right?

11 A. Correct.

12 Q. You didn't have any personal knowledge of Mr. Harris
13 having ever dealt crack before, correct?

14 A. No, sir.

15 Q. Okay. All right. But this man that you have just
16 arrested wants to talk to you. And he wants some help
17 with a bond, right?

18 A. Yes, sir.

19 Q. Okay. And when he tells you he wants some help with
20 his bond, you said what?

21 A. I advised him that situation being his -- the
22 situation he was in, if he wanted my assistance, that he
23 would have to help himself.

24 Q. Meaning he would have to do something for you, right?

25 A. Correct.

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 Q. He would have to work for you, correct?

2 A. Correct.

3 Q. All right. And that work for you was make a phone
4 call to somebody that Mr. Harris told you might have
5 drugs, right?

6 A. Correct.

7 Q. Okay. Then I think you said something about telling
8 him what you needed him to do, right? I mean, he was
9 going to make the phone call, but then there was -- you
10 said, "He was gathering information for me," right?

11 A. Yes, sir.

12 Q. So there was the initial phone call, right?

13 A. Yes, sir.

14 Q. And did you hear Mr. Harris say that when he
15 initially made the phone call, that whomever it was he
16 talked to said "I don't have any drugs"?

17 A. He advised me that --

18 THE WITNESS: Can I say what --

19 THE COURT: He asked the question. Answer the
20 question.

21 A. He advised me that when he made contact with
22 Mr. Pope, Mr. Pope said he didn't -- was not holding
23 anything at that time, that he would call him back and
24 check on something.

25 Q. So was not holding, right?

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 A. Right.

2 Q. Means he didn't have any, right?

3 A. Correct.

4 Q. Okay. All right. Now, do you have any evidence, any
5 evidence at all that had you not handed Mr. Harris his
6 phone back, that Mr. Pope would have ever come to Union,
7 South Carolina, on that day?

8 A. No, sir.

9 Q. Okay. All right. So to get you to give him
10 assistance on the bond, he made that first phone call,
11 right?

12 A. Yes, sir.

13 Q. He was working for you when he made that first phone
14 call, right?

15 A. Yes, sir.

16 Q. And -- but you weren't able to gather enough
17 information on that first phone call to satisfy you,
18 correct?

19 A. Correct.

20 Q. So there were additional phone calls made by
21 Mr. Harris to somebody he alleged was Roderick Pope. A
22 total of five phone calls, right?

23 A. Right. After Mr. Pope called.

24 Q. Right. I'm just talking about outgoing phone calls
25 from the man that was sitting in front of you. Five

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 outgoing phone calls, right?

2 A. Right.

3 Q. And each time, Mr. Harris was asking questions based
4 on something that you told him you needed, correct?

5 A. Well, he was trying to find out locations where he
6 was at, how far out, you know, that type of thing.

7 Q. Right. But those were things that you told him you
8 needed to know, right?

9 A. Right.

10 Q. Or wanted to know, right?

11 A. Right.

12 Q. Okay. How many people were in the car?

13 A. I have no idea. I would not have any idea of that
14 until he was stopped, and then there was three.

15 Q. Mr. Harris didn't know, right?

16 A. No, sir. He just said that he could hear individuals
17 in the background, so he knew there was more than one
18 person in the car.

19 Q. Just a quick math question. What is 14 minus two and
20 a half?

21 A. Be 11.5.

22 Q. 11.5. Okay. Thanks.

23 Now, you said to Mr. Harris, "If you do what you say
24 you can do, I'll go speak to the magistrate about a
25 reduced bond," right?

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 A. Correct.

2 Q. And you did that, right?

3 A. Correct.

4 Q. And this man -- who in 1994 pled guilty to five
5 separate and distinct drug charges and was sentenced to 15
6 years, suspended to 10, with 5 years' probation, then
7 popped again for distribution of crack -- walks out of
8 your jail for \$200, right?

9 A. Correct.

10 Q. So based on your word to the magistrate, \$200 pays
11 his way out of jail, right?

12 A. I didn't get him off scot-free, no, sir. But yes, he
13 did.

14 Q. \$200. But on that same day, you charged Mrs. Harris,
15 didn't you?

16 A. Yes, sir.

17 Q. She's not in jail today, is she?

18 A. No, sir.

19 Q. And she didn't plead guilty to anything, did she?

20 A. No, sir.

21 Q. All right. And if I get arrested for possession of
22 cocaine and I go to court and I get sentenced to probation
23 or something like that, if I get arrested for the same
24 thing again, isn't it true that the sentence for the
25 second punishment can be more harsh than it was for the

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 first crime?

2 A. Could be.

3 Q. It's called enhancement, right?

4 A. When that happens.

5 Q. Right. So when you get a second drug charge, the
6 sentence is enhanced, right?

7 A. Correct. Well, excuse me. Can you say that again.

8 Q. A second-offense drug charge can mean enhancement,
9 right, of the sentence?

10 A. I'm sorry, I thought you said "does mean."

11 Q. Can mean.

12 A. Can mean. Yes, sir.

13 Q. Well, what we know is Mr. Harris pled guilty to a
14 sixth offense.

15 A. No, sir, we don't know that.

16 MR. ANTHONY: Objection. We don't know that.

17 THE COURT: Yeah, I sustain the objection.

18 MR. BRANNON: Understand.

19 Q. What we know is in 1994, he pled guilty to five
20 separate charges, right?

21 A. Yes, sir.

22 Q. Okay. And if you add one to five, it's six, right?

23 A. I would assume that, but the way it is rolled into
24 it, I doubt that there is actually -- would be six

25 separate charges or the sixth offense. If that would be

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 the case, then half the people that we lock up wouldn't be
2 here; they'd all be in prison.

3 Q. And he got a three-year sentence for this charge in
4 June of 2010, right?

5 A. Yes, sir.

6 Q. Okay. But the only promise you made was "I'll talk
7 to the magistrate," right?

8 A. That is the only promise that I made at that time,
9 yes, sir.

10 Q. At that time?

11 A. That's the only promise I made to him for what he
12 done that day.

13 Q. "At that time." That's what you just said.

14 A. On that day.

15 Q. Okay. "At that time" is what you just said, right?

16 A. What I said was what he did that day is the only
17 thing that I promised him I would do is go talk to the
18 magistrate for what he done that day, and that was the
19 only thing that came out of that for that -- the dealing
20 with Mr. Pope.

21 Q. All right. Now, that arrest where Mr. Harris was
22 picked up, that traffic stop, that was all video recorded,
23 wasn't it?

24 A. Yes, sir.

25 Q. You had him -- you had his voice on tape and you had

SERGEANT JAMES JOHNSON - CROSS-EXAMINATION BY MR. BRANNON

1 his pretty picture on tape, didn't you?

2 A. Yes, sir.

3 Q. But you don't -- you didn't record any of the phone
4 calls between Harris and who he says was Pope, did you?

5 A. No, sir. At that time, I didn't have any video
6 recording equipment with me when I stopped at the jail to
7 speak with this individual.

8 Q. All right. Did you ever request Mr. Harris's cell
9 phone records?

10 A. No, sir, I did not.

11 Q. Have there been any cell phone records requested by
12 law enforcement in this case?

13 A. No, sir. We had Mr. Pope's phone with the calls on
14 it that was taken from him.

15 Q. Okay. All right.

16 MR. BRANNON: One second, Your Honor. Nothing
17 further. Thank you.

18 MR. McKINNON: Your Honor, we have no questions of
19 Sergeant Johnson.

20 THE COURT: Any redirect?

21 MR. ANTHONY: May we have one moment?

22 REDIRECT EXAMINATION

23 BY MR. ANTHONY:

24 Q. What happened with Mr. Harris there at the jail as
25 far as asking him to see if he could get somebody to come

SERGEANT JAMES JOHNSON - REDIRECT EXAMINATION BY
MR. ANTHONY

1 down here and bring crack into Union County, is that
2 fairly commonplace?

3 A. Is it fairly commonplace?

4 Q. Yeah.

5 A. It does happen, yes, sir. I mean, it's happened in
6 the past.

7 Q. Okay. And what, based on your experience, what is
8 the street value of a half ounce of crack?

9 MR. BRANNON: Object. Outside the scope of anybody's
10 cross.

11 THE COURT: Yeah, I sustain the objection.

12 Mr. St. Pierre?

13 I'm sorry, you through?

14 MR. ANTHONY: I don't have anything else. I thought
15 there was cross-examination along those lines from
16 Mr. St. Pierre, but if I'm -- I'm wrong, then.

17 MR. ST. PIERRE: I thought I just asked him to do the
18 simple math. Without -- I didn't --

19 THE COURT: I sustain the objection. Anything else?

20 MR. ANTHONY: No.

21 MR. ST. PIERRE: I have nothing further of this
22 witness, Your Honor.

23 MR. BRANNON: Neither do I.

24 MR. MCKINNON: Nothing further.

25 THE COURT: You can step down.

1 Call your next witness.

2 MR. ANTHONY: That's everybody the State has for the
3 day, Your Honor.

4 THE COURT: Members of the jury panel, the State --
5 it's after five anyway, so it's probably close to quitting
6 time. We'll start back at 9:30. Keep in mind, you're not
7 in a position yet to make up your mind or discuss the
8 case. Keep in mind what I told you about not accessing
9 any electronic -- any kind of media, do any research, find
10 out anything about the case as far as what to do if anyone
11 tries to discuss the case with you and to avoid any news
12 coverage if there is any. So have a pleasant evening, and
13 we'll see you back at 9:30, and I feel very confident
14 we'll be able to finish the case tomorrow.

15 (WHEREUPON, the jury left open court at approximately
16 5:09 p.m.)

17 THE COURT: You got Sheriff Taylor, he was also
18 supposed to testify yesterday, and you also have Willie
19 Smith. Just so everybody kind of knows the schedule.

20 MR. ANTHONY: My expectation will be to have Agent
21 Smith here at 9:30 in the morning, and we'll probably rest
22 after that.

23 THE COURT: All right. Not holding anybody to it. I
24 got about four -- it's like four additional witnesses that
25 I've written down from the witness list on behalf of

1 treats him and the lawyer that represented him in the
2 disability. I don't have any records.

3 MR. ANTHONY: Well, he just said he was going to call
4 somebody to try to put in some records.

5 THE COURT: Well, we'll do this. I'd ask you to have
6 them here around 11:00. Looks like if you've only got one
7 witness, we'll, of course, let the jury go out and I'll
8 talk to the defendants, and looks like by about 11:00
9 we'll be in a position to do that. I'll certainly give
10 you a chance once these people come to look at the records
11 maybe that they could be stipulated, the witness not even
12 have to take the stand. Maybe you want the witness to
13 take the stand, or he can be stipulated. But we'll give
14 you an opportunity, Mr. Anthony, to look at them before we
15 move forward.

16 MR. ANTHONY: All right. Thank you.

17 MR. BRANNON: Thank you.

18 THE COURT: Anything further?

19 MR. BRANNON: No, Your Honor.

20 (Whereupon, the proceedings were adjourned until
21 December 8th, 2011.)

22

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS
 SIXTEENTH JUDICIAL CIRCUIT
 2010-GS-44-1053, 1039, 1036

State of South Carolina)
)
) Transcript of Record
 vs.)
) Volume III - Page 186 - 364
 Lashad Brewton, Randy)
 Crosby and Roderick Pope)

December 8, 2011
 Union, South Carolina

B E F O R E:

The Honorable John C. Hayes, III

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

John Anthony, Deputy Solicitor
 Union, South Carolina

Attorney for the State

Joe St. Pierre, Esquire
 Laurens, South Carolina

Attorney for the Defendant, Lashad Brewton

Dan Hill, Assistant Public Defender
 York, South Carolina

Mark McKinnon, Assistant Public Defender
 York, South Carolina

Attorneys for the Defendant, Randy Crosby

Doug Brannon, Esquire
 Spartanburg, South Carolina

Attorney for the Defendant, Roderick Pope

SHIRLEY G. BROOM
 CIRCUIT COURT REPORTER
 SIXTEENTH JUDICIAL CIRCUIT

1 The Court - Thank you. Take your seats. State
2 ready?

3 Mr. Anthony - Yes, sir. We're ready.

4 The Court - Mr. St. Pierre?

5 Mr. St. Pierre - I am, Your Honor.

6 Mr. Brannon - Yes, sir, Your Honor. I have one
7 issue to take up.

8 The Court - All right.

9 Mr. McKinnon - Yes, Your Honor.

10 The Court - All right, that issue being?

11 Mr. Brannon - Your Honor, I would just ask the
12 Court, I don't know if you can take judicial notice
13 necessarily, but last on the way back to Spartanburg, I
14 measured the distance between 150 and The Lighthouse
15 Restaurant. I did it again this morning on the way back.
16 There's a traffic light at 150 and a traffic light at The
17 Lighthouse seafood or fish camp. It's exactly two and a
18 miles between traffic light and traffic light. In that
19 two and a half miles, there are four intersections and
20 three median turnarounds. And, Your Honor, I could've
21 count the number of drivers.

22 The Court - Well, I'm not going to take judicial
23 notice because I hadn't judicially noticed it and in
24 keeping with -- followup on what I was talking about
25 yesterday about the field test and testing, have you had

1 your odometer calibrated lately?

2 Mr. Brannon - I'm sorry, sir?

3 The Court - Have you had your odometer
4 calibrated lately?

5 Mr. Brannon - No, but I've had the speedometer
6 calibrated by law enforcement not too long ago.

7 The Court - On purpose?

8 Mr. Brannon - No, sir.

9 The Court - All right, familiar with that. All
10 right, bring in the jury.

11 (Jury returns to the courtroom)

12 The Court - Good morning. I'm glad to see
13 everybody came with a sweater or a jacket. I usually tell
14 jurors -- We have trouble keeping the temperature in these
15 big rooms in public buildings and the temperatures can
16 fluctuate a lot and I usually tell jurors that the safest
17 thing to do is wear short sleeves and bring a sweat, but
18 you all look like you're covered up pretty good, because
19 it's a little chili in here this morning. I apologize for
20 that, but there's nothing we can do about it. All right,
21 call your next witness.

22 The Anthony - The State's next witness is Agent
23 Smith.

24 Willie Smith, after being first duly sworn,
25 testifies as follows -

Willie Smith - Direct by Anthony

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1 Clerk - Have a seat, sir.

2 Direct Examination

3 by Mr. Anthony -

4 Q Would you state your name, please.

5 A My name is Willie C. Smith, III.

6 Q Mr. Smith, how are you employed?

7 A I'm employed with South Carolina Law Enforcement
8 Division, also known as SLED.

9 Q What's your position there?

10 A I'm a senior criminalist-chemist in the drug analysis
11 department.

12 Q How long have you worked for SLED?

13 A I've been at SLED for eleven years and five months.

14 Q And what exactly do you do as a criminalist? What
15 does your job involve?

16 A Well, my job is I receive samples from agencies
17 across the state, and I determine if there's a controlled
18 substance in it and identify it and send out a report as
19 to what it is.

20 Q And could you tell the jury what education and
21 training you have in the field of drug analysis?

22 A I have a bachelor of science degrees in biology and
23 chemistry from the University of South Carolina. I've
24 taken additional graduate course work for the purposes of
25 drug analysis. I went through the Criminal Justice

Willie Smith - Direct by Anthony

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1 Academy to become a sworn law enforcement officer in the
2 State of South Carolina. I went through a year of
3 training at SLED to become a certified chemical analyst
4 and I've attended several meetings and also additional
5 courses as pertaining to drug analysis.

6 Q Have you testified before pertaining to drug analysis
7 and the results of analysis you have performed?

8 A Yes, I have been -- testified over sixty-five times
9 in Court.

10 Q And on those occasions were you qualified by the
11 Court as an expert witness?

12 A Yes, I was.

13 Mr. Anthony - At this time we would submit Agent
14 Smith to the Court as an expert in the field of drug
15 analysis?

16 The Court - Voir Dire?

17 Mr. St. Pierre - No, sir. No objection.

18 The Court - Mr. Brannon?

19 Mr. Brannon - No objection.

20 Mr. McKinnon - No objection, Your Honor.

21 The Court - I find he is qualified.

22 Q Agent Smith, I'm going to hand you what's been marked
23 for identification as State's Exhibit Number 2, and I'd
24 ask if you'd examine that item and advise if you've ever
25 seen it before?

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1 A Yes. What we do at SLED, forensic laboratory for the
2 State of South Carolina is we provide agencies with what
3 we call BEST kits in which they are tempered (sic)
4 indicative kits in which we allow them to send evidence to
5 us, to SLED for analysis. This is evidence that I
6 received which is lab number -- which we give a lab number
7 to every single evidence that we have that corresponds to
8 a BEST number which is the B number. In this case the lab
9 number for this case was L1010572 and has a B number which
10 is the BEST number for the BEST kit of 216189, and I
11 received this evidence on September 23rd.

12 Q And what is the process ---

13 The Court - You want to ask him what year?
14 September 23rd ---

15 Q September of what year?

16 A September 23rd, 2010.

17 Q And what is the process that is followed by SLED as
18 far as local law enforcement agencies submitting drugs to
19 your agency and what's done with those drugs after they're
20 submitted?

21 A Once the evidence of the BEST kit is received by SLED
22 it is taken to our log in department and one of our log in
23 technicians log in the evidence and it's put into our
24 evidence processing section in the back room until I am
25 able to pick it up from log in, and at that time once I

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1 pick up evidence from log in, I take the evidence to my
2 lab in my area where I can work on the evidence and
3 determine what it is after I test it on my molecular
4 level.

5 Q And where did you receive the items of State's
6 Exhibit 2 from?

7 A I received this evidence on September 22nd from Doris
8 Yarborough from our log in department.

9 Q And then once you receive the drugs from Ms.
10 Yarborough, what did you do with it?

11 A I take it -- Well, the first thing I do is I examine
12 the bag. I examine this bag to make sure that the seal is
13 still in tact, and I write the words seal in tact and I
14 put my date and initials on here. Next I open up the
15 evidence. In this case we have a envelope containing a
16 plastic bag that contains a rock substance. I take out
17 the rock substance and I take ---

18 Q Let me just back you up just a moment. You said you
19 received the drugs on the 22nd of September of 2010?

20 A That is correct.

21 Q That correct? All right, when did you actually
22 examine the drugs?

23 A I examined the drugs on September 23rd, 2010.

24 Q Once you retrieved the drugs on the 22nd, what was
25 done with them between the time you retrieved them and the

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1 time you examined them?

2 A It stays in my drug vault and my drug vault's in the
3 drug vault. (sic)

4 Q And where is the drug vault located?

5 A The drug vault it's located in the drug lab.

6 Q And who has access to that vault?

7 A Only the drug chemist has access to the vault, but no
8 one has access to the actual evidence but myself.

9 Q Okay. All right. And so on the 23rd, where did you
10 retrieve the bag from?

11 A I retrieved the bag from the drug vault and that's
12 when I opened up the bag to do my analysis.

13 Q And what contain -- If you would, going back to the
14 answer you were giving, what did you observe about the bag
15 before you actually started your analysis?

16 A Before I started my analysis, I make sure the bag is
17 sealed, and I write the word sealed in tact, and if the
18 bag has been tampered with in any way whatsoever, I will
19 not do an analysis, I will return to the agency.

20 Q And what was the condition of the bag when you
21 received it from SLED and examined it on September 23rd,
22 2010?

23 A The bag was sealed and in tact.

24 Q And once you made a determination that the bag was
25 sealed and in tact, what did you do with it? What did you

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1 do with the bag?

2 A I opened up the bag. I took an inventory of the bag
3 of exactly what was inside the bag which this case it had
4 an envelope containing the plastic bag that contained a
5 rock substance. I took a weight of the substance. I did
6 a preliminary test on it, then I took some samples to do
7 a confirmatory test to identify exactly what the substance
8 was, and after I took my sample to do the confirmatory
9 test, I repacked the item in an additional ziploc bag and
10 I sealed it back on the date and when I did my analysis
11 back on September 23rd, 2010.

12 Q And now as far as the particulars of the analysis you
13 did, you said you weighed the item?

14 A That is correct.

15 Q All right, and what did you determine from weighing
16 the item?

17 A From the weight of the item, it had a weight of 11.5
18 grams.

19 Q Okay. And then you said you ran two tests to make
20 the determination what the substance was?

21 A That is correct.

22 Q Okay. And can you just explain to the jury what
23 those test involved and what your conclusions from the
24 test were?

25 A Basically the presumptive test is basically a color

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1 test to indicate which type of function of groups that
2 it's belonging to. In this case it turns blue, indicates
3 a presence of some sort of caine, and I did a confirmatory
4 test which is a gas chromatography mass spectrometry which
5 I test the item on a molecular level which breaks it down
6 and it was found to be cocaine crack.

7 Q So based on those two test, do you have an opinion as
8 to the nature of the substance you have tested?

9 A Yes. By testing this on a molecular level, this is
10 found to be cocaine crack and it's 11.5 grams.

11 Q And dealing -- going back specifically to the weight
12 of the crack, are there any factors that would create a
13 variance in weight of crack cocaine?

14 A Yes. The way you make a crack is really simple, all
15 you take is cocaine, baking soda and water and you just
16 put it in a pan and you heat it up and when it hardens,
17 it's making a crack sound, that's why they call it crack.
18 And depending on the way the individuals make the crack,
19 by the amount of water or the baking soda or what they use
20 to make it, it can either add more moisture to the
21 substance it can be more of a powder substance or can be
22 a more rough hard substance. So in this case right here,
23 the moisture has already dried out the substance so there
24 was no moisture in the substance. If there was moisture
25 in the substance I would've indicated in my notes that

Willie Smith - Direct by Anthony

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1 there was moisture in the substance. So the substance I
2 weighed was a more hard rock like substance, but was 11.5
3 grams.

4 Q And so would there be based on your experience and
5 training any possibility that the crack ever weighed less
6 than what it does right now?

7 A No. If you would take this out of the bag right now,
8 it will weigh eleven -- at least eleven grams.

9 Q And would there have been a possibility that at some
10 point in time the substance you have in front of you
11 could've weighed more?

12 A It could have weighed more with the more moisture
13 into the substance and everything. By the time I received
14 the substance, it was a hard rock like substance that had
15 dried out and that's what I weighed.

16 Q Insofar as the bag, the little yellow bag that you
17 have there as part of the exhibit, does -- Are you
18 familiar with the testing protocol at SLED in regards to
19 DNA testing?

20 A Yes, I am.

21 Q And what would SLED submission requirements be or how
22 would SLED treat a baggy like that connected with a drug
23 case in regards to doing any type of DNA screening on it?

24 A Well, the process which is called touched DNA it's
25 rarely almost never used in a drug case due to the fact of

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1 the high number of murder and rape cases that we have. On
2 an our average we get it in 400 to 500 drug cases a month
3 with seven chemist that we have at the lab, so we have a
4 high volume of drug cases. If we had to do touch DNA on
5 all our cases and stuff, it would almost shut down the DNA
6 department.

7 Q And after -- After you concluded your examination,
8 what did you do to the bag?

9 A After I finished my examination of that item which I
10 put it in an additional ziploc bag which I put the rock
11 substance in, I sealed it and I put my initials and date
12 from when I did my analysis so that when I get to Court I
13 can see that this evidence is still sealed and in tact
14 from the same date that I did my analysis back on
15 September 23rd, 2010.

16 Q Okay. And in this instance, does the bag -- Is the
17 bag still in the same condition it was in when you sealed
18 it up after performing your analysis on September 23rd,
19 2010?

20 A Yes, it is.

21 Mr. Anthony - Your Honor, at this time we would
22 move Exhibit 2 into evidence.

23 Mr. Brannon - Your Honor, I have an objection to
24 its admissibility, but I would ask the Court to withhold
25 the ruling on its admissibility and my objection until

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1 after cross examination of the witness.

2 The Court - All right, I'll reserve ruling on
3 that.

4 Mr. Anthony - If I can have one moment. Thank
5 you. That's everything on direct.

6 The Court - All right, Mr. St. Pierre?

7 Mr. St. Pierre - No questions at this time, Your
8 Honor.

9 The Court - Mr. Brannon?

10 Cross Examination

11 by Mr. Brannon -

12 Q Good morning, Agent Smith. How are you?

13 A Great. How you doing?

14 Mr. Brannon - Approach the witness, Your Honor?

15 The Court - Yes, sir.

16 Q How many individual rocks can you see in that bag?
17 And don't worry about the little ones. I'm just talking
18 about the bigger pieces.

19 A Well, the bigger pieces, three rocks.

20 Q Okay. And then there's several small chunks. Right?

21 A That is correct.

22 Q Okay. Did you test each individual big rock?

23 A No, I did not.

24 Q Okay. Which rock did you test?

25 A I test representative sample from the total sample.

Willie Smith - Cross by Brannon

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1 Q Okay. But you had to take it off of one of the
2 rocks. Right?

3 A Yes.

4 Q Okay. And when you -- When you got this sample, was
5 it in similar shape? Were there three big rocks and some
6 smaller rocks?

7 A I do not know. All I know is the way I received the
8 sample, it was a rock substance. I do not indicate it if
9 it was three rocks or one rock. It was all -- all in one
10 bag, cross contaminating each other.

11 Q Okay. But the way it sits right now, there are three
12 larger rocks and some small chunks or powder residue.
13 Correct?

14 A That is correct.

15 Q And you took your sample from one of the three larger
16 rocks. Right?

17 A I cannot tell you where I took my sample from. I
18 just took my sample from the sample that was submitted.

19 Q Okay. Well, did you flake a little off of the big
20 one and a little off the of the middle one and a little
21 off of the smaller big rock?

22 A No.

23 Q Okay. All right, you been doing this for eleven
24 years. Right?

25 A Eleven years and five months.

Willie Smith - Cross by Brannon

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1 Q Have you ever been -- Have you -- You ever had sample
2 submitted that was allegedly an illegal drug but you found
3 it to be fake?

4 A Yes, and I also had cases where there were two
5 separate different type of items in there. If the items
6 did not look consistently the same -- just say if one rock
7 was a white rock or one rock was a beige rock, I would
8 separate those two rocks and test those two rocks
9 separately, but in this case all the rocks appeared to be
10 the same color and same consistency of all of them.

11 Q Right. But you have had samples submitted to you
12 that the -- whatever agency it was that received the
13 sample sent to you that wasn't what they thought it was.
14 Correct?

15 A That is correct.

16 Q All right. And you didn't test each of those rocks,
17 did you?

18 A No, I did not.

19 Q Okay. So you tested a sample that weighed 11.5
20 grams. Correct?

21 A That is correct.

22 Q Which is the total sample that was sent to you by
23 Union County Sheriff's Department. Correct?

24 A That is correct.

25 Q But you didn't test each of the rocks. Correct?

Willie Smith - Cross by Brannon

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1 A I tested a representative sample from the sample that
2 was submitted.

3 Q Right. But again, I ask did you take a sample off of
4 each rock and you said no.

5 A I did not take a sample off of each and every piece.

6 Q Okay. All right, now, would you tell the jury what
7 chain of custody means.

8 A Chain of custody is the order we received evidence
9 from one person to the next as to how we receive the
10 evidence.

11 Q Okay. I'm going to show you a document and ask you
12 to identify that.

13 A This appears to be a copy of our chain of custody
14 that SLED generates. SLED does an electronic chain of
15 custody.

16 Q Okay. And if you would, explain the different names
17 of individuals and why they are on that document?

18 A First of all each individual has a piece in the chain
19 of custody. It's how the evidence is received. And
20 that's why they're on in this document.

21 Q So start at the top and go down at least to the
22 person after you. Okay?

23 A First Nikki Perry received the evidence from the
24 officer ---

25 Q Let me stop you. Let's go before Nikki. Who was

Willie Smith - Cross by Brannon

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1 before Nikki?

2 A Lieutenant John Sherfield.

3 Q Okay. All right. Now what?

4 A Lieutenant Sherfield received -- brought the evidence
5 into Nikki Perry, Nikki Perry took the evidence into drug
6 in-take. I needed to pick up my evidence. Doris
7 Yarborough brought me my evidence. I picked up my
8 evidence from Doris Yarborough. After I finished doing my
9 analysis and it was sealed up waiting in my drug area, I
10 brought it downstairs on September 28th and took the
11 evidence to Patricia Cook and Patricia Cook took it to the
12 return evidence cabinet in which Amy Stevens is the next
13 person. She returned it to the agency and the person was
14 Perry Haney that it was returned to.

15 Q Okay. So you know that it came from Lieutenant
16 Sherfield and Union County Sheriff's Department to SLED
17 and he surrendered it to Nikki Perry.

18 A That is correct.

19 Q And then Nikki Perry took it to the evidence locker
20 where there is a evidence custodian that she gave it to.
21 Right?

22 A Nikki Perry put it into drug in-take and she put it
23 into box in the back room.

24 Q Right. And then when you went to get it, that
25 evidence custodian touched it, so she signed her name on

Willie Smith - Cross by Brannon

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1 it as having transferred it to you. Correct?

2 A That is correct. She signed the electronic chain of
3 custody.

4 Q And then you did all of your chemistry stuff. Right?
5 You did your test. Correct?

6 A That is correct.

7 Q Put it back in the envelope and then you took it back
8 to the evidence locker, the return evidence locker where
9 you handed it to someone and they put their name on it
10 because they touched it. Right?

11 A Yes.

12 Q Okay. Now, let's just say -- And SLED is beyond
13 reproach. You guys are the best in the world. But let's
14 just say that Sherfield -- Lieutenant Sherfield brings it
15 to SLED and he gives it to Nikki, but Nikki forgets to
16 write her name on it. She does what she's supposed to do.
17 She takes it to the evidence locker, but she forgets to
18 put her name on it. So on June the 22nd, you go to the
19 evidence locker to get it and it's there, but it says
20 Lieutenant Sherfield to Doris Yarborough. Would you still
21 test that stuff?

22 A What I received is um -- I'm trying to get it -- What
23 are you asking me?

24 Q What I'm asking you is, do you test substances where
25 you know there is a broken chain?

Willie Smith - Cross by Brannon

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1 Mr. Anthony - I object. This is just asking for
2 speculation. There's no relevance to it.

3 The Court - I overrule the objection. It's
4 cross examination.

5 A The only chain that I'm worried about as far as my
6 testing goes, is where I pick up the evidence from. As
7 far as where the chain starts or where the chain ends, it
8 is no concern to me. The only chain I'm worried about is
9 my chain, that my chain is correct, and that's the chain
10 that when he sent a e-mail before Court that I verify that
11 I received the evidence from this person and I return the
12 evidence to another person.

13 Q Exactly. Exactly. You're talking about this
14 document right here. Correct?

15 A No, that's not what I'm talking about. That is a
16 pre-log sheet that the officers log in generate to the log
17 in department.

18 Q Okay. What e-mail are you talking about?

19 A I'm talking about where we get a e-mail of this
20 particular chain right here to verify that I did receive
21 this evidence from a certain person and I returned the
22 evidence to a certain person.

23 Q Okay. So in this situation, who sent you an e-mail?

24 A Tammy who's an administrator with the SLED
25 department.

Willie Smith - Cross by Brannon

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- 1 Q Okay, and what did she e-mail to you?
- 2 A That did I receive the e-mail. She just sends me a
3 copy of this actual chain right here, this form, to show
4 that I did receive it from Doris and that I did return the
5 evidence to Patricia.
- 6 Q Understand that completely. My question though is
7 what happens if Lieutenant Sherfield brings this to Nikki
8 and Nikki forgets to sign her name indicating that she
9 took it?
- 10 A That would be a question for Nikki Perry in the chain
11 of custody.
- 12 Q But my question is to you, would you -- would you
13 still test the substance?
- 14 A I would still test the substance, because I would not
15 know about that part of the chain.
- 16 Q All right. Now, you said a few moments ago on the
17 direct that if the bag had been tampered with, if the
18 evidence bag that you received had been tampered with, you
19 wouldn't test it. Right?
- 20 A Yes. If this tamper indicative bag had been tampered
21 with as far as the strip, having tried to be open or
22 something or like someone tried to cut open this bag or
23 something, I would not test the evidence, which
24 corresponds to the Best kit that was submitted to SLED.
- 25 Q All right. So if the bag's tampered, you won't test

Willie Smith - Cross by Brannon

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1 it. Is it your testimony that if you have knowledge that
2 there is a broken chain, you will still test the evidence?

3 A If it's my knowledge that -- I just worry about my
4 particular chain of custody. As far as any other part of
5 the chain of custody, I'm not concerned. I'm just
6 concerned about how the evidence received to me and what
7 I do with it after I receive the evidence.

8 Q Okay. Are you familiar with -- not specifically with
9 that document, but that type of document?

10 A Yes.

11 Mr. Anthony - Can I see that?

12 Mr. Brannon - It's the affidavit.

13 The Court - Well, show it to him anyway.

14 Mr. Brannon - I'll be happy to.

15 Mr. Anthony - Oh, okay.

16 Q Are you familiar with that form, if you will?

17 A Yes. It is a chain of custody form that we provide
18 the agencies if they choose to provide a chain of custody
19 to the SLED laboratory.

20 Q Okay. If you -- Now, I've asked you if you were
21 familiar with that form. What is that form specifically?
22 What do you call it?

23 A It is a chain of custody form.

24 Q But isn't it also an affidavit?

25 A Yes.

Willie Smith - Cross by Hall

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1 Q Okay. In fact, it says it on there. Right?

2 A It does.

3 Q And it's notarized. Right?

4 A In this case it is.

5 Q Okay. If you knew that document were false, would
6 that have any effect on your testing the sample?

7 Mr. Anthony - Objection. It's asking for
8 speculation.

9 The Court - Well, I -- It's cross examination.
10 I overrule it. Go ahead.

11 A If I knew the documentation was false, the chain of
12 custody was false?

13 Q Yes.

14 A If I had knowledge of the chain of custody, there was
15 a problem with the chain of custody, I would return it to
16 the agency and let them know there was a problem with
17 their chain of custody.

18 Mr. Brannon - Thank you. Nothing further.

19 The Court - Mr. Hall?

20 Cross Examination

21 by Mr. Hall -

22 Q Mr. Smith, you had testified that crack cocaine over
23 a period can lose moisture and therefore the weight can go
24 down. Is that correct?

25 A That is correct.

Willie Smith - Cross by Hall

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1 Q And, in fact, you testified that in this particular
2 case what you weighed would -- was your opinion that it
3 would never ever weighed less than 11.5 grams. It was
4 completely dry when you got it.

5 A In this case, the rock substance was a hard rock
6 substance. Yes.

7 Q And just from scientific -- the science of it, if you
8 put the crack cocaine in a Best sealed bag, in a plastic
9 bag and then inside the Best sealed bag, where does the
10 moisture go when you say it can try out?

11 A It just evaporates. Just like if you put water in a
12 bag, it will eventually evaporate out.

13 Q Okay. And so it wouldn't be unusual for it to be in
14 a sealed -- just for my own understanding -- that it could
15 -- even though laymen's terms you might think it's sealed
16 up in a place, the moisture's not going anywhere, but
17 scientifically the moisture can be absorbed I guess even
18 in the air, unless it's a vacuum-packed pack into the air
19 around the crack. Would that be correct?

20 A Right. The moisture can like, you know, from solid
21 to liquids to a gas.

22 Q But you don't know whether the drugs weighed -- were
23 completely dry on June 24th, 2010. It could've been dried
24 out by then, couldn't it?

25 A Yes. I just know that the actual sample that I

Willie Smith - Cross by Hall

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1 weighed at the time was 11.5 grams.

2 Q And you're not telling this jury that on June 24th,
3 2010 that there's no way it could have weighed exactly was
4 the date that you weighed it.

5 A I'm telling the jury that the actual weight that I
6 had on September 23rd, 2010 is 11.5 grams.

7 Q And it's just as reasonable scientifically to
8 speculate that it could have weighed 11.5 grams on June
9 24th, 2010. There's no -- Would that be correct?

10 A I would not have any knowledge of that. The only
11 knowledge I have is from the date that I did my testing.

12 Q And so you can't test -- You're not able to test or
13 don't test to know the aging process of particular rock of
14 crack cocaine that you test.

15 A No. I just know if it contains more moisture it
16 weighs more and sometimes the moisture evaporates, it
17 makes it -- weighs less.

18 Q And let me just ask you a simple or math question.
19 If a drug dealer was selling drugs in Union County on June
20 the 24th, 2010 and he had a half ounce of crack, how much
21 crack would that be in grams?

22 A I would need ---

23 Q Isn't true 28 grams is an ounce?

24 A 28.35.

25 Q 28.35 is actually the -- Is that the science?

Willie Smith - Re-Direct by Anthony

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1 A Right. So what is your question?

2 Q And so a half of a ounce would be fourteen grams and
3 whatever .35 is divided by two. Is that right?

4 A Right. As far as my -- The way we report it out is
5 in grams and grains. I would have to calculate it to
6 ounces. If you would calculate it to ounces, I would just
7 say, all you have to do is multiply times 0.0353 and that
8 would calculate it into ounces.

9 Q All right. But if you had drug dealer selling crack
10 and you he had half -- fourteen grams of crack cocaine
11 with him on June the 10th (sic) 2010 and he pinched off
12 two and a half grams to sell someone, how much crack would
13 he have left? He'd have 11.5 grams. Right?

14 A That is correct.

15 Mr. Hall - All right, thank you. No further
16 questions.

17 The Court - Re-direct?

18 Mr. Anthony - Just briefly.

19 Re-direct Examination

20 by Mr. Anthony -

21 Q The substance in the bag, is there any reason to
22 believe that there's any differentiation between the
23 individual rocks in that bag?

24 A No. It is all part of the same sample, and I took a
25 representative sample and it turned out to be cocaine

Willie Smith - Re-Direct by Anthony

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1 crack.

2 Mr. Anthony - Nothing further.

3 The Court - Mr. St. Pierre?

4 Mr. St. Pierre - No questions.

5 The Court - Mr. Brannon?

6 Mr. Brannon - Nothing, Your Honor.

7 The Court - Mr. Hall?

8 Mr. Hall - Nothing further, Your Honor.

9 The Court - All right, this witness can step
10 down and be excused. We appreciate your time, Mr. Smith.

11 Mr. Anthony - We still have -- The Court didn't
12 rule on whether it would be moved in.

13 The Court - Well, I think I'm going to let the
14 jury go out while we do that. So why don't you -- Instead
15 of being excused, why don't you just have a seat out
16 there. I'm going to let the jury go to the jury room
17 while we take up a matter of law.

18 (Jury exits the courtroom)

19 The Court - All right, Mr. Brannon, you moved to
20 -- or you -- you didn't consent to the introduction of --
21 Well, go ahead and tell me what your motion is.

22 Mr. Brannon - Your Honor, I --

23 The Court - That's the best way to do it.

24 Mr. Brannon - I object to the admissibility of
25 the drugs in this matter based on the testimony of the

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1 State's expert witness, that had he known the affidavit,
2 which is beginning of the chain of custody that was
3 submitted to SLED were false, that he would not have
4 tested the material, that he would return it to the agency
5 and told them that they had a problem with their chain.
6 Your Honor, Lieutenant Sheriff that testified under oath
7 that affidavit is not factually correct. It is false. He
8 did not collect the drugs or -- what does he say -- seize
9 the drugs from Randy Crosby, Lashad Brewton and Roderick
10 Pope on June 24th. In fact, he's not the one that seized
11 the drugs at all. So, Your Honor, based on the flawed
12 chain and the State's expert's witness testimony that he
13 would not have tested the drugs, I believe that they are
14 not admissible to this case and would ask the Court not to
15 allow them to be admitted into evidence.

16 The Court - Mr. St. Pierre?

17 Mr. St. Pierre - And, Judge, I join in that
18 motion verbatim.

19 Mr. McKinnon - We'd also join in.

20 Mr. Anthony - Your Honor, you prove chain -- the
21 testimony in Court. That's what we've done. Done the
22 chain from Corporal Vinson to Lieutenant Sheriff, the in-
23 take people at SLED to Agent Smith and they're --
24 Obviously this chain has been subject to cross examination
25 and they can argue that it goes to the weight of the chain

1 or whatever they wish to argue, but we have met the legal
2 requirements to proving the chain.

3 The Court - I agree. I've tried -- as always
4 doing this cases map out -- have my own little form that
5 I follow the chain, and I think the chain has been
6 established. Whether or not the affidavit is false or
7 not, I certainly think that might be something that could
8 be argued to the jury and obviously will be, but from the
9 Court's standpoint, the Court has to determine whether or
10 not the chain exist, not whether were there some flaw in
11 the chain that -- the testimony is very clear the chemist
12 would not know about, but whether some unknown flaw in the
13 chain would affect his right to test, his willingness to
14 test and the results -- and the test -- and the results of
15 his test is not an issue that the Court could determine.
16 That's up to -- I find -- I overrule the motion. All
17 right, so -- Is that your last witness?

18 Mr. Anthony - Well, I would like to briefly
19 recall Sergeant Johnson.

20 The Court - All right, well, I just wanted to
21 make for planning purposes -- Let me bring the jury back
22 in, so -- And then we'll do Sergeant Johnson and then
23 we'll take our morning break and have motions and things.
24 Bring the jury back in.

25 Mr. Anthony - Can Agent Smith be excused?

James Johnson - Direct by Anthony

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1 The Court - Yes, Mr. Smith can go. Thank you.
2 Appreciate your being here.

3 (Item marked into evidence as State's Exhibit
4 Number 2.)

5 (Jury returns to the Courtroom)

6 The Court - Members of the jury you will recall
7 that Mr. Brannon objected and I waited to take it under
8 advisement. I have heard arguments, I've ruled and I have
9 allowed into the evidence the bag containing the rock-like
10 substance and it is in evidence as -- over objection of
11 all counsel for the defendants -- and it is Exhibit Number
12 2. All right, Mr. Anthony.

13 Mr. Anthony - State would call Sergeant Johnson.

14 The Court - Sergeant Johnson, you're still under
15 oath.

16 Mr. Brannon - Your Honor, may we approach?

17 (Whereupon, bench conference was held in the
18 presence of the jury but out of the hearing of the jury
19 which was not reported.)

20 James Johnson, after being previously sworn
21 testifies as follows -

22 Direct Examination

23 by Mr. Anthony -

24 Q Sergeant Johnson, in your experience with narcotic's
25 investigation, are you familiar with the prices of various

James Johnson - Direct by Anthony

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1 quantities of crack cocaine?

2 A Yes, sir.

3 Mr. St. Pierre - Judge, I believe I object to
4 this --

5 Court Reporter - I'm sorry. Ask him to ask that
6 question again.

7 The Court - Ask that question again and then
8 don't answer.

9 Mr. Anthony - The question was is he familiar
10 with the prices of various quantities of crack cocaine.

11 The Court - All right, and you object.

12 Mr. St. Pierre - And we objected to this
13 yesterday.

14 The Court - All right, I'm going to let the jury
15 go out while we take this up. I'm sorry, we just -- It's
16 the way our system works or don't work rather.

17 (Jury exits the courtroom)

18 The Court - All right, let me just kind of
19 preface this. We had a side bar where we re-call was
20 objected to -- even suggested that we have a proffer which
21 I guess may you're heading, but I have a little trouble
22 quite frankly -- Well, we've got a process that works
23 pretty darn well where a witness is presented and then
24 that witness is cross examined, then we have re-direct,
25 and that gives anybody -- not singling out the prosecution

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1 -- ample time to ask all the questions that need to be
2 asked. And after that they're generally not allowed to go
3 a third time. Allowing a witness to be re-called gives
4 the -- whoever does the re-calling -- an opportunity to
5 get a third re-direct is really what it amounts to where
6 generally you only get a second re-direct. I don't -- I'm
7 going to hear the objection, but so far the question is
8 not anything that I think could not have been floored
9 yesterday or the day before whenever the officer
10 testified. I guess it was yesterday. Let me hear the
11 objection.

12 Mr. St. Pierre - The objection was in re-direct
13 either myself or co-counsel objected their going into this
14 line of questioning and the objection was sustained. So
15 on a third bite of the apple I would object that it still
16 remains objectionable and sustainable.

17 The Court - All right.

18 Mr. Brannon - Your Honor, I join that motion but
19 I would add, you know, I've been in front of Your Honor
20 several times and we would break in the middle of
21 testimony and you would always caution the witness not to
22 speak to anyone about their testimony. Your Honor, you
23 had no knowledge or idea that this officer was going to be
24 re-called, therefore, you had no reason to caution this
25 officer about who he should speak to or about his

James Johnson - Direct by Anthony

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1 continued testimony or anything like that. Your Honor, I
2 think the State found a hole in their case and they're
3 attempting to patch that hole. And, Your Honor, I would
4 ask that this -- no further questioning be allowed of this
5 witness.

6 Mr. Hall - Your Honor, we would just concur with
7 both arguments.

8 The Court - Why don't we make a proffer. Let's
9 see what you're going to ask and then I'll let you cross
10 examination and then we'll ---

11 Q Are you familiar with differentiations and in prices
12 for various amounts of crack?

13 A Yes, sir.

14 Q And if you were selling two and a half grams of crack
15 as Mr. Harris was alleged to -- or as Mr. Harris sold,
16 what was the price -- the asking price for that?

17 A Around about two hundred and forty, two hundred and
18 fifty dollars.

19 Q Okay. How was that crack being sold? How was it
20 packaged for sale?

21 A It's packaged for sale to someone who should be
22 consuming it at that sale -- at that amount -- that size.

23 Q Okay. If crack were be sold in a larger quantity,
24 say a half ounce, how is that crack packaged for sale
25 typically?

James Johnson - Direct by Anthony

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1 A It's packaged usually in bulk, whereas there's more
2 of it. It has not been broken down for sale -- for
3 individual purchase.

4 Q All right. And based on your training, what -- what
5 is the value for sale of a half ounce of crack that's
6 being sold in a bulk weight?

7 A Depending on who and I guess what, you know, type or
8 how good it is, which I couldn't tell there, but it could
9 go anywhere from five to eight hundred dollars
10 approximately, you know, like for that it's six hundred.

11 Q And what was -- What was the difference in the way
12 the crack in Mr. Harris' case where he did the sale --
13 what was the difference in that crack and the way it was
14 packaged for sale and the crack that was found in the
15 patrol car that's the subject of this case?

16 A The half ounce was sold in what would consider bulk
17 package that had not been broken down for individual sale
18 where, you know, majority of the time what we see based on
19 our experience is broken down to sell to individual
20 subject usually in twenty dollar, forty dollar increments
21 which would if you took that half ounce as a bulk, broke
22 it down like that, it would probably double or triple the
23 price of it.

24 Q Okay. But the price -- the actual price Mr. Harris
25 was selling was broken down into those units?

James Johnson - Direct by Anthony

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1 A Correct.

2 Mr. Anthony - Okay. And as to another -- the
3 other subject I wanted to go into, Your Honor, I want to
4 go ahead and make a proffer on this, too.

5 Q Have you in the past tried to obtain fingerprints
6 from evidence?

7 A Yes.

8 Q And in your experience, what would be the likelihood
9 of obtaining fingerprints from something like the plastic
10 baggy that's the subject of this case.

11 The Court - He's just proffer ---

12 Mr. Brannon - I understand.

13 A It's in my experience a very difficult thing to do,
14 especially based on how the bag -- fingerprints on the bag
15 would be -- you have to deal with creases in the bag, that
16 type of thing. If you don't have a solid, hard smooth
17 surface, it's very difficult to obtain prints on anything
18 other than that type of surface basically with the
19 equipment that we have.

20 Mr. Anthony - Thank you. That's my proffer.

21 The Court - Mr. St. Pierre, do you have any
22 questions?

23 Mr. St. Pierre - Yes, sir, Your Honor.

24 Cross Examination

25 by Mr. St. Pierre -

James Johnson - Cross/St. Pierre - Cross/Brannon 219

1 Q You said 2.5 grams is typically for consuming.

2 Correct?

3 A Correct.

4 Q Okay. Are you familiar with the statute, possession
5 with intent to distribute crack cocaine?

6 A Yes, sir.

7 Q Are you familiar with the inference that possession -
8 - the inference weight of possession with intent to
9 distribute crack cocaine?

10 A Yes, sir.

11 Q And what is it?

12 A It's a gram.

13 Q One gram. So if you had anything over one gram,
14 there's a strong -- a statutory inference that if you're
15 consuming, you intend to distribute. Right?

16 A Yes.

17 Mr. St. Pierre - No further questions.

18 Cross Examination

19 by Mr. Brannon -

20 Q So drug dealers are Walmart. They can buy in
21 quantity and sell cheaper. Right?

22 A That's the way they make their money, yes, sir.

23 Q Okay, but I think your testimony was it depends on
24 the different dealer. Correct?

25 A I don't think I said different dealer.

James Johnson - Cross by Brannon

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1 Q Well, you said depending on the individual.

2 A No, I said depending on the amount, based on the
3 product of what if they considered a -- the product as a
4 fine cut -- I mean however they cut it, whatever they cut
5 it with to make a -- more cocaine or less cocaine, in the
6 product which would make the price different.

7 Q I'm sorry. I might be wrong, but could you go back
8 to his answer on that.

9 (Whereupon answer was re-played by the Court
10 Reporter)

11 Q Okay, you said depending on who and the quality of
12 the crack.

13 A Okay.

14 Q Okay. And I used the word individual, but you used
15 the word who.

16 A Okay. Sorry.

17 Q So different dealers charged different amounts.
18 Correct?

19 A Correct.

20 Q And this is the first time you've ever bought
21 anything from Venson Harris. Right?

22 A Correct.

23 Q And your testimony has been abundant from yourself as
24 well as Sherfield, you didn't know who Roderick Pope was.

25 A No, sir.

James Johnson - Cross by Brannon

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1 Q So you don't know that Venson Harris wasn't selling
2 every gram depending on no matter how much he had for the
3 same price. Correct?

4 A No, sir.

5 Q Okay. Thank you. Now, as far as the fingerprints
6 go, you said that -- have you been trained to take
7 fingerprints?

8 A I've been taught how to take fingerprints, yes, sir.

9 Q Did you go to SLED and ---

10 A No, sir.

11 Q No? Okay. Have you ever had a case where you had
12 something, an object that you sent to SLED to be tested
13 for fingerprints?

14 A I'm sure that I have.

15 Q Okay. So that's possible. Correct?

16 A That's possible.

17 Q All right. So you could've sent -- In fact, you did
18 send the bag that this crack was found in to SLED, didn't
19 you?

20 A Excuse me, could I backup one second for that answer?

21 Q Sure.

22 A Actually anything that I have ever collected was
23 turned over to our investigators here. Now, whether they
24 sent it to SLED or not, I'm not for certain on that, but
25 I do know that they also fingerprint stuff themselves.

James Johnson - Cross by Hall

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1 Q Got you. I appreciate that answer. The -- You sent
2 the bag along with the crack that was allegedly seized
3 from the backseat of a police car in this matter to SLED.
4 Right?

5 A Correct.

6 Q And you had the -- when I say you, I'm talking about
7 Union County Sheriff's Department -- had the ability to
8 ask not only for the materials to be tested chemically,
9 but you could've asked that the bag be tested for
10 fingerprints, couldn't you?

11 A Yes, sir, I'm sure that could be a possibility. I
12 don't know if they would do that or not, but yes.

13 Q But you could've made the request.

14 A I guess that we could, yes.

15 Mr. Brannon - Thank you. Nothing further.

16 Mr. Johnson - When I say that I guess, I really
17 don't know.

18 Cross Examination

19 by Mr. Hall -

20 Q Sergeant Johnson, based on your experience that you
21 have, an informant come up and say I know where I can get
22 a G, what would that be?

23 A Gram.

24 Q And if he said, I need fifty dollars to get that G,
25 what would you say?

James Johnson - Cross by Hall

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1 A Probably not going to be enough money.

2 Court Reporter - I can't hear him.

3 Q I'm sorry?

4 A I would say that's a pretty good price.

5 Q But you had opportunities where drug dealers or
6 informants have been able to purchase a G for fifty bucks.
7 Right?

8 A Like I said, once again, if I had, that was a really,
9 really good price as it's usually something over that.

10 Q Are you denying that you've ever been able to
11 purchase a G for fifty bucks?

12 A I don't recall that I have been able to.

13 Mr. Hall - All right, thank you.

14 The Court - Mr. Anthony, any other questions?

15 Mr. Anthony - No, sir.

16 The Court - All right, they've made their
17 objection as to -- what -- Why should this witness be
18 allowed to testify at this time after already having
19 testified, cross examined and re-directed?

20 Mr. Anthony - Well, the concern I have is that
21 from his testimony yesterday the jury could've been left
22 with the impression and I should've asked to be heard on
23 this more extensively yesterday and I apologize for not
24 doing that. I'm afraid though that has the impression and
25 the defense might argue in this case that Mr. Harris --

1 well, basically the crack in any form sells for a hundred
2 dollars a gram and that since we're talking about fourteen
3 grams of crack as the original purchase amount, that
4 they're going to argue that there was something
5 inconsistent about a sale for six hundred dollars, and I
6 think Sergeant Johnson needs to be able to explain that,
7 because I would assume that argument would be made and I
8 think he should be entitled to clear up the fact that
9 there's a difference in buying a half ounce in bulk and
10 buying two and a half grams that are cut and packaged for
11 use.

12 The Court - Well, are you shocked to find out
13 that that was going to be a defense?

14 Mr. Anthony - I didn't have any expectation that
15 there would be this questioning about the two and a half
16 grams deducted from fourteen.

17 The Court - All right, Mr. Brannon?

18 Mr. Anthony - I had no anticipation of that.

19 Mr. Brannon - Your Honor, I don't think that I
20 ever heard the prosecutor say they've got a defense in
21 this case, please let me stop him. I mean basically what
22 John's asking you to do would be similar to me saying
23 after the jury finds my client guilty, will you let me re-
24 call some additional witnesses and put up a defense.
25 We've done our job. And he had this opportunity. I mean

1 ---

2 The Court - Well, but you'll have an opportunity
3 if I allow the witness to testify, cross examine again.
4 I know that would take some sting out of the -- where we
5 are right now, but you still have the right -- the same
6 right you would've had if he'd testified to this
7 yesterday. I think I made it clear, I think this is a bad
8 practice and certainly don't want to present any
9 precedent, but I'm going to allow the testimony. Before
10 we get into that -- Yes, sir, Mr. St. Pierre?

11 Mr. St. Pierre - Would you please note my
12 concurrent objection to this as well?

13 The Court - Well, you've already objected, but
14 that's fine, and Mr. McKinnon, you want to double object
15 to?

16 Mr. McKinnon - We're fine with our original
17 objection.

18 The Court - All right. I needed to take a
19 break, so let's take a short break before we go further
20 into this witness, and you can step down while we take a
21 break.

22 (Recess taken)

23 The Court - Bring in the jury.

24 Mr. Brannon - Sorry for the delay, Your Honor.

25 The Court - No, no -- That's all right.

James Johnson - Direct by Anthony

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1 (Jury returns to the courtroom)

2 The Court - All right, you may proceed.

3 Mr. Anthony - Thank you, Your Honor.

4 Direct Examination

5 by Mr. Anthony (contd.)

6 Q Sergeant Johnson, in your experience as a narcotic's
7 investigator, have you become familiar with the prices of
8 various amounts of crack cocaine?

9 A Yes, sir.

10 Q And are you also familiar with how prices would
11 differentiate based on how crack cocaine, the quantity of
12 crack cocaine is sold?

13 A Yes, sir.

14 Q Would you please explain to the jury how -- how that
15 matters as far as prices go?

16 A Well, depending on the amount, if it's in bulk, which
17 considering this case a -- say a half ounce is brought in,
18 it would be a price range somewhere depending on what type
19 of crack cocaine it is as far as the quantity -- I mean
20 quality of it to be anywhere from five hundred to eight
21 hundred dollars on average. That's what we usually see.

22 Q And how would that differ say from someone selling a
23 smaller quantity, say someone sell -- Well, how are
24 smaller quantities usually packaged?

25 A Usually if it's going to the individual for use,

James Johnson - Direct by Anthony

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1 you're going to see it broken down into smaller
2 increments, twenty, forty dollar pieces of crack rock that
3 they're going to use for consumption. At that point when
4 it's broken down, it could double or even possibly even
5 triple the price of what would be the bulk. Say if you
6 took six hundred dollars worth of crack which would be a
7 half ounce and then you broke it down into individual
8 pieces for sale, you know, that could possibly even double
9 that price. That's how they make their money.

10 Q So a gram broken down for sale would probably on
11 average cost how much?

12 A Gram broken down for sale?

13 Q Yes, sir.

14 A If you were going to sell the gram itself or if
15 you're going to break it down and sell it by piece.

16 Q If you were going to sell it as individual rocks, how
17 much would you sell it for?

18 A If you bought a gram by bulk, it'd probably be around
19 a hundred dollars, but once you broke that gram down into
20 about a tenth of a gram package, you would be looking at
21 about two hundred dollars worth on the street value.

22 Q All right, and one other topic I want to just cover
23 with you briefly. Are you familiar with how to try to --
24 how to obtain finger-prints, how to attempt to obtain
25 finger-prints from evidence?

James Johnson - Cross by St. Pierre

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1 A Yes, sir.

2 Q And insofar as the -- say that plastic baggy where
3 the crack in this case was located, what would -- what
4 difficulties would you expect as far as trying to collect
5 finger-prints from a plastic bag?

6 A From my experience with the finger-printing, you
7 basically need a hard, smooth surface, something that does
8 not have any grains or creases in it to be able to dust it
9 and then be able to collect finger-print. Dealing with a
10 plastic bag especially in that condition where you have
11 creases in the bag, that type of thing, it's very rare
12 that you're going to see somebody be able to collect
13 finger-print off something that type of surface.

14 Mr. Anthony - All right, thank you. That's
15 everything.

16 Cross Examination

17 by Mr. St. Pierre -

18 Q You testified that perhaps you get a discount if you
19 buy in bulk?

20 A No, sir, I testified that crack in bulk is going to
21 be cheaper than once it's broken down into individual
22 purchase, which would say only -- you know, if you were
23 selling it to an individual for consumption. That's how
24 the word process -- That's how the process works.
25 Somebody ---

James Johnson - Cross by St. Pierre

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1 Q I think we're on the same -- same thing, two
2 different ways. Right?

3 A If you want to ask the question ---

4 Q If you buy in bulk, you get a discount?

5 A I guess you would say that.

6 Q Okay. And you also testified that if you bought a
7 gram, it would cost around a hundred dollars. Right?

8 A If you bought a gram in bulk, not prepared for
9 purchase -- I mean to sell to an individual for
10 consumption, you could possibly pay around a hundred
11 dollars for that. If you bought a gram packaged ---

12 Q A gram --

13 A --- to sell to somebody for individual purchase, then
14 you could be paying anywhere -- you could be paying
15 possibly up to two hundred dollars.

16 Q So if you bought one gram, it's a hundred dollars.

17 A Possible.

18 Q Okay. And if you bought two grams, it's two hundred
19 dollars. Right?

20 A Depends on how it's packaged and what you're selling
21 it to the individual for.

22 Q What about Venson Harris, two and a half grams?

23 A Okay.

24 Q Got a ten dollar discount, didn't you?

25 A He got about somewhere around two hundred and forty

James Johnson - Cross by St. Pierre

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- 1 dollars is what we made the purchase from him for.
- 2 Q For two and a half grams.
- 3 A Yes, sir. Around, approximately two and a half
- 4 grams.
- 5 Q Okay. And a hundred dollars a gram ---
- 6 A Actually I don't know how much crack was actually
- 7 there -- I don't have that in front of me, so I can't tell
- 8 you how much we actually got. I just know we paid him two
- 9 hundred and fifty -- two hundred forty, two hundred and
- 10 fifty dollars for what we bought from him that day.
- 11 Q Okay. But we have testimony from Venson himself it
- 12 was two and a half grams, don't we?
- 13 A From what I recall, yes, sir.
- 14 Q So how many times does two and a half go into
- 15 fourteen?
- 16 A We need a calculator for that one.
- 17 Q Well, roughly about six. Right? Six would equal
- 18 fifteen. Right?
- 19 A No, sir, six would equal eighteen.
- 20 Q Six times?
- 21 A You said how many times?
- 22 Q Six times two and a half.
- 23 A Six times two and a half. Well, I guess it would be
- 24 close.
- 25 Q And a ten dollar break six times, you'd get a sixty

James Johnson - Cross by Brannon

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1 dollar break, wouldn't you?

2 A You're going to have to get me a calculator if you're
3 going to keep doing that.

4 Mr. St. Pierre - Okay. No further questions.

5 The Court - All right, Mr. Brannon?

6 Mr. Brannon - Thank you, Your Honor.

7 Cross Examination

8 by Mr. Brannon -

9 Q So when I go to Ingles and buy a six pack of toilet
10 paper, I pay four dollars and fifty-nine cents. Okay.

11 A Okay.

12 Q But if I go to Sam's and I buy a hundred rolls of
13 toilet paper, I can get it for twelve bucks. Right?

14 A Correct.

15 Q So Ingles and Sam's are just like dope dealers then.
16 Right? Is that what you're saying?

17 A I don't know if that's exactly what I'm saying. I
18 don't know exactly what you're getting at there. I know -
19 - All I'm saying is, in order for an individual to make
20 money off of selling dope, they get the dope in bulk.
21 They have to package it and process -- yes, and then they
22 have to go out and distribute it and then the price goes
23 up on the smaller amount.

24 Q That buy that your confidential informant made on
25 June 24th from Venson Harris was approximately two and a

James Johnson - Cross by Brannon

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- 1 half grams. Right?
- 2 A Correct.
- 3 Q Okay. That's an amount that would -- that I believe
- 4 your testimony was that that would probably be for
- 5 personal use. Right?
- 6 A Could be, yes, sir.
- 7 Q Okay. But what did Venson Harris get charged with?
- 8 A Distribution.
- 9 Q Distribution. And if your confidential informant was
- 10 not a CI, just a person buying two and a half grams of
- 11 crack and you arrested him, what would you have charged
- 12 him with?
- 13 A Two and a half grams it would've been possession with
- 14 intent to distribute.
- 15 Q Possession with intent to what?
- 16 A Distribute.
- 17 Q Distribute. Okay. So in the eyes of the law, two
- 18 and a half grams is distribution.
- 19 A Correct.
- 20 Q It's not personal use. Right?
- 21 A Correct.
- 22 Q Okay. And that two and a half grams or approximately
- 23 two and a half grams, you, Union County Sheriff's
- 24 Department, paid two hundred and forty dollars for it.
- 25 Right?

James Johnson - Cross by Brannon

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- 1 A Right.
- 2 Q And I know you don't have a calculator, but if you
- 3 multiplied two hundred and forty dollars times six, what -
- 4 -- What would it be if you multiplied two hundred times
- 5 six?
- 6 A You looking at twelve.
- 7 Q Twelve hundred dollars. Right?
- 8 A Correct.
- 9 Q Okay. And if you multiply forty by six, what do you
- 10 get?
- 11 A Two forty.
- 12 Q Two forty. So wouldn't that come to fourteen hundred
- 13 and forty dollars?
- 14 A I think so, somewhere around there maybe.
- 15 Q Okay.
- 16 A Like I say, if y'all going to keep throwing numbers
- 17 at me, you're going to have to give me a calculator.
- 18 Q Okay. But your testimony was or the State's
- 19 testimony has been that y'all were going to buy a half --
- 20 half an ounce for six hundred dollars?
- 21 A That is the going price on the street if you buy in
- 22 bulk, yes, sir, and that's what were getting -- supposed
- 23 to be getting.
- 24 Q According to Venson Harris.
- 25 A According to how the deal was set up. That's what

James Johnson - Cross by Brannon

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1 they were supposed to be bringing.

2 Q According to Venson Harris.

3 A Yes, sir.

4 Q Okay. The guy who just sold two and a half grams for
5 two hundred and forty dollars.

6 A Correct.

7 Q Got you. Okay. Now, let talk about fingerprints.
8 When did you go through the SLED training program to take
9 fingerprints?

10 A I went through the basic law enforcement academy and
11 then I was trained by a senior investigator here.

12 Q Okay. So I'm going to ask again. When did you go
13 through the SLED training program to learn how to take
14 fingerprints?

15 A All I had was basic law enforcement training at the
16 academy and then I learned how to take fingerprints here
17 from a senior investigator after I arrived back here at
18 the sheriff's office.

19 Q Okay. Does that mean you never had the SLED training
20 program for taking fingerprints?

21 A No, sir.

22 Q No you did not or no, sir, it doesn't mean that?

23 A No, sir, I did not have it at SLED. I had it here.

24 Q Okay. Now, what we know is that there was a package
25 containing the substance believed to be crack cocaine that

James Johnson - Cross by Brannon

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1 was sent to SLED. Right?

2 A Correct.

3 Q And when you sent it to SLED it was with the plastic
4 bag that it was found in. Right?

5 A Yes, sir.

6 Q Now, you -- And, again, I'm not saying -- when I say
7 you, I'm not talking about you, I'm talking about the
8 sheriff's department. The sheriff's department at some
9 point sent a document to SLED, in fact, this document
10 right here telling them what they were sending and what
11 they wanted done with it. Right?

12 A Yes, sir.

13 Q Okay. Now, on that document Lieutenant Sherfield
14 could've said and while you've got it, would you check the
15 plastic bag for fingerprints. He could have, couldn't he?

16 A I guess that is a possibility. I've never had --
17 I've never done that, asked them to print a bag like that.

18 Q But you know that SLED tests for fingerprints.
19 Right?

20 A Yes, sir.

21 Mr. Brannon - No further questions.

22 Mr. McKinnon - No questions for Sergeant
23 Johnson, Your Honor.

24 The Court - Any re-direct?

25 Mr. Anthony - No re-direct.

1 The Court - All right, you can step down. Thank
2 you. Call your next witness.

3 Mr. Anthony - That will be the State's evidence,
4 Your Honor.

5 The Court - All right, members of the jury
6 panel, the State has presented their evidence. I know you
7 just came back in and I know you feel like we're sending
8 you in and out, but like a ball game there are certain
9 parts of this -- a trial that we can't do until we've done
10 something before that to get to a certain point, and we've
11 reached a point to where I have to let you go out and take
12 up some matters of law outside your presence, so I'm going
13 to let you go back out again and we'll send for you as
14 promptly as we can.

15 (Jury exits the courtroom)

16 The Court - Anything from the State?

17 Mr. Anthony - No, sir.

18 The Court - All right, Mr. St. Pierre?

19 Mr. St. Pierre - Yes, sir, Your Honor, just one
20 second. (Pause) Your Honor, at this time I'd move for a
21 directed verdict, directed verdict in favor of my client,
22 Lashad Brewton for numerous reasons. I have prepared a
23 Memorandum in support of this directed verdict. I would
24 ask that it be marked as a Court's Exhibit.

25 The Court - All right, be marked and handed up

1 so I can peruse it.

2 (Document marked as Court's Exhibit Number 5.)

3 (Document handed up to the Court)

4 The Court - All right, go ahead.

5 Mr. St. Pierre - First I'd like to address the
6 charge that my client is facing trafficking in crack
7 cocaine where he either knowingly sells, manufactures,
8 delivers, purchases or brings into the State, or provides
9 financial assistance or otherwise aids, abets and attempts
10 or conspires to sell, manufacture, deliver, purchase or
11 bring into this State or he was knowingly in actual or
12 constructive possession or who knowingly intends to become
13 in actual constructive possession of ten grams or more is
14 guilty of trafficking in cocaine base. Your Honor has to
15 submit this case to a jury substantial -- substantial
16 circumstantial evidence has been presented that reasonably
17 tends to prove my client's guilt or from which his guilt
18 may fairly and logically be deduced. However, the Trial
19 Court should grant directed verdict motion when the
20 evidence presented merely raises a suspicion of guilt.
21 Conviction of possession of the drugs requires proof of
22 possession, either actual or constructive coupled with
23 knowledge of its presence. Knowledge can be proven by the
24 evidence of acts, declarations or conduct of the accused
25 from which the inference may be drawn that the accused

1 knew of the existence of prohibited substances. My
2 client, Lashad Brewton made no declarations, did not act
3 suspiciously, did not flee and therefore, did not exhibit
4 any tendency to show he knew that he was involved in any
5 type of cocaine related activity. My client further
6 submits that he could've just been acting merely as a taxi
7 driver or a chauffeur driving around Mr. Pope as he
8 usually may have done out of gesture of his kindness or
9 for compensation or out of indebtedness to Mr. Pope. The
10 record is clear that it was Mr. Pope's vehicle and that
11 his wife picked up the car the following day. The
12 defendant was the only one with a driver's license and
13 that's prima facie proof that the occupants of the car
14 were obeying the laws rather than breaking them.
15 Lieutenant Sherfield testified on the stand that he would
16 not arrest a taxi driver if this exact same stop, search
17 and seizure would've occurred in a taxi cab. This
18 testimony means that if one is a taxi driver, he is
19 presumed not to have knowledge of the reasons the
20 passenger is going to his destination, it would not be
21 subject to prosecution. Conversely, if you're -- By that
22 same logic, Mr. Sherfield is saying that the driver of a
23 non-commercial vehicle, the driver is presumed to have
24 knowledge -- is presumed to have required the passengers
25 to disclose the reasons for their travels and opens

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1 himself up to arrest and trial so long as the drugs are
2 located anywhere in the car. I submit this reason -- this
3 reasoning is non-sensible, because there is no maxim of
4 law that parallels this theory. The defendant bases this
5 motion on the precedent set forth in State vs. Andre
6 Jackson, Opinion 4894 filed October 5th, 2011. It's a
7 Court of Appeals case.

8 The Court - In that case according -- Just
9 briefly looking, wasn't the defendant the passenger as
10 opposed to the driver?

11 Mr. St. Pierre - He was a passenger in the car.

12 The Court - As opposed to the driver.

13 Mr. St. Pierre - Yes, sir, Your Honor. And it's
14 citations in State vs. Brown, 267, SC 311 and United
15 States vs. Blue 957, Fed.2d. 106. In Brown the officers
16 approached the car and immediately smelled the odor of
17 marijuana, saw a large opaque bag in the backseat
18 floorboard. A search later revealed there were eight
19 pounds of marijuana in the bag. Both occupants were tried
20 and convicted. The State Supreme Court reversed the
21 conviction of the passenger because he was merely acting
22 nervous and told the driver to shut-up when he was
23 confessing. Obviously a confession helped the driver to
24 get convicted. The Court ruled that the passenger's
25 directed verdict should've been granted, even though there

1 was a smell of marijuana and eight pounds of marijuana in
2 the back seat. In Blue the cops had set up surveillance
3 of a house suspected for illegal drug activity and noticed
4 a car pull up, passengers get out and go inside and return
5 to the car shortly thereafter and depart. The cops pull
6 over the car due to a seat-belt violation and observed the
7 passengers do a shoulder dip, much like Rod allegedly had
8 done in this incident. They also testified the passenger
9 was acting nervous after a gun was found under his seat.
10 He was tried and denied direct verdict and convicted. The
11 U.S. District Court of Appeals reasoned as follows:
12 Beyond the officers claim that he saw the passenger's
13 shoulder dip and the discovery of the pistol underneath
14 the passenger's seat, the government did not substantiate
15 its case against the passenger. It did produce finger-
16 prints or any -- It is not did not produce finger-prints
17 or any other physical evidence which would link him with
18 the gun. The government introduced no evidence
19 demonstrating that the passenger owned the gun or the
20 testimony that he had been seen with the gun. The car in
21 which the gun was found did not belong to the passenger.
22 In this case the car did not belong to Mr. Brewton. In
23 fact, no evidence indicated that he had ever been in that
24 car before. Same with Mr. Brewton. There's no evidence
25 that Mr. Brewton had ever been in this car before.

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1 Without more evidence than that proffered by the
2 government, they did not sustain the passenger's
3 conviction. The defendant submits that Sherfield's
4 testimony is even more favorable to the facts in Blue.
5 There were no further movements by the defendant, no
6 contraband found within his reach, no contraband found on
7 his person. And then we've got similarities of Blue. The
8 State did not produce finger-prints connecting anyone in
9 (sic) the contraband. Even though they could've tried to
10 fingerprint these scales, but instead they threw them in
11 a file cabinet. No evidence presented as to who owned the
12 contraband, the car does not belong to the defendant and
13 there was no evidence that the defendant has ever been in
14 the car before. Therefore, under Blue I would submit the
15 defendant is entitled to a directed verdict of not guilty.
16 In Jackson a traffic stop ensued which Jackson was the
17 defendant. Upon approaching the car, the officer smelled
18 marijuana. A drug dog later hit on both sides of the car.
19 Both the passenger and the driver gave conflicting stories
20 to the officer about where they were going. Four bags of
21 marijuana were found in the center console in between the
22 two buckets seats between the driver and the passenger.
23 After he was denied a directed verdict on the basis that
24 there was no circumstantial evidence of knowledge that of
25 the contraband, Mr. Jackson appealed it. The South

1 Carolina Court of Appeals did an analysis in comparison of
2 Blue and Brown and said the following: Here the evidence
3 against Jackson is even less than in either Brown or Blue.
4 The drugs were more out of sight and the State presented
5 no evidence that Jackson was nervous or made any
6 suspicious movements. Accordingly, the State failed to
7 present sufficient circumstantial evidence of knowledge to
8 submit the case to the jury. Thus the Trial Court erred
9 in denying Jackson's motion for a directed verdict.
10 Without evidence of knowledge existing there can be no
11 dominion and control to exercise illegal contraband.
12 Without dominion and control, there can be no constructive
13 possession. Without constructive possession, the
14 defendant must be granted a directed verdict. The
15 defendant would ask this Court to compare this case
16 similar in every way except the contraband in question.
17 And ---

18 The Court - Again, in both of those cases it was
19 a passenger, not a driver.

20 Mr. St. Pierre - Right, but what the maxim of
21 law says, the driver of a car -- and I'm comparing to the
22 Jackson ---

23 The Court - I'm going to charge the jury that --
24 I can tell you that I'm going to charge the defendant --
25 the defendant's knowledge -- knowledge and possession may

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1 be inferred when a substance is found in the presence on
2 the property under the defendant's control.

3 Mr. St. Pierre - Okay. And I would -- I would
4 ask the Court to -- would a taxi driver -- Would a taxi
5 driver be ---

6 The Court - I'm not going to argue with you.
7 I'm just -- You can ask me, but I'm not going to answer
8 you.

9 Mr. St. Pierre - Okay. Well, I would submit
10 that a taxi driver would carry the same liability as my
11 client -- my client does, unless the Court distinguishes
12 that from a taxi driver is not in control of a vehicle --
13 the vehicle, because he's being told where to drive, and
14 this would be my same argument that because my guy is the
15 only one with a license and it's not his car, he's being
16 told where to drive, he wouldn't be under -- He wouldn't
17 have control of that premises.

18 The Court - Where is the evidence that he was
19 being told where to drive? I told you I wasn't going to
20 answer your question and now I did, but where is the
21 evidence? Maybe that's my question. Where is the
22 evidence he was told where to drive?

23 Mr. St. Pierre - That would be inferred.

24 The Court - Why?

25 Mr. St. Pierre - Because -- why everything else

1 is being inferred against him. I mean that's my question,
2 is there's no evidence that my client knew any of this was
3 going on, and that's -- In order to be convicted of this,
4 Your Honor, you have to know what's going on, and there's
5 no evidence that the State produced that my client knew
6 anything was going on.

7 The Court - All right, I deny the motion. I
8 find there is direct evidence and substantial
9 circumstantial evidence from which the jury could return
10 a verdict as to Mr. Brewton. Not saying they will, of
11 course, but I think they could. All right, anything else?

12 Mr. St. Pierre - Yes, sir, Your Honor. I would
13 again renew my motions to suppress any evidence based on
14 probable or lack of probable cause to stop the vehicle.
15 There was a lack of probable cause to search my client.
16 There was a lack of probable cause to arrest my client for
17 possession of cocaine which was out of his reach in the
18 backseat underneath the seat. And there's no knowledge --
19 And I'll go back to the same argument that I'm sure will
20 be the same answer, but there's no knowledge that he --
21 There's no evidence that had -- that showed he had
22 knowledge of anything underneath the seat in someone
23 else's car. I would also renew my motions on the grounds
24 that the testimony that was elicited from the stand was --
25 was hearsay and violative of my client's due process right

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1 to a fair trial. There was one specific order where the
2 testimony could've come out where the hearsay would not
3 have been violative and that would've been Venson
4 testifying -- Venson Harris testifying first saying that
5 I knew Pope, I recognized his voice, I talked to Pope, he
6 told me he was coming into town and we were arranging a
7 drug deal, then I told Johnson and then Johnson told
8 Sherfield and then Sherfield told everyone else. I don't
9 see any way around that, because Mr. Pope is the only one
10 -- Mr. Harris is only one that can identify who Pope was
11 and what Pope said. There is no recording. There's no
12 speaker phone of any of the conversation and so, you know,
13 admission -- The admission of a co-conspirator hearsay is
14 not applicable in this case, because everything was based
15 on hearsay from the stand.

16 The Court - All right.

17 Mr. St. Pierre - I would also make a motion that
18 there is not substantial evidence in this case to move
19 past this point of directed verdict.

20 The Court - All right, I deny the motions and
21 rely on my rulings earlier regarding all of the issues
22 that you now raise and stand by my earlier rulings on each
23 and every one of those issues. The -- You hit on one
24 point that nobody really kind of brought up that crossed
25 my mind earlier, was the co-conspirator absence of the

1 hearsay rule. The charge does include attempt or conspire
2 to sell, but I haven't based any of my rulings on that
3 theory at this point. You understand what I'm saying?

4 Mr. St. Pierre - Yes, sir.

5 The Court - Well, it crossed my mind at some
6 point during the trial that we do have the co-conspirator
7 hearsay exception -- exception to the hearsay rule. Here
8 Mr. -- there's been no -- I don't know there's been an
9 attempt by the State to make Mr. Harris a co-conspirator
10 and, of course, he's not charged with anything, these
11 three gentlemen are charged with conspiring, but my point
12 is that there is that exception to the hearsay rule, but
13 I have not based my rulings on that.

14 Mr. St. Pierre - Okay.

15 Mr. Brannon - Your Honor, I would join in
16 motions made by Mr. St. Pierre. I would renew my prior --
17 my previous motions, understanding the Court's rulings.
18 I would move for a directed verdict in this matter, Your
19 Honor, on a different basis than those raised by Mr. St.
20 Pierre. The State has not proven -- in fact, not proved -
21 - they have not produced any evidence that could prove
22 that there was ever drugs in that black Ford Expedition,
23 never. And they certainly never proved that there were
24 any drugs in the possession of my client. Without there
25 being drugs -- Without there being evidence of drugs in

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1 the black Ford Expedition, there is no case. Your Honor,
2 there is no evidence in the record that were ever any
3 drugs in that black Ford Expedition, and based on the
4 State's failure to make that proffer of evidence, I move
5 for a directed verdict at this point.

6 The Court - I deny the motion. There is direct
7 evidence and substantial -- circumstantial evidence based
8 on the facts presented in which the jury could reach a
9 conclusion that the State has proven beyond a reasonable
10 doubt Mr. Pope's guilt as to trafficking. All right, Mr.
11 McKinnon?

12 Mr. McKinnon - Thank you, Your Honor. First I
13 would like to renew all motions and objections made
14 throughout the trial and pre-trial including but not
15 limited to all motions to suppress. And, Your Honor, I
16 also would concur and agree with motions made by both Mr.
17 St. Pierre and Mr. Brannon. Your Honor, I think can
18 distinguish my client from the other two to some degree as
19 well. Mr. Crosby was not mentioned by Mr. Harris at all
20 in the testimony as far as whatever was alleged he be
21 discussed back and forth between he and Mr. Pope. Mr.
22 Crosby actually -- I'm sorry, Mr. Harris actually said of
23 Mr. Crosby, he had never heard of him, he had never met
24 him, had no idea who he was. Mr. Crosby was merely found
25 in the backseat of this black Ford Expedition that was

1 pulled over. He was not in control of the vehicle. He
2 was clearly a passenger in the backseat. He had no
3 ability to have dominion or control of the vehicle or
4 anything found therein. I believe there is some case law
5 and Mr. St. Pierre brought it up that the fact that
6 something is found -- some contraband was found underneath
7 the seat of a passenger vehicle that is neither owned nor
8 driven by a passenger does not necessarily give the State
9 probable cause to arrest that passenger. Your Honor, the
10 only possible bit of evidence against Mr. Crosby I believe
11 is that after this arrest that we certainly are objecting
12 to his -- the probable cause for the arrest based on many
13 reasons already enumerated, but he was put into a police
14 car and taken out of a police car where eventually some
15 drugs were found in. Your Honor, that's a scintilla of
16 evidence and we will argue that you should direct a
17 verdict against Mr. Crosby -- I mean for Mr. Crosby.

18 The Court - Well, I deny that motion for the
19 same reasons. I think there is direct and circumstantial
20 evidence from which a jury could reach a conclusion that
21 the State has proven beyond a reasonable doubt Mr. Crosby
22 was involved or knew or was in actual or constructive
23 possession or -- let me put it like this, that the State
24 could prove that Mr. Crosby did, in fact, as alleged in
25 the indictment was involved in the trafficking of crack

1 cocaine as alleged, so that motion is denied.

2 Mr. McKinnon - Thank you, Your Honor.

3 The Court - Now, all three defendants, Mr.
4 Brewton, Mr. Pope and Mr. Crosby, can you each hear me?

5 Mr. Brewton - Yes, sir.

6 Mr. Crosby - Yes, sir.

7 Mr. Pope - Yes, sir.

8 The Court - All right, we've reached the point
9 in the trial where you have the right to present a defense
10 if you wish. You do not have to present a defense if you
11 do not want to, but you have a right to. You are presumed
12 innocent of the charges against you and the State has to
13 prove your guilt beyond a reasonable doubt. You do not
14 have to prove your innocence. Again, you're presumed
15 innocent. The State has to prove your guilt beyond a
16 reasonable doubt. You could call witnesses if you wish.
17 That is your absolute right. You can testify if you wish.
18 That is your absolute right. You can remain silent, that
19 is, choose to exercise your constitutional right to remain
20 silent. That is your absolute right. If you choose to
21 exercise your right to remain silent, I would tell the
22 jury that they -- they cannot use that against you, that
23 they cannot even discuss or factor into their own
24 deliberation the fact that you have exercised your
25 constitutional right to remain silent. I will emphasize

1 the substance is, in fact, crack, the defendant has
2 possession of that crack either actual or -- actual
3 possession or constructive possession and that there were,
4 in fact, ten grams or more of crack cocaine involved. I
5 believe all the language in the indictment is boiled up
6 into actual constructive possession.

7 The Court - Well, based on where we're ending
8 up, I -- My trafficking charge, I don't follow Judge
9 King's, but I guess based on what's requested by the
10 State, I need to charge what constitutes aiding and
11 abetting, need to charge attempt, need to charge conspire,
12 of course, sell and deliver would be normal context, but
13 I think I need to tell them what conspire means. Yes,
14 sir?

15 Mr. Brannon - I know you want to take a break,
16 but I ---

17 The Court - No, I'm not in no hurry to take a
18 break. I ---

19 Mr. Brannon - I do have a motion, Your Honor,
20 and it may take some time.

21 The Court - Okay.

22 Mr. Brannon - Your Honor, I would -- I
23 understand that you have allowed the drugs in over
24 objection. I certainly understand that, but I now raise
25 a new objection to the drugs themselves, Your Honor. This

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1 is not a chain objection, but it is an evidentiary
2 objection. Your Honor, Officer Vinson -- Deputy Vinson
3 testified that he found some -- something that he believed
4 to be crack cocaine in the backseat of his car. He
5 testified that he gave that contraband to Lieutenant
6 Sherfield. Lieutenant Sherfield took some drugs to -- or
7 took a substance to SLED to be tested. The Court's well
8 aware of that. What did not occur in this case is the
9 State never picked up that bag that contained allegedly
10 crack cocaine and showed it to Officer Vinson and asked
11 him to identify it as the drugs that he found in the
12 backseat of his car and then hand it to Sherfield. So,
13 Your Honor, we don't -- There's no evidence in the record
14 that -- that State's Exhibit Number 2 I think is the
15 number on it -- is the drugs that Vinson found in the back
16 seat of his car. There is absolutely no evidence and
17 that's why, Your Honor, I thought it might take a while.
18 You might want to go back and look at Vinson's testimony,
19 because they never picked the bag up, they never showed it
20 to them, they never said is this what you found in the
21 backseat of your car. That was never asked. He never
22 identified it. Nowhere. So, Your Honor, there's no
23 evidence in the record that what he says he found in the
24 backseat of his car is what's in that bag marked State's
25 Number 2, so I would move to suppress based on the fact,

1 Your Honor, that that evidentiary step was never made by
2 the State?

3 The Court - What do you have to say about that?

4 Mr. Anthony - We don't have to make that step.
5 Lieutenant Sherfield testified -- Well, Sergeant Vinson
6 testified that he found the crack in his car. He called
7 Lieutenant Sherfield, Lieutenant Sherfield came out to the
8 jail and the crack was turned over to him by Corporal
9 Vinson. Lieutenant Sherfield identified the crack that's
10 in evidence as the crack that was turned over to him and
11 Corporal Vinson testified that he turned the crack over to
12 Lieutenant Sherfield at the jail. So we've shown our
13 chain and the evidence has been admitted.

14 Mr. St. Pierre - Judge, I would join in the
15 motion and further add that there's evidence that at least
16 two crack buys happened on that day and possible a third.
17 I think Sherfield said that there was a third sting later
18 after the arrest of these -- of these defendants and I
19 believe that in order for Vinson to say the crack that I
20 gave Sherfield was, in fact, that crack, he has to look at
21 it and identify it, because there's a substantial -- We
22 don't know about the possible third sting and all we know
23 about is this sting and then the other ones before it. So
24 I think that it is a necessity, an evidentiary standards
25 that the officer at the very least take a look at it and

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1 identify it and say, yes, that's what I found in the back
2 of my car.

3 The Court - Mr. McKinnon, your turn.

4 Mr. McKinnon - Your Honor, I just briefly add to
5 that and also will join in this motion and my recollection
6 also is that Corporal Vinson did not say that he took me
7 out of the of the car and gave it to Lieutenant Sherfield.
8 He said he put it in his trunk is my recollection.

9 Mr. Brannon - Your Honor, I don't know that I
10 agree with Mr. McKinnon's recitation of the testimony. My
11 recollection is that he found the drugs, he went to the
12 trunk of his car and got a bag and put it in the bag that
13 was in the trunk of his car, but, Your Honor, State's
14 Number 2 doesn't have Deputy Vinson's name on it anywhere.
15 So there has to be some -- He has to identify it. He's
16 the one who found it. He has to make a identification of
17 the evidence that's in this case. And he's not done it.

18 The Court - Well, I deny the motion. The chain
19 does not have to be proven a hundred percent. Has to be
20 proven -- I hate to use the word substantially, but each
21 person who was in the chain has to be accounted for and
22 that is the case here and that's a jury argument for you
23 to make, but I think I -- The testimony of Vinson and
24 Sherfield coupled is sufficient, so I deny that motion.
25 All right, we'll take a short break and then get the jury

1 in for closing arguments and charge and we'll have them
2 order lunch so they can -- not have to stop deliberations.
3 So let's take a break.

4 Mr. Brannon - Your Honor, the Court's been so
5 convenient and courteous, would the Court consider
6 allowing us to break for lunch before we do closing
7 arguments, because it's going to take probably two hours?

8 Mr. Anthony - I would join in that.

9 The Court - All right, I'm going to bring them
10 in and we'll break for an hour. How about that?

11 Mr. Brannon - That's perfect.

12 The Court - All right, bring in the jury.
13 That'll give me time to think through all of this morass
14 of stuff.

15 (Jury returns to the courtroom)

16 The Court - Members of the jury panel, the State
17 as I've told you has rested and that's put us in a
18 position of having to take up some legal matters which is
19 what we've been doing. The defense now has a right to
20 present a case if they wish. I have been told by each
21 that they do not intend to call any witnesses, but I will
22 let them or call on each of them to put on the record
23 their intentions.

24 Mr. St. Pierre - Thank you, Your Honor. At this
25 point Mr. Brewton rest.

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1 Mr. Brannon - Thank you, Your Honor. On behalf
2 of Mr. Pope I rest.

3 Mr. McKinnon - Your Honor, Randy Crosby rest.

4 The Court - All right. So now we've received
5 all the evidence through the testimony and exhibits. The
6 next stage of the trial will be the arguments of the
7 attorneys and then my charge on the law. It's lunchtime
8 and I don't want to work through lunch, so we'll stop --
9 well, we'll stop til 1:15. That's an hour and fifteen
10 minutes. You're not yet in a position to make up your
11 mind. You're not yet in a position to discuss the case,
12 and of course I told you what to do if anybody tries to
13 discuss the case with you, so have a pleasant lunch and be
14 back at 1:15 and we'll start with the closing arguments of
15 the attorneys.

16 (Jury exits the courtroom)

17 The Court - All right, we'll break til 1:15 and
18 I don't want to leave everybody up in the air, but I'm
19 still thinking through the lesser included request by the
20 State, so I'll be looking at that over lunch. I'll
21 certainly have a decision before we go to the jury. All
22 right. See you back at 1:15.

23 (Lunch recess taken)

24 The Court - I have looked at my charges and what
25 I have charged in the past and find that the charges in

1 trafficking do include the lesser included of
2 distribution, possession with intent to distribute and a
3 charge to that I feel like I -- incumbent upon me to
4 charge simple possession, so that's my intentions at this
5 time. Any comment on that by the State?

6 Mr. Anthony - No, I assume when you charge --
7 part of the PWID charges inference and all of that?

8 The Court - Yes, it is.

9 Mr. Anthony - Okay.

10 The Court - Any comments?

11 Mr. St. Pierre - No, sir. If, in fact, if
12 you're going to PWID, just ask that you do the lesser
13 included as well.

14 The Court - All right.

15 Mr. Brannon - No comment.

16 Mr. McKinnon - Nothing.

17 The Court - All right, we've got the copies of
18 a little bit more we're going to add in as far as the
19 lesser included and conspiracy. And then with that I
20 believe we're ready to -- State ready to proceed?

21 Mr. Anthony - Well, I would appreciate just a
22 couple of minutes to look at ---

23 The Court - Sure. Take a minute. We're getting
24 the verdict forms typed right now so it'd be in ascending
25 order of the possible verdicts, including, of course, not

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1 guilty. (Pause) In first on possession with intent to
2 distribute, I'm not going to charge that all of the
3 elements of trafficking except crack -- of the crack
4 cocaine and then for the addition I'm just -- I'm going to
5 say possession with intent to distribute requires active
6 or constructive possession of crack cocaine as I have
7 already defined these terms for you, additionally, the
8 State must prove beyond a reasonable doubt that the
9 defendant had the intent to distribute crack, then that --
10 then the inference. And I don't see where the Clerk's
11 printed out the other ones I wanted yet. Aiding and
12 abetting and conspiracy. Maybe you've already done those.
13 I don't see them.

14 Mr. Anthony - I have the conspiracy.

15 The Court - Okay, he -- I just -- Yes, I've got
16 it. I'm sorry, we've got it. It is in there. But I'll
17 get the aiding and abetting. All right, anything else?

18 Mr. Anthony - If I could just have one moment.

19 The Court - Okay.

20 Mr. Anthony - I think it's when the Court -- as
21 to the conspiracy, the Court will just couch that in the
22 trafficking charge since they're not --

23 The Court - I'm not going to charge as a
24 separate offense. I've haven't really read through it,
25 but I'm going to charge it as a definition of conspire ---

1 Mr. Anthony - Yes, sir.

2 The Court - --- not as a charge ---

3 Mr. Anthony - Not ---

4 The Court - -- not as a substantive offense.

5 Mr. Anthony - Okay. The only concern I have is
6 I would just renew my request to charge hand of one, hand
7 of all in that the conspiracy and aiding and abetting
8 attempted language is couched in the trafficking statute
9 and so for the jury to understand that that type theory
10 would work for a PWID, I would submit that they ought to
11 be charged as the hand of one is the hand of all.

12 The Court - Well, is the hand of one the hand of
13 all on possession with intent to distribute?

14 Mr. Anthony - Well, I think that if a jury found
15 that three people had an agreement to come to Union and
16 sell ---

17 The Court - Well, you're back in the conspiracy
18 now ---

19 Mr. Anthony - Well, ---

20 The Court - --- as opposed to hand of one is
21 hand of all.

22 Mr. Anthony - They can't -- I don't know that
23 the jury would understand that -- Say the jury decided
24 that this was a PWID case, not a trafficking case, the
25 charge on PWID does not encompass a conspiracy theory, the

1 ---

2 The Court - Right. I understand what you're ---

3 Mr. Anthony - Conspiracy is part of trafficking,
4 not PWID.

5 The Court - I understand that.

6 Mr. Anthony - But I do think if they believe
7 that they came to Union to sell less than ten grams of
8 crack, that ---

9 The Court - Well, the problem I have is I'm
10 going to charge them actual constructive possession and --
11 - charging mere presence and to possess -- I'm not going
12 to charge -- I'm not going to charge the hand of one is
13 the hand of all. All right, Mr. St. Pierre, I think you
14 were standing.

15 Mr. St. Pierre - Your Honor, with the
16 conspiracy, my concern is that if a jury convicts any of
17 these clients for conspiracy to traffick or conspiracy to
18 possess with intent, I believe by statute our clients'
19 penal liability would be cut in half. If there's any way
20 for us to put on the verdict form or -- or if they do come
21 back with guilty, could we then ask them to determine
22 whether or not it was based on the conspiracy?

23 The Court - You're on record requesting that.

24 I don't -- I don't believe that's the law because I know -

25 - I know what you're talking about. I know conspiracy

1 statute, but this -- This is part of a substantive
2 offense, so I'm not going to charge that. I'm not going
3 to have them do the breakdown. All right, Mr. Brannon?

4 Mr. Brannon - Your Honor, you may have already
5 answered this question, but in your conspiracy charge,
6 right under the heading that says the defendant is charged
7 ---

8 The Court - No, I'm not going to charge that.

9 Mr. Brannon - Okay. Thank you. And then the
10 last paragraph of that charge where it says in order to
11 convict ---

12 The Court - I'm not going to charge that.

13 Mr. Brannon - Thank you very much. That's all
14 I have.

15 The Court - Okay. Anything, Mr. McKinnon?

16 Mr. McKinnon - No, Your Honor.

17 The Court - All right.

18 Mr. Anthony - I don't really need to see the
19 aiding and abetting. I think I got a pretty good idea how
20 you explain that, so I'm ready whenever.

21 The Court - All right, bring in the jury.

22 (Jury returns to the courtroom)

23 The Court - Members of the jury panel, the State
24 will argue first, then the attorneys will have their
25 opportunity. We'll probably take a break sometime before

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1 we get to my charge, depending on the length of the
2 arguments.

3 Mr. Anthony - Thank you, Your Honor. All right,
4 the way our rules work, I do the argument that I have and
5 then I have to sit down and all three of the defense
6 lawyers get to go and I don't get to say anything else, so
7 I'm -- I feel like I'm kind of at a disadvantage, but all
8 I'm going to do is just try to outline to you what I
9 think's important in this case and then that'll -- I won't
10 be able to respond, so I hope that you'll be able to make
11 some responses based on what I'm going to suggest to you.
12 What I'd like for you to think of -- I know in Mr.
13 Brannon's opening statement he talked about a box and he
14 talked about a box with a cat and a mouse, and I want you
15 to imagine a box, too, only I don't want you to think
16 about a box with a cat and a mouse and a hole. I want you
17 to think about a closed up box or a secured box and I want
18 you to think about animal, but I don't want you to think
19 about a cat and a mouse. I want you to think about a box
20 with no holes and a snake. And you put -- Some of you may
21 be thinking you'd never pick up a snake, but just kind of
22 work with me here for a minute. You put the snake --
23 Well, first of all you look in the box and you check the
24 box real close and there's nothing in the box at all,
25 completely clean, and you take the snake and you put the

1 snake in the box and you take that box somewhere, maybe
2 you take it to somebody who likes snakes or something, I
3 don't know, but you take the box somewhere, and you get
4 the box to where it's going, you open up the box, you take
5 the snake out of the box and then you look in the box and
6 what's in the box. There's a snake skin in the box.
7 Well, I would submit to y'all that this is the snake skin
8 of our case, because what you have -- What happened that
9 night was that you had a patrol car that two arrested
10 people were about to be placed into, and the sheriff's
11 office knew -- They knew that somewhere on somebody there
12 was some crack, because they had this deal set up, and
13 they hadn't found any crack in the Expedition, so they
14 knew there had to be some crack somewhere, and Lieutenant
15 Sherfield knew that. This is what he does for a living.
16 So he goes to Corporal Vinson before they go and they put
17 Mr. Brewton and Mr. Crosby in Corporal Vinson's car and he
18 tells him, he says you check that car. And then Corporal
19 Vinson goes and he gets his -- He gets his seat up, he
20 looks in his car and he's got a clean box. He knows that
21 there's nothing in that car, and he does that routinely
22 anyway, but he was sure going to do it this time, because
23 his superior had told him to and as you know, if you're on
24 the job and one of your superiors tells you to do
25 something and he's right there with you, you're going to

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1 go do it. So you know that Corporal Vinson had a clean
2 box. He had a clean backseat when he put those two guys
3 into it, and part of the reason for that was, there was an
4 expectation that maybe, just maybe -- They didn't know for
5 sure who had the crack. They knew somebody had crack and
6 they knew that Captain McNeil wasn't able to just strip
7 them down buck-naked there on the side of the road. He
8 couldn't do something like that, so they knew that there
9 was a pretty good chance that that crack was going to wind
10 up in the backseat of that car, and that's why they
11 checked it so close was to make sure it would be clean.
12 And so sure enough, when Corporal Vinson just makes the
13 trip to the jail, he takes them in the jail and then what
14 was the very next thing he did once he got them to the
15 jail, he goes out and checks his car, and sure enough when
16 he checks his car, what does he find. And it's just
17 really interesting that the skin was found where Mr.
18 Crosby was sitting, not where Mr. Brewton was sitting,
19 where Mr. Crosby was sitting, and it's really interesting
20 that this scale was found underneath where Mr. Crosby was
21 sitting. See they can't -- this scale, it didn't come out
22 of Venson -- from Venson Harris. This isn't Venson
23 Harris' scale. This is Mr. Crosby's scale. It didn't
24 come from a patrol car. It came from their car and it
25 came where (sic) the man who turned out left the crack in

1 the backseat. It came from where he was sitting. You
2 know, drug dealers and scales are kind of like barbers and
3 cutters. If you were a barber and you went to cut
4 somebody's hair, what would you take? You'd take a
5 cutter. You'd take your scissors, whatever they -- the
6 technical word for it is. I call it a cutter. You go
7 somewhere and sell crack, you're a crack dealer, you're
8 going to take a scale. But Mr. Crosby, he didn't take the
9 scale with him. He just left the scale in the Expedition,
10 but once they hand-cuffed his hands behind his back, they
11 put him in that car, he was able to get that crack out
12 from wherever it was on his body, probably in his
13 underwear, but wherever it was in his body, he was able to
14 get it out and he was able to just work it down underneath
15 that seat that Corporal Vinson said he didn't even keep
16 locked down, because he has to check it all the time, so
17 it couldn't have been that hard. Your hands are behind
18 your back, you reach down in your underwear, you pull the
19 bag out, you work it down in the seat. And that's what he
20 did. And that is really the key to this whole case,
21 because there's no other reasonable explanation for how
22 that crack got to where it was, how this bag got to --
23 Russell Vinson's to the backseat of his car other than
24 Randy Crosby left it there. The box was checked before
25 the snake got put in it. It got checked again after the

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1 snake was taken out, there was the skin. There's no
2 reasonable explanation as to where that skin could've come
3 from, other than it was left by Randy Crosby. And when
4 you get to that point, everything else about the case
5 really just sort of falls into place. Mr. Pope got a call
6 from Mr. Harris. He rounded up his crew. He got Mr.
7 Brewton to be his driver. He got Mr. Crosby to bring the
8 -- to hold the crack and hold the scale and down 176 they
9 go. And that, ladies and gentlemen, makes them drug
10 traffickers. And the Judge will give you this definition
11 of trafficking, but basically there's just a couple of
12 words I want you to listen for. There's two ways really
13 in this case that you can find somebody is a drug
14 trafficker. The first way is to find that they agreed,
15 which the legal word for that is conspire, or that they
16 participated, and the legal word you'll hear for that is
17 aided or abetted in the delivery of crack cocaine,
18 basically that everybody got together with the intent to
19 deliver crack down here in Union and everybody had a role.
20 So that's the first way. The second way is under what --
21 what's called a possession outlook. And either way,
22 either way it works, they both apply, but either one you
23 could reason this out either way. As to possession,
24 there's two kinds of possession. One is actual
25 possession, which is what Mr. Crosby had before he dropped

1 the crack in the car. And then the other is what's called
2 constructive possession which is basically the Judge will
3 use the words dominion and control. And, you know, I was
4 thinking about how to try to illustrate this, and I think
5 a good way to look at it is, I had three guys over to my
6 house last week, because I had these big old bushes that
7 I had to have taken down, and they are all part of the
8 same yard business, and I'm sure they have tools, saws and
9 lawn mowers and shovels and whatever, they all have tools
10 that they -- belong to the yard business, that they just
11 all use. Well, at any given time one person is in actual
12 possession say of a shovel, but all three of them have
13 constructive possession of that shovel, because it's the
14 yard business shovel and they all three have access to it.
15 They all three have dominion and control over it. So just
16 because the crack wasn't found on Mr. Brewton, the crack
17 wasn't found on Mr. Pope, that doesn't mean that they
18 aren't legal -- from a legal standpoint that they aren't
19 legally in possession, and as long as you find that there
20 was an agreement between the three of them, you -- As long
21 as you find from these circumstances that we've proven to
22 you that these three guys came to this agreement to come
23 to Union and deliver crack, then they're all three guilty.
24 And the only other thing you have to consider is the
25 weight, because if you have over ten grams -- This is

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1 trafficking based on weight -- If you have over ten grams,
2 you're considered a drug trafficker. If you have some
3 doubt about the amount, that you'll have an option to
4 convict them of what's called possession with intent to
5 distribute, which is a lesser offense of trafficking, and
6 basically that means that you are possessing less than ten
7 grams of crack with the intent to distribute it, but the
8 law allows y'all, it allows the jury to find that
9 possession is being made with the intent to sell when a
10 person has over a gram, so if there's some doubt in your
11 mind about the trafficking, you can still find them guilty
12 of possession with intent to distribute. Now, one other
13 thing or a couple other things I need to mention to you,
14 Mr. Pope has made this other defense claim, and I need to
15 talk to you about that a minute. He is claiming what is
16 known as the entrapment defense. And basically the Judge
17 will give you this explanation, this legal explanation of
18 entrapment, but I would submit to you that when you break
19 down entrapment, what it really boils down to is somebody
20 saying, well, I did it, but I didn't really want to, I was
21 made to do it. And the legal term that is used for that
22 is what's called predisposition, and if you find as jurors
23 that a defendant had any predisposition, that's what the
24 government say, any predisposition to commit a crime, then
25 they're not -- there hasn't been entrapment. Well, I was

1 thinking about this entrapment, and maybe some of y'all
2 have had to call people from Spartanburg to come to your
3 place in Union and do something. It's probably not
4 uncommon for people in Union every now and then to have to
5 get somebody from Spartanburg to come to where they live.
6 And I know for me, I need -- I wanted to get my chimney
7 cleaned out so I can burn wood in it this winter, and I
8 couldn't find anybody local that did that, so I called
9 this man up in Spartanburg last week, and I called him up
10 and I told him who I was and where I lived and told him
11 what I wanted him to do and I asked him how much he'd
12 charge me to come here and do it and asked him when he
13 wanted to come, and I was thinking about that conversation
14 and I thought, well, shoot, did I entrap that chimney man,
15 because that's pretty much what Mr. Harris did. Mr.
16 Harris called Mr. Pope up, he told him what he wanted, he
17 got him a -- got a price, he asked him to come. Sergeant
18 Johnson heard the whole -- you know, heard the whole
19 thing. Doesn't sound like there was any begging, wasn't
20 any begging, you know, please, Mr. Pope, come down here
21 and bring me some crack cocaine. Doesn't sound like there
22 was any of that. So if Mr. Pope comes -- And you can call
23 a man-up and get a price, find out when he's coming,
24 that's not entrapment. Nobody made Mr. Pope do anything.
25 As a matter of fact, if you remember back to those phone

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1 calls -- The phone's in evidence, so you can examine that
2 phone if you want to, but by my recollection -- Obviously,
3 this is for you to decide, but I counted eleven calls that
4 day, eleven times that Mr. Pope was on the phone trying to
5 call Mr. Harris doing the back and forth trying to set all
6 this up. And Mr. Pope was down here in about two hours.
7 You know, he made it down here in two hours. He made
8 eleven calls to Mr. Harris and now they want y'all to
9 think that he was entrapped, that he just had to do this.
10 Well, now, come on, he wasn't entrapped. He did what he
11 wanted to do. Nobody made that man over there get in his
12 vehicle, get his crew together and do anything. He did it
13 because he wanted to do it, because he wanted to sell some
14 dope and he wanted to make some money. That's what this
15 boils down to. When these lawyers get up here after I sit
16 down -- I'm going to sit down pretty soon. I'm trying to
17 keep this short. But when these lawyers get up here, I
18 imagine you're going to hear an awful lot from them about
19 things that they say that the sheriff's office did wrong,
20 and you probably going to hear a whole lot about, well,
21 this isn't in the report, this is mis-stated in the
22 report, this time is wrong and this date is wrong, on and
23 on. That's what I expect you'll hear an awful lot. Well,
24 as you're listening to that, I would ask that you -- you
25 think to yourself, how much of that matters. Okay?

1 That's what I'd ask that you think about. How much of it
2 matters and how much of it is just complaining because
3 there's not really much else to say. And what I would ask
4 you to remember about this case is that the sheriff's
5 office here, they're not on trial. You know, your verdict
6 is not a judgment for the sheriff's office. These three
7 men over here, they're the three that are on trial. Now,
8 I am not excusing mistakes, but your job, your verdict is
9 not whether or not the sheriff's office made a perfect
10 case. Your verdict is are these three men guilty, and you
11 know these three are guilty because there's no explanation
12 as to how this crack wound up in the back of Corporal
13 Vinson's car, other than Randy Crosby put it there, and
14 all these paper problems, and that's essentially what they
15 are, problems with paper, don't really matter to what
16 y'all have to decide. Now, the Sheriff of Union County
17 has been in this courtroom pretty much this whole case.
18 Okay? And his office is downstairs in the courthouse and
19 I'm sure that he would be glad to hear anything that y'all
20 have to say about what you think about how his department
21 made this case, but I would just ask you, I'd just beg
22 you, that if you think that these three guys are guilty,
23 then don't acquit drug dealers because the sheriff's
24 office paperwork isn't perfect. If you've got a complaint
25 about the way the sheriff's office handled this case,

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1 there's another way to address it, but don't make a
2 verdict as a judgment on the sheriff's office, because the
3 sheriff's office isn't on trial. And I'll -- I know when
4 y'all get back there in the jury room and you start
5 deliberating this case, you start thinking about that car
6 and how that crack could've wound up in that car, you're
7 going to use your common sense, and one thing in this case
8 just kind of falls from the other, because once you figure
9 out how the crack, that there's no reason -- no way -- no
10 other way the crack could've got in the car, everything
11 just kind of falls from that, and I know once you get back
12 there and start thinking about this, you're going to reach
13 that conclusion, you're going to figure that out, because
14 you've got common sense and that's what the jurors have to
15 have. Jurors have to have their -- use their common sense
16 and figure out that sometimes, you know, one thing just
17 sort of flows from something else. And then I'd ask you
18 to just think about your role. Once you've figured out
19 what happened here, just think about what your verdict
20 means to Union County, because crack cocaine is bad.
21 Crack cocaine is bad for people. It's poison, and selling
22 crack is the wrong way to make money, and the last thing
23 we need are people like Mr. Pope and his crew hauling it
24 down here into our county. All you got to do is call Mr.
25 Pope up here and he'll get his crew together and he'll

1 have poison here in our county in two hours. I'd ask that
2 you give a verdict that shuts down Roderick Pope's
3 delivery wagon, because we don't need more people selling
4 poison in Union County that what we've got right now.
5 Give a verdict that lets Mr. Pope and Mr. Brewton and Mr.
6 Crosby and every drug dealer up there, every drug dealer
7 up the road know to keep it up there, because we've got
8 enough here already. Find all three of these men guilty
9 of trafficking crack cocaine. Thank y'all.

10 The Court - Mr. St. Pierre?

11 Mr. St. Pierre - May it please the Court.

12 The Court - Yes, sir.

13 Mr. St. Pierre - And we don't need drug dealers
14 on video and audio-tape being bonded out for two hundred
15 dollars when they've been sentenced to fifteen years
16 before. This isn't a pitty party for the sheriff's
17 office. This is about the liberty of these three men who
18 are sitting there innocent until proven guilty. Now, I
19 told you about coverups, lies and deceits at the very
20 beginning of this trial, and you saw it with your own eyes
21 and your own ears. You heard from Sherfield that his job
22 is centered around being deceitful, a snake. You've heard
23 from him be approached about a scale missing a battery.
24 And when he was approached, whoop, here's the battery. He
25 was trying to deceive you. He was trying to deceive me

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1 and everyone of these people at this table, and it wasn't
2 until Mr. Brannon took a close look at it and Mr.
3 Sherfield said, oh, that's not the real battery, in fact,
4 I don't even know where the battery is. You've got two
5 stories from the same person Sherfield saying, my incident
6 report is accurate, honest and complete, and my incident
7 report says, Corporal Vinson got the drugs from Brewton,
8 Pope and Crosby and then three months later he fills out
9 an affidavit with his buddy, Mr. Johnson, who notarized it
10 for him, I swear under oath that I got it from Brewton,
11 Pope and Crosby. You also heard the reason for seizing
12 the car. I seized the car, because a large amount -- Oh,
13 wait, we hadn't found that yet. Let's talk about
14 coverups. Let's talk about white-out on the incident
15 report. Okay? Let's talk about incident reports written
16 three weeks prior to the incident. Let's talk about the
17 price of dope once we reveal the big discrepancy. They
18 had to call back Mr. Johnson and say, oh, well, you know,
19 you can get two and a half grams for two forty, but you
20 know what, for an extra two sixty I'll throw in -- You
21 know, you can get twelve and a half more grams. Real
22 convenient. You heard the facts saying you get a ten
23 dollar discount if you buy two and a half grams. You
24 don't get an eight hundred dollar discount. Okay? All
25 the other I don't remembers whenever it's very convenient

1 for them to say so. These are all lies, deceit and
2 coverup that you heard from the stand. And these are all
3 law enforcement officers. Now, why would they do this?
4 Frustration? Had the whole stop planned out, called his
5 boss, the sheriff, boss, I got a big -- I got a big deal
6 coming through. In fact, I'm going to get the captain of
7 investigations. Captain of investigation, I've got a big
8 deal coming through, let's set up surveillance, let's set
9 up -- Let's get some road officers in here. But, you
10 know, surveillance -- We've already done our surveillance
11 for the day. We need zero videos, we need zero audio and
12 we need zero photographs. They wanted the arrest. They
13 wanted arrest number 358, 359 and 360 for that year. Can
14 that explain the dope? You bet you. Which brings me to
15 ulterior motives. Got two people with ulterior motives.
16 We've got the sheriff's office. We've got Venson Harris.
17 Mr. Harris doesn't want to go to prison for thirty years.
18 The sheriff's office wants to save face. Can that explain
19 the dope? You bet. Got some simple math for you.
20 Fourteen minus 2.5 equals 11.5. You heard it all here in
21 trial. That's reasonable doubt. Reasonable doubt is not
22 guilty. Now, everyone of those gentlemen at the table
23 with their lawyers is charged with trafficking in cocaine,
24 crack cocaine. And when the Judge reads you the charge
25 about trafficking in crack cocaine, you're going to hear

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1 the word knowingly three times, definition of crack
2 cocaine, and in order to convict any three of those
3 gentlemen at the table, you have to find beyond a
4 reasonable doubt that they knowingly trafficked in
5 cocaine. And what is trafficking in cocaine? Possessing
6 either actually or constructively crack cocaine in an
7 amount over ten grams. Now, last night when I was at home
8 sitting down in my chair, hand tucked (sic) behind my back
9 smoking a cigarette I was thinking how can I explain
10 trafficking in crack cocaine and constructive possession?
11 Let's consider this as a thirteen passenger van and you're
12 driving the van. And each one of you are sitting on a
13 chair containing a cushion, and sir, if you believe the
14 State's theory, you're responsible for whatever is under
15 every one of these people's cushions, but we must
16 differentiate this, because this van is going to get
17 stopped, everyone is going to get searched, nothing
18 illegal is going to get found, you're all getting arrested
19 and guess what, sir, now you're responsible for crack
20 cocaine found in a police car and all of y'all are at
21 trial. Makes a lot of sense doesn't it? So, yes, that's
22 a lot reasonable doubt. Is there any doubt that this
23 substance is crack cocaine? No. Is there any doubt the
24 substance is ten grams or more of crack cocaine?
25 Absolutely. You have the scientist saying I scraped a

1 little piece of crack cocaine off a rock, but I can't
2 remember which one it is. And you'll get to look at this
3 bag. And there's plenty of rocks in here. Puts a little
4 drop on it and it turns blue and he test it again through
5 a machine and wham bam it's crack cocaine. So -- Because
6 a little piece of something from one of these rocks he
7 can't remember turns blue, that's all crack cocaine, 11.5
8 grams of crack cocaine. Now, ladies and gentlemen, my
9 client, Lashad Brewton, is presumed innocent by the State.
10 He's presumed not to have knowledge of any crack cocaine
11 deal. Okay? He's presumed innocent of any of these slew
12 of charges that are getting thrown at him. And for the
13 ladies and mothers, ladies, I'm going to define reasonable
14 doubt, little mother's intuition, where you just know
15 something just ain't right and you can't quite put your
16 finger on it. That's reasonable doubt. If you find
17 reasonable doubt, you must find my client not guilty. And
18 for the gentlemen, those of you may who watch football,
19 the ruling on the field is my client is innocent, and when
20 you go back to that jury room and you take a look at all
21 the evidence, you need to have conclusive evidence that my
22 client is guilty of trafficking in crack cocaine. I
23 submit to you that doesn't exist. So I'm simply asking
24 you to consider all the lies, all the deceit and all the
25 coverups that you heard on the witness stand and compare

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1 that with my client's liberty and I ask you to come back
2 with a verdict of not guilty. Thank you.

3 The Court - Mr. Brannon?

4 Mr. Brannon - May it please the Court.

5 The Court - Certainly.

6 Mr. Brannon - First off I'd like to say thank
7 you for your time and your patience. I know it's been a
8 long trial and probably having to get up and walk back
9 there and forth so much is a bit exhausting, but thank you
10 for your time and your patience. You've probably also
11 noticed during this trial that I'm a bit of a storyteller
12 and I'm going to tell you a couple more. When I was in
13 college, I had this friend named John Barker and we used
14 to hang out at a little lake near Tryon, North Carolina
15 called Lake Lanier and we were water ski buddies, and one
16 summer I came home from school and I see my buddy, John,
17 across the lake and he's got a dog on his dock and it's a
18 beautiful dog. It's kind of a charcoal grey chow,
19 beautiful dog and I ride in the boat over the John's house
20 and I meet his dog and his dog's name is Niche, beautiful
21 dog. And I looked at John and I said, Niche? He said,
22 yes, Niche is named after some german philosopher. Well,
23 John's clearly smarter than me because my dog's name is
24 Bubba, but I went home and I did a little bit of research
25 and I looked up Niche, and what I found out is that Niche

1 is a guy named Frederick Niche who was born in Germany in
2 1844 and he lived til 1900. He was a german philosopher
3 and kind of a social critic, maybe the first something of
4 a movie critic, but Niche said a couple of really neat
5 things. I'm sure that he said hundreds of really neat
6 things, but I'm going to use two of them today. The first
7 one that comes to mind is, in about 1880 Niche said, I'm
8 not mad because you lied to me, I'm mad because I can
9 never again trust you. And then about two years later,
10 Niche said something along the lines of, when performing
11 a task, there's my way to do it and there's your way to do
12 it, but the right way and the perfect way and the only way
13 does not exist. Now, I'm going to tell you that when
14 you're dealing -- When the law enforcement in this state
15 or in this county are performing tasks and doing their
16 job, Niche was wrong, because there is the right way to do
17 things, and any other way is the wrong way to do that. In
18 this case what we know because of witnesses that the State
19 themselves put up right on that witness stand, and I'm
20 speaking specifically of Lieutenant Sherfield, he sat
21 right here and he told you that he signed an affidavit
22 that was false. He signed an affidavit that said he
23 personally seized something from Lashad Brewton, Roderick
24 Pope and Randy Crosby. He signed a sworn statement that
25 said, I seized it, but we all know that he didn't.

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1 Officer Vinson found something in the backseat of his car.
2 I'm going to tell you right now, I'm not mad at Lieutenant
3 Sherfield because he lied, but what I know is I can never
4 again trust him. When I approached Agent Smith, the
5 State's drug expert and I said to him, if you knew this
6 affidavit that was the beginning point of your chain of
7 custody was false, what would you have done with it? He
8 said I would've returned the substance to the agency and
9 told them they had a problem with their chain. Let me
10 tell you something, ladies and gentlemen, if those drugs,
11 if that substance, whatever it is, was not tested, y'all
12 wouldn't be sitting in those uncomfortable chairs, I
13 wouldn't be in this courtroom, those three men would be at
14 home doing whatever it is that they would do on a Thursday
15 afternoon and I'd probably be trying another case
16 somewhere else. So this whole case, the fact that you're
17 in these chairs is based on a lie. I'm not mad because he
18 lied, but I know that I'm doing something that I shouldn't
19 have to be doing. I want to talk to you for a minute
20 about an individual who we do not know, but he's called a
21 confidential informant or a confidential reliable
22 informant, because you see, on June 24th, 2010 about 1:30
23 in the afternoon, there was a deal arranged between
24 officers with the Union County Sheriff's Department and
25 somebody that they knew to be a confidential reliable

1 informant whereby that person was going to go to a
2 convenient store in Jonesville and buy some dope from a
3 guy named Venson Harris. And what we know, based on the
4 testimony is that Lieutenant Sherfield and Investigator
5 Johnson knew what that person's name was, they knew his or
6 her sex, they knew if he or she had a job, they knew where
7 they lived, they knew where they hung out, they knew their
8 phone numbers and they knew that in the past that
9 individual had given them information that was reliable,
10 upon which they were able to make arrest and make other
11 investigations. They could go to that person and say,
12 hey, we've heard this, can you confirm or deny this, and
13 they did, but when they arranged that buy with Venson
14 Harris, they did more than just send him with some money.
15 They sent him with a video camera, a video camera that
16 also had audio with it, just a little tiny body camera.
17 So when they went -- When that CRI went to that
18 convenience store to make a buy from Venson Harris, it was
19 all on tape. They show Venson Harris, you heard the
20 informant, you saw the transaction, there was marked
21 money, it was all right there. Remember, in this case
22 there is the right way and the only way to do it. Niche
23 was wrong and when they went with the CRI to the
24 convenience store to pop Harris, they did it the right
25 way. Now, let's talk about what -- excuse me -- Union

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1 County Sheriff's Department knew about Venson Harris when
2 he's sitting in the Union County Detention Center. They
3 knew that he had just bought the dope for -- excuse me --
4 just sold dope to their CRI. They knew that he needed a
5 bond so that he could go to work the next day, but they
6 didn't know if he'd ever told the truth in his life. They
7 didn't know where he worked. They didn't know his phone
8 number. They didn't know who he hung out with and they
9 didn't know and had never used him in the past for any
10 information. He apparently approaches law enforcement or
11 they approach him and said, look, I need a bond so that I
12 can go to work in the morning. Investigator Johnson says,
13 if you want my help, you're going to have to help
14 yourself. You're going to have to do something for me.
15 Please keep in mind that I asked both Sherfield and
16 Johnson, was Harris working for you, and they both said
17 yes. That makes him the State's agent. That makes him
18 the State's actor. He was working for them. Now, I want
19 -- want you to understand, they claim that the only deal
20 offered him and the only benefit he received for working
21 for them was Officer Johnson going to the magistrate and
22 saying give this guy a lower bond. That's the deal they
23 want you to believe, but guess what, that's enough. If
24 that's all you believe he got, that's enough. That's
25 payment for services rendered, but in this case, ladies

1 and gentlemen, let's look beyond the deal. He was looking
2 at thirty years in prison. He got three. His wife was
3 arrested the same day and charged with exactly the same
4 crime. Never served a day in jail. She never pled guilty
5 to anything and she's not in jail today. So you can
6 believe that the only deal was I'm going to go talk to the
7 magistrate and get you a lower bond. You can believe that
8 if you want. And quite frankly, that's fine, because
9 that's enough. But the truth of the matter is he got ten
10 times fewer years in prison than he could have and his
11 wife's charge was dismissed. Now, let's talk about the
12 traffic stop. I don't know about y'all, but I've been
13 stopped by the police a time or two for going a little bit
14 too fast. That's a traffic stop. Ooops, the blue-light
15 goes off, you sit there kind of nervous, police officer
16 walks up, can I see your driver's license and
17 registration. That's a traffic stop. Now, let's talk
18 about what happened here. A vehicle was driving down 176.
19 The next thing the occupants of that vehicle know, there's
20 at least two police cars behind it. There's at least two
21 police cars in front of it, and there's any number of law
22 enforcement officers approaching the vehicle with guns
23 drawn. Now, I know, everybody asked the police officers,
24 were your guns drawn and they said, we don't remember, but
25 it wouldn't be unusual. Let me tell you something. That

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1 means the guns were drawn. That's what it means. This
2 was not a traffic stop. This was an ambush. Another
3 piece of evidence that leads us to know it wasn't a
4 traffic stop is because nobody got a ticket. They didn't
5 get a speeding ticket. They didn't get charged with
6 reckless driving. They didn't get, you know, no seat-
7 belts. There were no traffic citations issued. The other
8 thing that might lead you to believe that it wasn't a
9 traffic stop is immediately after they got these people
10 out of the car, they're hand-cuffed. I'm sorry. If it's
11 a traffic stop, they don't hand-cuff you. These three men
12 were immediately put into hand-cuffs. Then when talking
13 about this traffic stop with Lieutenant Sherfield he said
14 something that led me to tell the story about the little
15 red wagon. Did you hear him? He said we were going to
16 seize this vehicle because of the large quantity of
17 cocaine. He said that. But he was pushing the wagon,
18 because they hadn't found any cocaine. They got a call
19 from somebody at the sheriff's department, said he could
20 help them. The guy was facing thirty years in prison,
21 said he could help them, and by God somebody was going to
22 get arrested. Somebody was going down. Something was
23 going to happen. We're going to seize this vehicle
24 because of the large quantity of cocaine. They hadn't
25 found it yet. It wasn't there. He was pushing his wagon.

1 He says that he found a scale. After hand-cuffing the
2 three individuals they searched the vehicle. You know,
3 constitution says that we are free from unreasonable
4 searches and seizures in our homes. There's some case law
5 that talks about the ability of law enforcement to search
6 your car, and it's not quite as strict as searching your
7 home, and that's because the car can move. Right? But
8 who was going to move the car once the three guys were out
9 of it and their hands were cuffed? Nobody. They never
10 asked, can we search the car. They never went to a Judge
11 and got a search warrant. They just went in and got it.
12 And now Sherfield says he found a scale, and you got a
13 scale. I've seen it. You've seen it. Here's my problem
14 with the scale. The scale has been kept in a file cabinet
15 for a year and a half. Kept in a file cabinet that any
16 number of people have access to and, oh, by the way, in
17 that year and a half the scale has changed. A part of the
18 scale that was there when he says he found it ain't there
19 no more. Now, that's kind of nonsensical, doesn't really
20 matter, but what does matter is remember the sequence of
21 events. You see, law enforcement gets word that this
22 Harris guy might be able to help them and they go into
23 action. Sherfield calls in his gang and they meet at the
24 drug task force where the file cabinet's at. And
25 remember, according to Sherfield himself, that file

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1 cabinet's got all kinds of scales in it, it's got dozens
2 of scales that they've collected over the years. Now,
3 keep in mind I'm trying to tie these things together.
4 This is the same guy that said we're going to seize this
5 vehicle because of the large quantity of cocaine that's
6 supposed to be in it, but it ain't in it. I don't know
7 that Sherfield took a scale out of a file cabinet. I
8 don't know that, but what I know is this box has got a
9 hole in it, and it could've been that, it could've been
10 that. Could've been. I mean keep in mind, this is the
11 same guy that told SLED I seized dope from three people
12 and I want you to test it, but he admits that that was not
13 true. This is the same guy that told you that he often
14 and regularly entices people to do something by lying to
15 them. I don't know that he did it, but he says he found
16 a scale. And then he says that on this scale he found
17 something that based on his experience he believed to be
18 residue cocaine, and based on his finding that without a
19 search warrant, without consent to search the vehicle,
20 without any of that, he places them all under arrest for
21 possession of cocaine. And that's okay. The problem is,
22 you don't have that cocaine here. It's not here. So he
23 charged them. He arrested them for something he says he
24 saw on the scale but he didn't -- He didn't have it
25 tested. Remember there is a right way and one way and the

1 only way to do it when it comes to law enforcement, and he
2 didn't do that, and you don't have that white powder
3 residue he says based on his experience was cocaine. You
4 don't have it. He also says in his incident report, I
5 took everyone's cell phone. It's in his report. But he
6 didn't take everyone's cell phone. He changed it. He
7 said, no, I only took everyone that had one. I'm sorry.
8 I'm a defense attorney. You know, earlier Mr. Anthony
9 said I feel like I'm at a disadvantage, because they get
10 to go after me. Well, what about us defense attorneys?
11 We have an incident report that says I took everybody's
12 cell phone, but they didn't, and we found that out here.
13 On 176 during this ambush they get these three guys out of
14 the car and all they find is money. That's all they find.
15 And they want you to say -- They want you to think that,
16 oh, they got to be drug dealers because they had two
17 hundred and eighty dollars in their pocket, five hundred
18 and thirty dollars or something like that. Well, keep in
19 mind Mr. Pope didn't have a damn penny on him. He didn't
20 have any money in his pocket. And because they have money
21 in their pocket, they're drug dealers. Well, I'm going to
22 tell you what, I don't have any money in my pocket,
23 because I don't want them to think I'm a drug dealer.
24 They didn't find guns. Nobody had a gun, but yet
25 Sherfield said guns are normally and typically found on

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1 people that sell drugs. Didn't find any guns. This is
2 something that's kind of technical. This bag right here
3 was sent to SLED and inside of this bag was this yellow
4 bag that they say they found the dope in. Well, you know,
5 I'm sorry that Officer Vinson doesn't think that he could
6 test this bag for fingerprints because of the wrinkles in
7 the bag. I tell you they can at SLED. They can. And
8 that bag was at SLED, but they didn't -- They didn't have
9 it tested because, see, that would've been proof positive
10 who had touched it. They didn't do that, but they could
11 have and they didn't do that. But this is -- These people
12 at this table want you to believe that this is the drugs,
13 this is the stuff that Officer Vinson found in his police
14 car and that he immediately after transporting Mr. Crosby
15 and Mr. Brewton, this is what he found in his police car
16 under the seat and then he gave it to Officer Sherfield,
17 but you know what they didn't do? Please keep this in
18 mind. They didn't do this. When Officer Vinson was
19 sitting up here and testifying under oath, they never
20 handed him this bag and said, is this the stuff that you
21 got out of your car? They never asked him that. And you
22 see, to prove that Mr. Crosby or Mr. Pope had dope that
23 they deposited in that car, they have to show you the dope
24 that they alleged they found in the car. This ain't it.
25 They never proved that. They didn't. Now, what you might

1 be able to believe is that this is the drugs or this is
2 the substance that Officer Sherfield took to Columbia to
3 have tested, but keep in mind his affidavit is false. So
4 while this might be what he took to be tested, I would
5 just ask you to think about something here. This is the
6 same guy that told SLED I seized it from three people and
7 brought it to you for testing, but that's not how it
8 happened. I don't doubt that this is something that
9 Sherfield took to Columbia to test, but what I know is
10 this package right here was never put in the hand of
11 Officer Vinson, was never even shown to Officer Vinson to
12 say, yep, that looks like what I found in my car. He
13 never said it. Now, please keep in mind not one of those
14 three men sitting over there with their lawyers and, of
15 course, my client in the striped shirt, not one of these
16 three men were ever found to have had drugs on them by law
17 enforcement. Never. Never, never, never. Nothing was
18 ever checked for fingerprints to say, yep, it was Pope or
19 yep it was Crosby or yep it was Brewton. Doesn't happen.
20 It's not there. I want to talk to you for a minute about
21 entrapment. Entrapment has two steps, has two steps.
22 First, I have to give you what's called a scintilla.
23 Actually, I have to give you more than a scintilla of
24 evidence that Mr. Pope was enticed by a state actor to
25 come to Union County. There were five calls made from

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1 Venson Harris to Mr. Pope while he was sitting in the
2 Union County jail. Johnson and Sherfield both testified
3 he was working for them. I then asked them and Mr.
4 Harris, as well, do you have any evidence that Mr. Pope
5 would've come to Union that day but for the phone calls
6 from Harris? Nope. He was working. He was benefited by
7 calling Mr. Pope. No question about it. There's evidence
8 that he was and there's absolutely no evidence that he
9 wasn't. None. Okay, and then after I show you a
10 scintilla of evidence that he was enticed, then the State
11 has to prove beyond a reasonable doubt, beyond a
12 reasonable doubt that -- there's three things -- an
13 existing course of criminal conduct by the defendant.

14 Mr. Anthony - I'd object. I believe he's
15 reading part of the charge that the Court has advised it's
16 not going to be ---

17 The Court - Well, don't read what I'm not going
18 to charge and I ---

19 Mr. Brannon - Okay. Okay. All right. Let me
20 rephrase. They have to prove beyond a reasonable doubt
21 one thing, and that one thing is a willingness to commit
22 the crime charged as shown by the defendant's ready
23 response to be induced, ready response. Now, I want you
24 to remember the testimony of Venson Harris, Officer
25 Johnson and maybe even Sherfield. I'm not sure. Harris

1 said my client said he didn't have any dope. Harris said
2 that. And then Johnson said that's what Harris told him.
3 He didn't have any dope. He didn't have it. And then I
4 want you to understand this. The very first phone call
5 from Venson Harris' phone to the person he alleges was
6 Roderick Pope was made at 4:39 p.m. The ambush took place
7 and the arrest was made at 6:55 p.m. The difference is
8 one hour and forty-four minutes. He clearly was not
9 readily accessible. Five phone calls, one hour and forty-
10 four minutes, he didn't have any dope. If Pope ain't got
11 the dope you must acquit. Now, I want to talk to you just
12 for another minute about a few things. Already talked
13 about Mr. Anthony talking about he was kind of at a
14 disadvantage because he had to go first, and then he used
15 my box story and he changed it into a snake skin. And I'm
16 going to tell you, I like his story. I like his snake
17 skin, because if there's a skin in the box, there's your
18 snake right there. They said something about Vinson was
19 told by his superior to check the backseat of the car
20 before he put Crosby and Brewton in the car, because --
21 And we know that he did it because his supervisor was
22 there and his supervisor told him to do it, and by golly
23 you got to do that. Well, and then Mr. Anthony said, the
24 sheriff's been in here most of the time. It's interesting
25 he's not in here now, but the sheriff is his supervisor.

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1 Okay? Do you think the sheriff told Sherfield to lie on
2 the affidavit? Do you think he did? Bet you he didn't.
3 So you see, they don't always follow the rules. They
4 don't. And then John Anthony said to you they set up this
5 ambush on 176 because they knew there was a large quantity
6 of cocaine coming through on 176 in a black Expedition.
7 Ladies and gentlemen, they didn't know anything but what
8 Venson Harris told them. That's all they knew, a man who
9 had been sent to prison for ten years, sentenced to
10 fifteen suspended to ten for five different drug charges
11 and then arrested again looking at thirty years. Only
12 thing they knew is what he told them. They didn't know
13 squat. Drugs weren't found on anybody. They weren't
14 found on anybody. There's just been so much talk about
15 two grams or whatever it is. I don't know. Half an ounce
16 and all of that stuff. Lot of money talk. If it costs
17 two hundred and forty dollars to buy two and a half grams,
18 how can 12.5 -- or excuse me -- 11.5 more only cost
19 another two hundred and sixty dollars? I don't know. The
20 State's story just doesn't make any sense. And then Mr.
21 Anthony told you that Officer -- Investigator Johnson
22 heard the whole story over the telephone between Harris
23 and allegedly Mr. Pope. He said he heard the whole thing,
24 but he didn't hear the whole thing. He only heard half of
25 the thing. He only heard the known criminal talking.

1 That's all he heard. And then -- And then Mr. Anthony
2 attempted to make apology for the problems with the
3 paperwork and the State's case and he said, disregard that
4 stuff, disregard that stuff. Don't hold it against the
5 sheriff. Don't pay any attention to the mistakes in the
6 paper. Again, there is only one right way to do it in law
7 enforcement, only one. So, ladies and gentlemen, you
8 can't disregard the mistakes. He said the sheriff's
9 department is not on trial, but maybe they should be.
10 Maybe they should be. I'm almost done. In a little while
11 the Judge is going to tell you about two different kinds
12 of evidence. There's this stuff called direct evidence.
13 And direct evidence is the stuff that you actually see,
14 feel, hear, taste or touch. So you go to bed at night,
15 there's no snow on the ground, you wake up the next
16 morning, you open the window and boom, there's snow on the
17 ground. That's direct evidence that it snowed last night.
18 Okay? But I'm -- I'm going to change it. You go to bed
19 at night and the ground is dry, you wake up the next
20 morning, you look out and there's puddles in the driveway,
21 there's drops of rain dripping off the trees, but there's
22 no -- It's not raining, but -- but you can suggest from
23 that that it rained. Right? You didn't see it rain, but
24 there's puddles in the ground, there's puddles on the
25 driveway an there's drops dripping off the trees. You got

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1 up in the morning and you saw the snow and you knew it
2 snowed. That's direct evidence. When you get up in the
3 morning and there's puddles in the driveway and there's
4 raindrops dripping off the branches but you don't see it
5 rain, that's circumstantial evidence. And I'm sorry, I
6 crossed up two stories there. I screwed that up. But if
7 you see it, touch it, taste it or feel it, that's direct.
8 If you have to add some things together to get there,
9 that's circumstantial. Okay? In this case there isn't
10 any direct evidence or even any circumstantial evidence
11 that Roderick Pope ever had dope. None. Ladies and
12 gentlemen, you're reasonable people. You've had the time
13 to listen to the evidence. You have the common sense that
14 makes you a great juror. If you look at all this stuff,
15 if you read all of this stuff that you're going to have
16 back there, you're going to find a hole in the bottom of
17 the box. Maybe you'll find more than one. I don't know,
18 but here's what I do know. There are certain things in my
19 life that I've very proud of. My two kids are the light
20 of my life. I can tell you when they were born. I can
21 tell you when they took their last breath (sic). And what
22 I also know is that Lieutenant Sherfield could tell you
23 that day how many arrests had been made in 2010. He even
24 counted those three arrests. He was going to make an
25 arrest. Was going to make three arrests. He had some

1 information from somebody. He had to make it real. He's
2 tried to make it real. I'm going to walk away and I'm
3 going to sit down and I want to thank you again, but as I
4 walk away, I'm going to throw one thing out at you. What
5 if Harris called Mr. Pope, the guy he had known for ten
6 years, to come and bond him out of jail? What if that's
7 what the call was about? Thank you. They're not guilty.

8 The Court - We're going to take a break before
9 we do the next argument and the charge, so don't start
10 discussing the case. You hadn't heard it all yet. Don't
11 try to make up your own mind and we'll send for you in
12 just a little bit.

13 (Jury exits the courtroom)

14 The Court - Before we take our break, I've got
15 two issues to deal with. I think I know the answer to one
16 and the other we're dealing with. On two of the -- Mr.
17 Pope and Mr. Brewton, have the CDR Code as 450. On the --
18 Mr. Crosby you have 451. 451 is trafficking second. 450
19 is trafficking first. I'm just calling that to your
20 attention because that may be what it's supposed to be,
21 but I just ---

22 Mr. Anthony - I think that -- Yes, sir, I think
23 that's it.

24 The Court - Okay, I just noticed that we had --
25 The other is the Court Reporter informed me right before

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1 came in, Aminah, the Court Reporter yesterday did not
2 leave her tapes her. So we were trying to get those at
3 this time and we're calling to see -- She's supposed to be
4 working for Judge Alford this afternoon or at least
5 according to what she told me. Hopefully, she has the
6 tapes with her there at the Moss Justice Center. We are
7 contacting the solicitor's office to try to touch base
8 with Aminah and get some method to dispatch those over
9 here. I would appreciate whatever help the solicitor's
10 office can give us in going that. And that's just where
11 we are on that.

12 Mr. Anthony - You want us to call up to York and
13 see if somebody can get ---

14 The Court - Well, I've got my Clerk working on
15 it, but couple of things, one, we've got to find Aminah,
16 but I think she's supposed to be with Judge Alford, number
17 two, let's hope she has the tapes with her, because she
18 doesn't have an office at the Moss Justice Center, so ---

19 Court Reporter - She doesn't use tapes. She
20 doesn't have a tape backup.

21 The Court - She doesn't have any tapes.

22 Court Reporter - She uses ---

23 The Court - She has real time.

24 Court Reporter - Yes, she does real time. So
25 she would have to be here to do that.

1 The Court - Well, it may be that we may have to
2 try to get Aminah over here then. Anyway, we've got that
3 situation. I'm concerned about it. If I'd known about it
4 earlier, we would've gotten started working on it earlier.
5 Anyway, we'll take a break and try to get her over here,
6 and I'd appreciate any help from the solicitor's office.

7 Mr. Anthony - Well, if there's something we can
8 do, we'll be happy to ---

9 The Court - Well, I don't know. We're going to
10 try to get in touch -- Now, that I know she doesn't have
11 tapes ---

12 (Discussion is held between the Court and the
13 Law Clerk which was not reported.)

14 The Court - All right, we'll work on that.
15 We'll take a break.

16 (Recess taken)

17 The Court - State ready?

18 Mr. Anthony - Yes, sir.

19 The Court - Mr. St. Pierre?

20 Mr. St. Pierre - Yes, sir.

21 The Court - Mr. Brannon?

22 Mr. Brannon - Yes, Your Honor.

23 Mr. McKinnon - Yes, Your Honor.

24 Mr. Anthony - Your Honor, just to advise the
25 Court with the situation with Ms. Hardy, we are more than

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1 happy to bring her -- I talked to Mr. Brackett and he said
2 that he -- He would be more than happy to arrange for her
3 transportation to Union if need be. He just hadn't been
4 able to -- We can't find her.

5 The Court - I know. Okay, I don't know that
6 we'll ultimately need her, but I just -- at least have
7 some way we can get in touch with her and have her -- if
8 it pops up that we need her to get her here -- requires
9 some downtime ---

10 (Discussion is held between the Clerk and the
11 Court which was not reported.)

12 The Court - Did you say Mr. Brackett is looking
13 into it?

14 Mr. Anthony - I just talked to him. Yes, sir.

15 (Discussion is held between the Clerk and the
16 Court which was not reported.)

17 Mr. Anthony - I just -- He can't figure out a
18 way --

19 The Court - I understand, but we are trying to
20 see if we can get in touch with her and have her get in
21 touch with Mr. Brackett. All right, bring in the jury.

22 (Jury enters the courtroom)

23 The Court - All right, Mr. McKinnon?

24 Mr. McKinnon - Thank you, Your Honor. Ladies
25 and gentlemen, you're almost through. I'll try not to

1 take too long here. What do we know about this case?
2 These three gentlemen were pulled over in a car,
3 subsequently arrested, put in two different vehicles where
4 Mr. Crosby, Mr. Brewton later put in one police car and
5 when they were taken out the police say they found 11.5
6 grams of crack underneath the seat. That's the State's
7 actual case. There's other filler, there's other State's
8 theory that they want you to believe. They want to fill
9 in the gaps of how this happened and, ladies and
10 gentlemen, there is something else, one other thing that
11 we know for sure. The only person that day from Union
12 County that was found beyond a reasonable doubt to possess
13 crack cocaine was Venson Harris. Now, Mr. Harris, as
14 you've heard several times, certainly had a desire to get
15 out of jail. He was facing a lot of time. His wife was
16 arrested, he couldn't make bond, so he -- He says he wants
17 out, the State -- use your phone, help us. So they
18 reasonably expect based on what Mr. Harris apparently told
19 them that they're going to find large amount of crack
20 cocaine, fourteen grams or half an ounce. So what do they
21 do? They mustered their troops, they get uniformed
22 officers, they get narcotic's officers, they even get the
23 captain of the sheriff's department, Captain McNeil's
24 getting involved, so excited, this is going to be big.
25 What else? They get the elected sheriff, Sheriff Taylor

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1 involved in a car to go out and make a bust that they're
2 so excited about. They pull these guys over and ambush I
3 believe Mr. Brannon referred to it as, bunch of police
4 cars converging, pulling them over, probably coming out
5 with their guns drawn and they address in stance, pulling
6 them out, all right, we're going to get -- this is
7 fantastic. Okay? Now, they searched the vehicle.
8 There's some discrepancy as to who searched who, but
9 Captain McNeil himself searched Randy Crosby. Not one bit
10 of narcotics, no firearms, no bit of contraband, nothing
11 illegal was found on any of these three gentlemen. They
12 searched the car. Again, nothing. Now, they got these
13 scales with a white smear on it that they said believed to
14 be controlled substance, again, crack cocaine, but that
15 wasn't -- That's not in front of you here today. Wouldn't
16 you like to have seen that, seen, you know, a chemist say
17 what that was? That's the reason they arrested them.
18 Now, also wouldn't you also like to hear who when Mr.
19 Brewton and Mr. Crosby were put into the car first? The
20 State can't even tell you who sat them in the car and when
21 it happened, who was at first. How long was the first
22 person in there before the second was put in there. We
23 don't know. Wouldn't that be important? If their -- If
24 you believe the State's theory that one of them had drugs
25 hidden on them and then later somehow extricated it from

1 themselves while they're hand-cuffed in the car and hid it
2 in there, wouldn't you like to know who had that
3 opportunity with no one around, no one else in the car?
4 Ladies and gentlemen, once they go back to the police
5 station they say or Mr. Anthony said when I -- the seat,
6 there's the drugs, how else could they possibly have
7 gotten there. Well, obvious these drugs weren't ever
8 found on any of the three, how would the State
9 conclusively prove that. Fingerprints, DNA. They
10 could've done that and they did not. Would be so much
11 simpler. We probably wouldn't even be here if that was
12 done. We would all know conclusively whether those --
13 that package was handled by any of these three guys. We
14 don't know that. That's a gap. They want to fill that
15 gap in and say oh, of course, must've -- drugs were put in
16 there, because that's the only thing that makes sense.
17 You deserve better than that. You deserve to know beyond
18 a reasonable doubt these drugs were possessed by one, two,
19 three or none of them. Now, ladies and gentlemen, also
20 Mr. Anthony asked you not to worry about paper issue, this
21 affidavit. Everybody's brought it up. But it's just not
22 paperwork. That is the sworn affidavit, the same thing
23 when Lieutenant Sherfield testifies here in Court on
24 Wednesday, they swear under oath that they're telling the
25 truth. We know that affidavit was false. We know he

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1 swore to tell the truth. He's there and he's telling the
2 truth. That's what an affidavit is, and it's not true.
3 He said it's not true. But it's obvious we know that.
4 Here today and all week, that's the basic testimony you
5 hear in Court. You're supposed to believe or not believe
6 someone because they are swearing an oath that they are
7 telling the truth. Now, the Judge in a little while will
8 give you his charge. One of those charges will be it's
9 your job as jurors or your prerogative to believe or not
10 believe someone's testimony, any witness, all the
11 witnesses, you know, what they say, part of what they say,
12 that's your prerogative and I want to just inject keep
13 that in mind when you decide the credibility of everyone's
14 testimony, what you know about their credibility and what
15 you know about the truth they've already told in Court and
16 under oath. What else would be helpful for you guys to
17 know? There was no testimony whatsoever about officer
18 searching the car that Mr. Pope was in before or after the
19 arrest. Strange they did that for two guys that they say
20 found drugs in. Didn't do that in the other car. There
21 was no testimony of it. Would like to know that? Another
22 thing the Judge will tell you in his charge is something
23 called merely present. Ladies and gentlemen, I will say
24 to you that these two gentlemen in a car with no
25 contraband found in it were merely present in that car and

1 that Mr. Crosby and Mr. Brewton in a car that was later
2 found to have drugs under the backseat, you know, had to
3 flip up to get to were merely present in that car. Again
4 that is not actually possessing. They're going to try --
5 The State's trying to tell you that's constructive
6 possession when they've got long theory that they must've
7 actually possessed it for it to get there. But the actual
8 tangible evidence says otherwise. And, ladies and
9 gentlemen, I'll bring this up. And I've been wondering
10 about it the whole week, maybe you have, too, sort of like
11 an elephant in the room. Again, the one person June 24th,
12 2010 that's been found conclusively beyond a reasonable
13 doubt to possess crack cocaine was Venson Harris. This
14 alleged deal, one half ounce which according to testimony
15 is fourteen grams, Mr. Harris sold two and a half grams.
16 That leaves 11.5. Wouldn't you like to know what that
17 crack looked like, that 2.5? Agent Smith from SLED said,
18 well, I can sort of tell, you know, looking at the crack,
19 how hard it is, the color, a few other descriptive items,
20 looking at two pieces of crack, I can kind of tell if
21 they're equivalent or from the same batch, can't remember
22 what his exact wording was, but he can tell based on look
23 and touch and so forth. Well, wouldn't you like to see
24 what that 2.5 grams that Mr. Harris sold? He did not tell
25 you that. Wouldn't you like to see if that matched up

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1 with the 11.5 grams? One guy definitively sold crack and
2 possessed crack that day. Ladies and gentlemen, a lot of
3 things that I think you deserve to know that you don't.
4 These three gentlemen, Mr. Crosby, Mr. Brewton, Mr. Pope
5 deserve for you to have had that information to make your
6 decision. Please consider that. At the end of the day
7 when you deliberate I'm confident that you will all find
8 that the State has not proven beyond a reasonable doubt
9 the guilt of these gentlemen. They laid out a few facts
10 and tried to fill it in with a story. Thank you.

11 The Court - Members of the jury panel, I ask you
12 to give me your attention. I appreciate the attention
13 you've give to me and the attorneys and the witnesses to
14 this point. I am now going to charge you the law that you
15 are to apply to the facts as you determine them to be.
16 Now, these indictments against these three gentlemen you
17 will have with you in the jury room. They're not
18 evidence. They are the allegations, the charges against
19 Mr. Crosby, Mr. Pope and Mr. Brewton, but they're not
20 evidence, so you're not to consider them as evidence. And
21 madam forelady, they'll ultimately be where the unanimous
22 verdict is enrolled and the paperwork by way of which this
23 case is processed through our Court system. Now, the fact
24 that these three gentlemen has been arrested, the fact
25 that they have been charged, the fact that they have been

1 indicted, the fact that they are on trial is not evidence
2 either. That is no indication of their guilt. That's
3 just the way our system works. When the State believes
4 someone has committed an offense, they are charged,
5 indicted, tried, it's up to the jury to determine whether
6 or not the State has proven that person's guilt beyond a
7 reasonable doubt. The fact that they are on trial, should
8 not, cannot and must not weigh against them in any way
9 whatsoever. The fact there are three defendants is of no
10 importance. Therefore, you are not to assume or conclude
11 that because there are three individuals or one is guilty
12 and -- if one's guilty, they're all guilty or they're all
13 guilty because there are three of them. That is you are
14 to look at these charges as to each. You look at the
15 evidence as to each. You look at the law as I charge it
16 to you as to each. As to each defendant before you could
17 convict and find that defendant guilty as to that
18 defendant, the State must prove to your satisfaction that
19 defendant's guilt independent of the other defendants
20 guilty of the elements of the offense as I charge it to
21 you. Each of these defendants is presumed innocent. Our
22 law gives each defendant charged with any offense the
23 presumption of innocence. This is a substantial right.
24 It is not just a mere legal theory or mere legal phrase.
25 The presumption of innocence is a substantial right that

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1 enures to the benefit of a defendant at the time they're
2 arrested, remains with them as their case is processed
3 through our Court system and remains with them as they are
4 on trial. This presumption of innocence remains in favor
5 of Mr. Crosby, Mr. Pope and Mr. Brewton as I speak and
6 even as you deliberate. The presumption in their favor
7 remains with them and is removed if and when and only if
8 and when you as the trial jury in this case determines the
9 State has proven one or more's guilt beyond a reasonable
10 doubt. The State has to prove beyond a reasonable doubt
11 all of the elements of an offense before you could convict
12 a defendant of an offense. Now, the State is not required
13 to prove one's guilt beyond all or beyond every doubt but
14 beyond a reasonable doubt. A reasonable doubt is the kind
15 of doubt that would cause a reasonable person to hesitate
16 to act. Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of someone's guilt. There are
18 very few things in our world that we know of absolute
19 certainty and our law does not require that in criminal
20 cases. If based on your consideration of the evidence you
21 are firmly convinced of one's guilt as to the crime
22 charged, you would find him guilty. On the other hand if
23 you think there is a real possibility that a defendant is
24 not guilty, then you would find him not guilty. Again,
25 the State must prove one's guilt as to all elements of the

1 charge beyond a reasonable doubt. I told you two days ago
2 when we started that I have several jobs, one of which is
3 to charge you the law. You must take, accept and apply
4 the law as I charge it. This is true even if you think I
5 charge the law in error or even if you think I -- the law
6 should be different. Your oath requires you to take,
7 accept and apply the law as I charge it. You're not to
8 infer from anything I have said or done or anything I now
9 say or do as indicating an opinion of mine on the facts.
10 Our law does not allow a trial Judge to formulate or
11 express to a jury any opinion on the facts. It is solely
12 up to you. It's solely up to you as trial jury in this
13 case to examine the evidence, give to the evidence the
14 effect, the value, the weight and the truth you believe it
15 should have. In doing this you may believe one witness as
16 opposed to several, several witnesses as opposed to one.
17 You may believe all, part or none of a witnesses'
18 testimony. As Judges of the facts, you must of necessity
19 judge the credibility, that is the believability of the
20 witnesses who have testified. In assessing believability,
21 use the things I just talked to you about, use the things
22 that you in your day-to-day life find as indicative of the
23 truthfulness in an individual. You can use certain
24 evaluators, how a witness acts on the stand, their
25 demeanor, are they hesitant or straight forward in

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1 responding to questions. You could consider and look at
2 consistences and inconsistencies of a witness, that is
3 whether there are statements that make, testimony or
4 compared to statements that were made at an earlier time.
5 You can look at consistencies and inconsistencies to
6 determine one's credibility, that is one's believability.
7 You can consider the opportunity a witness had to know who
8 things about which the witness testified in assessing
9 credibility. You can look to see if anyone has any bias
10 or prejudice, that is any reason to help or hurt one side
11 or the other and as to credibility, you could consider
12 whether or not an individual has a criminal record. You
13 can consider that in determining whether and to what
14 degree to believe them. Now, in cases such as this there
15 are generally two types of evidence presented, direct and
16 circumstantial. Direct evidence is testimony by someone
17 who claims to have actual knowledge of a fact such as an
18 eyewitness. Direct evidence is evidence which immediately
19 establishes the main facts sought to be proven.
20 Circumstantial evidence is proof of a chain of
21 circumstances indicate the existence of a fact.
22 Circumstantial evidence is evidence which immediately
23 establishes collateral facts in which the main fact may be
24 inferred. Circumstantial evidence is based on inference
25 and not on personal knowledge or personal observation.

1 Our law makes absolutely no distinction between the weight
2 or value to be given even direct or circumstantial
3 evidence. Our law does not require a great degree of
4 certainty for circumstantial evidence as -- as -- that it
5 does to direct evidence. What you should do in this case
6 is weigh all of the evidence. If you determine after
7 weighing all the evidence that the State has not convinced
8 you of an individual's guilt beyond a reasonable doubt,
9 you would find that person not guilty. In this case we've
10 had an expert testify, a chemist. Generally, an
11 individual can only testify as to something they've
12 observed from one of their five senses. It's usually
13 something they've seen or heard, but it could be taste,
14 touch or smell. However, where an individual has certain
15 qualifications because of education, skill, knowledge and
16 training in a certain area, that person can take facts and
17 from those facts render opinions. Now, opinions are
18 allowed into evidence through experts to assist you.
19 They're not binding on you. You look at an expert witness
20 with all the criteria you look at any other witness. In
21 addition, as to an expert witness, you look at their
22 ability, that is their -- you determine whether or not you
23 believe they have the ability to render an opinion in that
24 certain area, here it's chemistry in drug analysis, and
25 you also can determine and look at the reason they reached

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1 the opinion they reached. You can accept or reject in
2 whole or in part an expert's testimony. I charge you that
3 mere present at the scene of a crime does not make a
4 person guilty of that crime. A defendant -- A defendant's
5 presence where a crime is committed or mere association
6 with one who commits a crime does not make that person an
7 accomplice, an aider or an abetter with a person
8 committing a crime. The burden, as I've told you a couple
9 of times is on the State to prove every element of the
10 charges. If you find after reviewing all the evidence the
11 State has proved only that a defendant was present at the
12 scene and has not proven beyond a reasonable doubt any
13 participation by a defendant in a crime, then you would
14 find that defendant not guilty. The law is that proof at
15 the scene of a crime by an individual is not going to be
16 sufficient to find someone guilty. Each of these
17 defendants have exercised their constitution right to
18 remain silent. That is a constitution right, both State
19 and Federal. I advise you that you cannot use against a
20 defendant in any way whatsoever the fact that they have
21 exercised their constitution right to make -- to not
22 testify. Again, this is an important, substantial
23 constitutional right that enures to the benefit of anyone
24 charged with an offense. The fact that they exercise that
25 right cannot be used against them, cannot be discussed by

1 you and cannot in your own deliberations, in your own mind
2 be a factor in your reaching your verdict. They do not
3 have to prove their guilt. I'm sorry. They do not have
4 to prove their innocence. They do not have to prove their
5 innocence. The State must prove their guilt beyond a
6 reasonable doubt by proving each and every element of an
7 offense before you could convict a defendant of a charge.
8 Now, in order to establish criminal liability, criminal
9 intent is required. For example, the mental state
10 required to prove a -- to be required to be proven by the
11 State for a particular crime could be purpose, intent,
12 knowledge -- or knowledge. Criminal intent must be proven
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by you, the jury in this
15 case, from the circumstances surrounding the situation at
16 issue. There is, of course, no way to prove to a
17 mathematical certainty and no way medical science can
18 dissect and determine what's in a person's mind. So our
19 law says that criminal intent may be inferred from the
20 circumstances that are shown by the evidence to have
21 existed. This is how we make a determination or how you
22 would make a determination as to whether or not the
23 element requiring intent was present. It is not necessary
24 to establish intent by direct and positive evidence, but
25 intent may be established by inference in the same way as

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1 any other fact in this case, taking into consideration the
2 acts of the parties, all the facts and circumstances
3 presented in this case. Criminal intent is a mental
4 state, a conscious wrongdoing. It is up to you to
5 determine whether a defendant -- what intent a defendant
6 intended to do based on the circumstances shown to have
7 existed at the time. Criminal intent can arise also from
8 acts and/or failure to act. Each of the defendant is
9 charged with trafficking in crack cocaine. The State must
10 first prove that the substance at issue was, in fact,
11 crack cocaine. The State must also prove beyond a
12 reasonable doubt that a defendant aided, abetted,
13 attempted or conspired to sell, deliver or was knowingly
14 in actual or constructive possession of crack cocaine.
15 The State must prove beyond a reasonable doubt as to
16 trafficking that the amount of crack was by weight ten
17 grams or more. I used the word conspire. Conspiring
18 means to have a mutual understanding, agreement or common
19 intent and plan. To constitute conspiring, mere passing
20 knowledge or consent to the criminal conduct of someone
21 else alone is not enough to make a person a conspirator.
22 One had conspired, that person must have guilty knowledge
23 and be a participant. Similarly, the mere fact that one
24 defendant may have associated with others or met with
25 others to disclose common names and interest does not

1 necessarily establish proof of the existence of a
2 conspiracy or that a defendant was involved in a
3 conspiracy. On the other hand, it is not necessary to
4 show that there was a formal agreement or an agreement in
5 writing or that a meeting was held or that there was any
6 express -- expressly stated terms of any common plan or
7 agreement. The agreement of a criminal conspiracy may
8 come into being through an implied mutual understanding.
9 The willful intentional and knowing adoption by two or
10 more persons of a common plan, that is, is sufficient. No
11 overt acts need to be shown to establish a conspiracy. A
12 conspiracy may be shown by circumstantial evidence and the
13 conduct of the parties. I used the words aiding and
14 abetting. A person who is present at the scene of a crime
15 and intentionally or through a common plan aided, abetted
16 or assisted in the commission of that crime through some
17 overt act is guilty as an accomplice. So to be liable as
18 an accomplice, a defendant must have knowledge of the
19 principal actor's criminal conduct. As I told you and
20 remind you, mere presence at the scene is not sufficient
21 to establish guilt and is not sufficient to establish
22 guilt as an accomplice. Intentionally means willfully
23 intending the results which actually occurred. Intention
24 is something that's not accidental or involuntary. I also
25 used the words actual and constructive possession. Actual

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1 possession means that the crack cocaine, if you determine
2 that's what it was, was in the actual, physical custody of
3 a defendant. Constructive possession means that a
4 defendant had dominion and control or the right to
5 exercise dominion or control over either the crack itself
6 or the property where it was located. Mere presence again
7 I tell you is not enough to prove one guilty of actual or
8 constructive possession. Actual knowledge of the presence
9 of a drug, here crack cocaine, is strong evidence of a
10 defendant's intent to control its disposition or use. A
11 defendant's knowledge and possession may be inferred when
12 a substance is found on property under that defendant's
13 control. However, this inference is simply an evidentiary
14 fact to be taken into consideration by you along with the
15 other evidence in this case and be given the weight you
16 decide it should have. Two or more persons may have joint
17 possession of a drug. Now, what I have just gone over
18 with you is the charge as set forth in the indictment
19 which is trafficking in crack cocaine. Simply reminding
20 you at this time that the State must prove what -- To
21 prove trafficking, the State must prove beyond a
22 reasonable doubt that one of the defendants or more aided,
23 abetted, attempted or conspired to sell deliver or was
24 knowingly in actual or constructive possession of ten or
25 more grams of crack cocaine. Now, our law provides for

1 what are called lesser included offense. If the State
2 cannot prove trafficking as I have defined it for you,
3 then the State -- then you by law can consider whether or
4 not the facts in this case, applying the law that I am
5 charging you now, from that conclude that a defendant
6 committed what we call a lesser included offense. I look
7 at this as steps. The top step and the most severe step,
8 that is trafficking. If you step down one step to a less
9 severe offense, that would be possessing crack cocaine
10 with intent to distribute. There's another step below
11 that which is simple possession of crack cocaine, and I
12 will charge you on the lesser, and of course, there's
13 another step down that's not a lesser included and that
14 would be a finding of not guilty and I will go over with
15 that with you in a moment on my verdict form. But if you
16 find that the State has failed to prove -- If you find
17 that the State has failed to prove that one or more of
18 these defendants was involved in trafficking and they've
19 not proven that beyond a reasonable doubt, you can
20 consider whether or not the State has proven that first
21 step down, the lesser included of possession of crack
22 cocaine with intent to distribute. I've already defined
23 for you the terms actual or constructive possession. So
24 that must be proven. The State must prove that a
25 defendant had actual or constructive possession of crack

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1 cocaine. Additionally, as to this second step, this lower
2 one, the State must prove beyond a reasonable doubt that
3 a defendant intended to distribute the crack cocaine. The
4 next step down, the next lesser is simple possession. If
5 you find the State has failed to prove trafficking of
6 crack cocaine, if you find the State has also failed to
7 prove one or more of the defendants guilty of possession
8 of crack cocaine with intent to distribute, you can
9 determine whether or not the State has proven beyond a
10 reasonable doubt whether the State has proven a defendant
11 guilty of simply possessing crack cocaine. That's called
12 simple possession. Simple possession does not require an
13 intent to distribute the crack cocaine, nor any set
14 amount. It only requires possession. Going back just a
15 moment to possession with intent to distribute, that
16 lesser included, I told you that the elements of that
17 which are possessing crack cocaine with intent to
18 distribute, actual or constructive possession as I have
19 defined, and that the defendant -- a defendant intended to
20 distribute it. I did not tell you that our law says that
21 possession of one or more grams of crack cocaine creates
22 an inference that a defendant possessed the crack cocaine
23 with intent to distribute it. This inference does not
24 relieve the State from proving beyond a reasonable doubt
25 that a defendant intended to distribute the crack cocaine

1 if you find was that and they possessed it. This
2 presumption based on one or more grams as to an intent to
3 distribute is simply an evidentiary fact to be taken into
4 consideration by you along with the other evidence in the
5 case and be given such weight, if any, you decide it
6 should have. And then I remind you that the third step
7 down is a defendant simply had in their possession crack
8 cocaine, not -- just simple possession. The Defendant,
9 Pope, in this case has raised a defense known in law as
10 entrapment. Entrapment is shown if one, the crime was
11 conceived and planned by an officer or someone acting as
12 an agent or -- of law enforcement, two, the officer or
13 agent induced, solicited, proposed, initiated, suggested
14 or persuaded a defendant to commit a crime, and three,
15 that the defendant would not have committed the crime
16 without the trickery, persuasion or fraud of the officer
17 or agent. The State is required to prove beyond a
18 reasonable doubt that the defendant is predisposed to
19 commit the crime without the inducement of the officer or
20 agent. Predisposed to commit the crime means that the
21 defendant had the intent, purpose, readiness or
22 willingness to commit the crime without the inducement or
23 persuasion of the officer or agent. The fact that the
24 officer or agent merely presented opportunities or
25 facilities for the commission of a crime is not

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1 entrapment. If you find that a defendant did -- as Mr.
2 Pope is the one who has raised this -- If you find that
3 Mr. Pope had any re-disposition without any governmental
4 inducement and influence to commit the crime, a defense of
5 entrapment would not apply. In deciding whether a
6 defendant had any predisposition to commit the crime, you
7 may consider evidence such as their willingness to commit
8 the crime charged as shown by their ready response to any
9 inducement. If you find that Mr. Pope was entrapped in
10 committing an offense, you would find him not guilty.
11 Your verdicts as to these three must be separate. As I
12 told you before, you must look at the facts and apply the
13 law as I have charged as to each defendant. Your verdicts
14 must be unanimous. All twelve jurors must agree. Madam
15 forelady, you will preside over the deliberations and
16 enroll the jury's verdict and I'll go over the verdict
17 forms with you in just a moment. Your verdict cannot be
18 based on passion, prejudice, public opinion, sympathy or
19 matters outside the record. If while you're deliberating
20 you have a question, write them down, knock on the door,
21 tell the bailiff. I have some other work to do, but I'll
22 send for you as promptly as I can. If you ask a question
23 and I can answer that question by writing an answer on the
24 note, after conferring with the attorneys, I will send the
25 note back in with the answer. Keep that note if that

1 happens and turn it back in with the evidence, madam
2 forelady, because it has to be part of the record. It may
3 be that I can bring you back here in open Court and answer
4 any questions you may have. In South Carolina we do not
5 send a written charge on the law in with you, but if you
6 wish me to go over any part or all of the law, please
7 knock on the bailiff (sic), send out a note and say we
8 want a charge on this, that or the other. I will bring
9 you back in and here in open Court charge you whatever you
10 want to -- want me to re-charge. When you've reached a
11 verdict, known on the door, tell the bailiff, the bailiff
12 will come and get us and we will send for you -- or come
13 and alert me and I will send for you as promptly as I can.
14 I understand I have some other work to do, but I will send
15 for you as promptly as I can. Mr. Booker, you will remain
16 in here. As alternate you will not have to go back out
17 again. Now, when you first go in, madam forelady and
18 ladies and gentlemen of the jury, do not start
19 deliberating yet. I have to go over with the attorneys my
20 charge. As I have told you, you have to follow the charge
21 as I give it, so it's incumbent on me to make sure that I
22 haven't made a mistake. If I have, I will bring you back
23 in and correct it. If I have not, I will send in the
24 exhibits, the verdict forms I'm going to show you in just
25 a moment and the bailiff will tell you to start

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1 deliberating. As to all three gentlemen, the verdict
2 forms are the same. They're on a piece of paper that's
3 been stapled to the indictment. There are four options
4 and the order they're in is of no significance. I have to
5 put them in some and this is the way I've been doing it
6 for quite a while, so the fact that one precedes the other
7 is not of any importance. If you find the State has
8 proven one or more of the defendants guilty of trafficking
9 in crack cocaine, you would simply put an X or a check in
10 front of that first line that says, we find the defendant
11 guilty of trafficking in crack cocaine. If you find that
12 the State has failed to prove the defendant guilty of that
13 offense, looking at the steps as I talked about earlier,
14 you can go down to the next step and determine and make a
15 finding if you deem it appropriate. The second step is,
16 we find the defendant guilty of the lesser included
17 offense of possession with intent to distribute crack
18 cocaine. Then the third line says, we find the defendant
19 guilty of the lesser included offense of possession of
20 crack cocaine. If the State has proven either of those
21 three beyond a reasonable doubt, you would simply put a
22 check in front of that as to that defendant. The fourth
23 line on each verdict form says, we find the defendant not
24 guilty. If the State has failed as to a defendant to
25 prove that defendant's guilt of any of those three

1 offenses, you will put a check on that third line that
2 says we find the defendant not guilty. I've already put
3 a date on here and there's a place for you to sign it,
4 madam forelady. I'm going to let y'all go to the jury
5 room at this time, but do not start deliberating. Mr.
6 Booker, I'll be with you in a minute. You just wait.

7 (Jury exits the courtroom)

8 The Court - I'll be with you in just a minute.
9 Anything with regard to the charge from the State?

10 Mr. Anthony - No, sir.

11 The Court - Mr. St. Pierre?

12 Mr. St. Pierre - Just renew my motion for the
13 probable cause charge as I feel this -- the facts in this
14 case warrants that.

15 The Court - All right. Mr. Brannon?

16 Mr. Brannon - Nothing, Your Honor.

17 Mr. McKinnon - Nothing, Your Honor.

18 The Court - All right, if you will all check the
19 exhibits and make sure they're in order. Check the
20 verdict forms and make sure they're in order. As soon as
21 that's taken care of, if you'll give them to the bailiff
22 and he'll take them back and tell them to start
23 deliberating. All right, Mr. Booker, you're through for
24 the week. You can stick around and see what the verdict
25 is or you can leave. You'll be mailed a check I believe.

VOL. II OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM UNION COUNTY

John C. Hayes, III, Circuit Court Judge

RECEIVED

NOV 13 2014

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

RODERICK POPE,

APPELLANT

APPELLATE CASE NO. 2012-207226

RECORD ON APPEAL

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1 everybody for their courtesies, all counsel during the
2 course of the trial.

3 (Jury returns to the courtroom with verdict at
4 5:19. p.m.)

5 The Court - Madam forelady, I understand you've
6 reached a verdict. Hand it to the bailiff and the bailiff
7 will hand it up to me.

8 (Whereupon, verdict is handed up to the Court
9 and the Court hands the verdict to the Clerk.)

10 Clerk - In the case of Lashad Brewton, we find
11 the defendant guilty of the lesser included offense of
12 possession with intent to distribute crack cocaine. In
13 the case of Roderick Pope, we find the defendant guilty of
14 the lesser included offense of possession with intent to
15 distribute crack cocaine. In the case of Randy Crosby, we
16 find the defendant guilty of the lesser included offense
17 of possession with intent to distribute crack cocaine.

18 The Court - If this be your verdict, so say you
19 all by raising your right hand.

20 (Whereupon, all jurors affirm)

21 The Court - The record will reflect that all
22 twelve jurors raised their right hand. Anything from the
23 State before the jury's dismissed?

24 Mr. Anthony - No, sir.

25 The Court - Mr. St. Pierre?

1 Mr. St. Pierre - Nothing, Your Honor.

2 The Court - Mr. Brannon?

3 Mr. Brannon - No, Your Honor. Thank you.

4 The Court - Mr. McKinnon?

5 Mr. McKinnon - No, Your Honor.

6 The Court - Members of the jury panel, I
7 appreciate your help. This concludes the jury work for
8 the week. You'll be mailed a check. The office
9 downstairs is closed, but if you need anything to take
10 back to work, if you'd stop by the Clerk's office tomorrow
11 they will give it to you. And, madam forelady, the Clerk,
12 Mr. Gault, is going to meet with you in the jury room just
13 a minute. We need to get you to also -- You didn't do
14 anything wrong, but you did exactly right, but we need to
15 get this verdict enrolled on the actual indictment itself,
16 and this is the way we always do it. We wait until after
17 you come back with the verdict form, so Mr. Gault will
18 meet with you in there and everybody else feel free to
19 leave. Thank you so much. Have a good holiday.

20 (Jury exits the courtroom)

21 The Court - All right, the jury's been
22 dismissed. Anything from the State before -- before we
23 get into sentencing?

24 Mr. Anthony - Not as to the trial phase, no.

25 The Court - All right, Mr. St. Pierre, anything?

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1 Mr. St. Pierre - Yes, sir, I'd move at this time
2 for a new trial and renew all of my objections that I
3 stated during the course of the trial and of course the
4 directed verdict motion after the State rested, after the
5 defense rested and my objections to the -- one second,
6 Your Honor -- the jury charge ---

7 The Court - Not charging probable cause.

8 Mr. St. Pierre - Yes, sir. And my objection to
9 the jury charge of the lesser included.

10 The Court - All right. Motions are denied. I
11 think the verdict, as I said, was an appropriate verdict
12 under the facts and the law. Mr. Brannon?

13 Mr. Brannon - Your Honor, I would at this point
14 renew all my motions and objections understanding the
15 Court's prior rulings. At this point I would continue to
16 move for a new trial, Your Honor.

17 The Court - All right, motion's denied. Just
18 like I said as to Mr. Brewton, I believe the facts and the
19 law supports the verdict. All right?

20 Mr. McKinnon - Your Honor, I'd like to renew all
21 objections and motions and ask for a new trial.

22 The Court - All right, well, that motion's
23 denied. Again as to Mr. Crosby also I find that the facts
24 and the law support the verdicts. All right, if we could
25 bring the defendants around for sentencing and we'll need

1 to get a sentencing sheet, Mr. Solicitor.

2 Mr. Anthony - They were attached to the
3 indictments. I would expect that maybe ---

4 The Court - Oh, I -- I think I do have them. I
5 forget y'all do it like that over here. All right, I have
6 them.

7 Mr. Anthony - And, Your Honor, I apologize. I
8 cannot find -- Well, I bet Mr. St. Pierre has it.

9 (Discussion is held between Mr. Anthony and Mr.
10 St. Pierre which was not reported.)

11 The Court - All right, and these are first
12 offenses to Pope and Brewton and second as to Crosby? Is
13 that correct?

14 Mr. Anthony - Yes, sir. Mr. -- Mr. Pope has a
15 prior drug conviction from 1989, but I believe that this
16 would be a sentence under the new law and as far as I can
17 tell that that conviction would not count. So this would
18 be a first offense for Mr. Pope, first drug offense for
19 Mr. Brewton and second drug offense for Mr. Crosby.

20 The Court - All right, here's what I'm going to
21 do. The sentencing sheets I'm going to hand down and make
22 so that the solicitor and the attorneys can make sure that
23 the information set forth on them are right as far as the
24 code section, CDR codes and the code sections and whether
25 or not they're violent, serious, most serious, anything

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1 like that. So I'm going to let the solicitor fill those
2 in before I go further and I want the defense counsel to
3 review them also. (Pause) Mr. Anthony, while they're
4 looking at those, what do you have for the CDR code for
5 the first offense.

6 Mr. Anthony - First offense is 3014 and second
7 offense is 3015.

8 Mr. St. Pierre - Judge, my client doesn't have
9 to sign anything, does he?

10 The Court - My understanding if it's a trial
11 that they're not required ---

12 Mr. St. Pierre - Thank you.

13 The Court - Well, Mr. Anthony, if you'd come
14 around and counsel bring the three defendants, I'll be
15 glad -- and we'll stick with the order that we've been
16 going through and does -- Anybody present that would like
17 to speak on any of these gentlemen's behalf, I'll be glad
18 to hear from them. All right, I need to hear from Mr.
19 Anthony first as to Mr. Brewton. Does he have any record?

20 Mr. Anthony - Mr. Brewton has a CDV conviction
21 from 2010. That's the extent of his criminal record.

22 The Court - All right, Mr. St. Pierre?

23 Mr. St. Pierre - Yes, sir. If it please the
24 Court. You obviously have heard the facts of the case and
25 we would just ask in the sentencing portion that you

1 consider a few things. He's 22 years old, has two young
2 children, a one year old and a two year old. He's got a
3 great family support as evidenced by his family members
4 standing behind him today. We would ask at this juncture
5 to consider a little equity in the sentencing. You've
6 heard testimony today -- or I'm sorry -- during this week
7 that Mr. Venson Harris, who's had five prior crack
8 convictions and had sentences of fifteen years and ten
9 years and has spent a significant part of his life in the
10 Department of Corrections for crack cocaine was sentenced
11 in this very courtroom, the fact for a period of three
12 years. Your Honor, I would also ask that you consider
13 that the amount of drugs that my client and his co-
14 defendants were convicted of possessing had a street value
15 of less than six hundred dollars and provided they're all
16 convicted of possessing that, and I would submit that
17 their equal share of that is around two hundred dollars
18 each, which is very similar to Mr. Venson Harris' -- the
19 amount of dope he was caught that (sic). So with that
20 being said, Your Honor, I would respectfully request due
21 to my client's lack of criminal history, his young age,
22 his family support, his family -- He needs the support --
23 that you would consider him for a suspended sentence and
24 allow him probation and the chance to move on in his life.

25 The Court - All right. There's a lady and

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1 gentlemen who appear to be with Mr. Brewton. I'll be glad
2 to hear from either one of those. Ma'am, would you give
3 me your name if you want to speak?

4 Ms. Brewton - Yes. My name is Joyce Brewton.
5 I'm his mother and that's his father, Greg Crocker. And
6 I never seen nothing like this before, but on behalf of my
7 son he never been no problem to me. He also help -- I
8 have a disabled daughter. She can't talk and -- Well, she
9 -- A lot of stuff she can't do, but helps -- help me a lot
10 with her. He ain't never been disrespectful, hard-headed.
11 He always went to church with me, whatever I needed him to
12 do.

13 The Court - Okay. All right, Mr. Brewton,
14 anything you want to say?

15 Mr. Brewton - No, sir.

16 The Court - All right. The sentence on Mr.
17 Brewton is for ten years, but that's suspended upon
18 service of five years, with five years probation. Have
19 you finished high school?

20 Mr. Brewton - Yes, sir.

21 The Court - Okay. While you're on probation
22 you're to have substance abuse counseling, random drug and
23 alcohol testing and addition to other fees, you'll owe
24 five hundred dollars for having appointed attorney. You
25 understand that?

1 Mr. Brewton - Yes, sir.

2 The Court - Thank you. Step over here. Mr.
3 Pope? All right, Mr. Crosby, you want to go next?

4 Mr. McKinnon - Sure.

5 The Court - All right, tell me Mr. Crosby's
6 record again, Mr. Anthony? Crosby.

7 Mr. Anthony - I was just -- As to Mr. Crosby, he
8 has a habitual traffic offender in 2010, has a DUS in
9 2008. He has a possession of crack in 2006, has a CDV in
10 2004, a disorderly conduct in 2003 and a operating
11 uninsured motor vehicle in 2002.

12 The Court - All right. Mr. McKinnon?

13 Mr. McKinnon - Thank you, Your Honor. May it
14 please the Court. Mr. Crosby is 27 years old. He lives
15 with his girlfriend. They have four children together.
16 They are 5 -- What are the ages again?

17 Mr. Crosby - 7, 5, 4 and 3.

18 Mr. McKinnon - Your Honor, I wanted to point out
19 again -- I guess what Mr. Anthony just said, his only
20 previous felony conviction I believe was the habitual
21 traffic offender and his previous drug conviction was a
22 simple possession. It's not nothing -- intent to
23 distribute or trafficking. Your Honor, we're simply
24 asking for any leniency you can provide in his sentence.
25 We realize the range is great, exposure is great. Mr.

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1 Crosby realizes that. And we would just ask something
2 commensurate with his not atrocious record and his family
3 situation and as Mr. St. Pierre said, the shared
4 responsibility of this crime.

5 The Court - Anybody want to speak on his behalf?

6 Mr. McKinnon - No, Your Honor. His girlfriend
7 had to get back and get their kids from school.

8 The Court - All right. Mr. Crosby, anything you
9 want to -- Well, wait just one second. Anything you want
10 to say?

11 Mr. Crosby - I'm sorry I put y'all through all
12 this. It won't happen again.

13 The Court - All right. Sentence on Mr. Crosby
14 is fifteen years. That's suspended upon service of ten
15 years and you'll be on probation for five years with
16 substance abuse counseling and random drug and alcohol
17 testing and in addition to other fees, you owe five
18 hundred dollars for having appointed attorney. You
19 understand that?

20 Mr. Crosby - Can you say that again?

21 The Court - Fifteen years suspended upon ten
22 years and that's to be followed by five years probation
23 with substance abuse counseling and drug testing. You
24 understand that?

25 Mr. Crosby - (Indicating yes)

1 The Court - He indicated he did.

2 Mr. Crosby - Yes, sir.

3 The Court - Thank you.

4 Mr. McKinnon - Thank you, Your Honor.

5 The Court - All right, Mr. Brannon?

6 Mr. Brannon - Your Honor, are we okay here?

7 The Court - Well, why don't you step over here.

8 The Court Reporter can hear you a little better.

9 Mr. Brannon - Your Honor, my client's 49 years
10 of age. He became disabled in 2008, injured at work.
11 However, Your Honor, he did not begin -- And I say that he
12 became disabled in 2008 because when he began to receive
13 his disability benefits in 2010 after this incident
14 occurred, they dated the disability back to a time in
15 2008. Your Honor, my client had not had any involvement
16 with law enforcement since 1989. He's married. His wife
17 is here with us in Court today. On June 24th, 2010 my
18 client had not yet received his disability payments. His
19 wife was working and doing what she could do, but Your
20 Honor, the power was going to be cut off. A phone call
21 came in and he initially said no, I don't have any drugs.
22 But, Your Honor, in an effort to keep the power on because
23 of his children who at that point were still living at
24 home and his wife, he did something he shouldn't have
25 done. Your Honor, it's somewhat ironic to me that the

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1 sentence on a trafficking charge is three to ten and the
2 sentencing on the lesser included exposes him to more
3 time. I am just respectfully asking this Court to
4 consider a probationary sentence. Not only does my client
5 have the injury that caused him to be determined disabled,
6 he now has heart problems. He's -- He's required to take
7 significant medications to deal with the heart trouble.
8 Your Honor, I have met with Roderick Pope on I would say
9 to the Court so many times I can't count. I mean we have -
10 - We've met regularly. My client is a nice person. You
11 know, the Court is aware of all of the evidence that was
12 introduced in this case and, you know, there's no evidence
13 that Mr. Pope had ever sold drugs to anyone else. The
14 Court is also aware that when this traffic stop occurred,
15 he didn't even have any money in his pockets. Your Honor,
16 he's accompanied as well as his wife by his brother
17 Michael and his sister, and, Your Honor, I believe they
18 would like to speak, but again I'm asking this Court to
19 consider a probationary sentence in this case. Thank you.

20 The Court - Yes, sir, your name?

21 Mr. Michael Pope - Michael Pope. I can pretty
22 much confirm most of what the lawyer said, that -- Because
23 me and my wife have kept their lights, not only their
24 lights but have paid their rent for them on numerous
25 occasions until he got his disability approved. I was

1 very shocked when I found out he was incarcerated and we
2 had to set his bond. He couldn't even come up with his
3 own bond money, and I can assure you that honestly from my
4 heart have no recollection -- I'm out of Greenwood, South
5 Carolina, and I had no recollection anything like this was
6 going on and I could honestly say we have had to take care
7 of them basically until -- This is my wife -- until the
8 disability got approved, and honestly he is a good brother
9 and a good friend. I know he made a mistake, but he is a
10 good fellow, and I do not believe in any kind of way,
11 shape or form that that would be the type lifestyle he
12 would want to live, selling drugs. Thank you.

13 The Court - Thank you. All right. Your name?

14 Ms. Pope - Shatisha (phonetic) Pope. I'm his
15 sister-in-law. Thank you, Judge, for letting me speak.
16 I'm just going to wrap mine up in a nutshell. I was a
17 dispatcher for highway patrol. I left there -- I retired
18 from there about two weeks ago. I'm studying to become a
19 practicing pastor. I believe in God and I'm a christian,
20 and I believe God has second chances and I would just wish
21 this Court would be lenient with my brother-in-law and
22 give him a second chance as God would all of us, but also
23 our family has been through so much. Our family has had
24 so much death. My step -- My son hanged himself in the
25 prison system. My other son was shot accidentally by death

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1 (sic). We've lost our -- his mother which was my mother-
2 in-law. I've lost my aunt which was his sister, and that
3 was all within a four to five year period of time. And I
4 know he's thinking about the fact and I know that stays on
5 his mind constantly, and what I want to do when I became
6 my pastor (sic) became to be ordained I wanted to minister
7 to him to help him get on the right track, the right track
8 in life, and that's all I want to say. I just want to
9 thank you for giving me a chance to speak.

10 The Court - Yes, ma'am. Thank you for speaking.
11 All right?

12 Mrs. Pope - My name is Barbara Pope. That's my
13 husband and if you could just give him probation. I mean
14 he made a mistake. Everybody make mistakes and everybody
15 deserves a second chance, Judge, and this would never
16 happen again. You know, he helps in my catering business.
17 I just started a catering business and he help me in it,
18 and everything. I just pray that, you know, your heart go
19 the right way and just, you know, give him probation. I
20 understand, you know, what was done was wrong, but I'm
21 hoping that you was a fair Judge, you know, and be lenient
22 with him. You know, just think about his health, you
23 know, all the health that he -- you know, he's dealing
24 with, and he's dealing with pretty much -- you know a lot
25 of health. Thanks.

1 The Court - Mr. Pope, anything you want to say?

2 Mr. Pope - I'm just sorry, Your Honor, sorry
3 that it happened. I wish you would be lenient with me,
4 Your Honor.

5 The Court - All right ---

6 Mr. Anthony - Your Honor, if I could give the
7 Court his record.

8 The Court - Oh, I -- Okay.

9 Mr. Anthony - He had a -- has a '89 conviction
10 for PWID schedule 4, a '88 conviction for CDV and a '88
11 conviction for burglary and grand larceny and a '87
12 disorderly conduct.

13 The Court - Mr. Pope, the sentence -- Your
14 sentence is fifteen years, but that's suspended on seven
15 and a half years with five years probation to follow with
16 substance abuse, drug and alcohol counseling and in
17 addition to other costs and fees, you owe five hundred
18 dollars for having an appointed attorney. Thank you.

19 (Back on record)

20 The Court - Mr. Anthony's informed me -- We'll
21 get Mr. Crosby in here in a minute -- this is a no parole
22 offense. I looked at my sheet and my --- the sheet
23 indicated -- The sheet I used for sentencing I looked to
24 see if it indicated that and it did not, so I'm now told
25 by -- or maybe I just didn't look at it close enough. Let

1 me see my sheet.

2 Mr. Anthony - I'm pretty sure second --

3 Mr. McKinnon - Mr. Anthony told me that and I
4 honestly thought it was not, but I ---

5 The Court - Well, let me see it.

6 Mr. McKinnon - -- I could be completely wrong.

7 The Court - I may overlooked it. I've got a
8 third as being no parole eligibility, but under 3015 --
9 Like I say, I checked earlier because I -- I was going to
10 factor that into my sentencing and mine did not -- I hate
11 to call it my cheat sheet, but the sheet I use does not
12 have it, although third does.

13 Mr. McKinnon - Unless the two previous I believe
14 are just simple possession ---

15 The Court - Well, I'm not going to get into ---

16 Mr. McKinnon - Well, I -- that's fine.

17 The Court - We've got enough to figure out right
18 now.

19 Mr. Anthony - Okay. I was really thinking that
20 it is, but maybe I'm wrong.

21 The Court - Well, if it is, it might make a
22 difference in what I sentence so why don't ---

23 Mr. Anthony - Let me check ---

24 The Court - Let everybody -- Clear the
25 courtroom. The Court Reporter stays for a few minutes.

1 The Clerk stays for a few minutes. You stay for a minute,
2 Ms. Ballou and then after we kind of get everybody and get
3 this -- I want to look at it.

4 Mr. McKinnon - Yes, sir. I appreciate it.

5 The Court - I want to make sure I'm going on the
6 right information. All right, we'll take a break while we
7 get this together. Thank you.

8 (Recess taken)

9 The Court - I have been informed by counsel for
10 Mr. Crosby that they want to make a motion for me to
11 reconsider the sentence I imposed today on Mr. Crosby for
12 possession of crack cocaine with intent to distribute.
13 Counsel?

14 Mr. Hall - That's correct.

15 The Court - So you are moving for me to
16 reconsider the sentence imposed on ---

17 Mr. McKinnon - Yes, sir, Your Honor, we are
18 making a motion for the Court to reconsider the sentence
19 imposed upon Mr. Crosby on possession with intent to
20 distribute second offense which was fifteen year suspended
21 upon the service of ten followed by five years probation
22 and substance abuse counseling.

23 The Court - I'm going to take it under
24 advisement.

25 Mr. McKinnon - Thank you.

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1 Mr. Brannon - Your Honor, may I make a like
2 motion?

3 The Court - Yes, sir.

4 Mr. Brannon - Your Honor, at this time I would
5 move to reconsider the sentence imposed on my client, Mr.
6 Roderick Pope. The sentence I believe was fifteen years
7 suspended to seven and a half with probation for five
8 years, move to reconsider that sentence.

9 The Court - While we're at it, Mr. St. Pierre,
10 you want to ---

11 Mr. St. Pierre - I sure do, Your Honor. I would
12 move to reconsider the sentence imposed by this Court of
13 ten years suspended on five active and five years
14 probation.

15 The Court - All right, well, I'll take all of
16 them under advisement, and if any of you want to submit
17 anything in writing, try to do it -- I know you've got
18 other stuff to do and I don't mean this fictitiously, but
19 defendants aren't going anywhere for a while so -- but
20 what do you think? How long do you think you'll need to
21 do something in writing?

22 Mr. Brannon - By next Friday.

23 Mr. St. Pierre - I'll be in Laurens next week.

24 The Court - By the end of next week will be
25 fine.

1 Mr. Anthony - And if I determine ---

2 The Court - You have five days to respond.

3 Mr. Anthony - And if I determine that it's not
4 a second offense, I'll just advise Mr. Crosby's lawyers
5 that that's my position.

6 The Court - All right, well, if you want to file
7 anything, when you get theres, if you let me know I can
8 give you like -- whatever time you need, five days ---

9 Mr. Anthony - Thank you.

10 (Notes marked as Court's Exhibits 7 and 8.)

11 (End of transcript)

12

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WITNESSES

Sherfield/UCSO

ARREST WARRANT NUMBER

K393878

ACTION OF GRAND JURY

TRUE BILL

Molly Wix

Person of Grand Jury

Date: AUG 26 2010

VERDICT

Guilty

Marsha G Vinson 12/8/11

Foreperson of Petit Jury

Date: 12/8/11

Per Verdict Form

Possession with Intent to distribute *John H. H. CDR 3014*

DOCKET NO. 2010-GS-44-1053

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

AUGUST 30, TERM 2010

THE STATE

vs.

RODERICK POPE

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375

CDR Code: 450

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

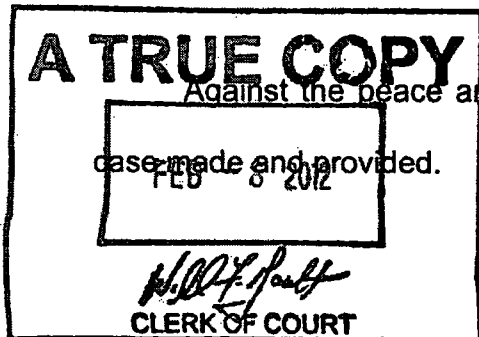
STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

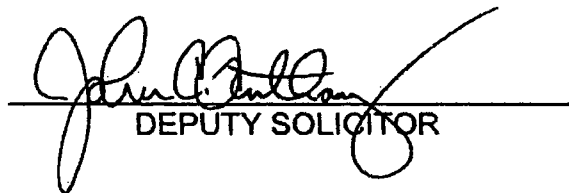
INDICTMENT

At a Court of General Sessions, convened on August 26, 2010, the Grand Jurors of Union County present upon their oath:

TRAFFICKING CRACK COCAINE

That in Union County, South Carolina, on or about June 24, 2010, Roderick Pope did wilfully, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a quantity of Crack Cocaine, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), and did traffick in Crack Cocaine in an amount being more than 10 grams but less than 28 grams, such trafficking not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina (1976, as amended).




DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Union

STATE

VS.

Roderick Pope

INDICTMENT/CASE#: 2010-GS-44-1053

AW#: K-393878

Date of Offense: 06/24/2010

S.C. Code §: 44-53-0375

CDR Code #: 0 4 5 0

AKA:

Race: B Sex: M Age: 49

DOB: SS#:

Address:

City, State, Zip: Moore, SC 29369

DL# SID# SC00403754

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: 1st offense PWD Ccd

In violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 2014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # 7116 Defendant Attorney for Defendant SC Bar # 68798

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of 1 1/2 days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code 16-25-43. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

\$14-1-206 (Assessments 107.5%) \$

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$

\$56-5-2995 (DUI Assessment) \$12 \$

\$56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00

\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

\$14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

\$50-21-114 (BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

\$44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$ 23.42

TOTAL \$ 803.42

Clerk of Court/Deputy Clerk

Court Reporter:

A TRUE COPY

FEB - 8 2012

days/hours Public Service Employment

Obtained GED ☐

Attend Voc. Rehab. Or Job Corp. CLERK OF COURT

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☒ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2049

Sentence Date 12/8/11

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
State of South Carolina,)
Plaintiff,)
vs.)
Roderick Pope,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

Indictment No.: 2010-GS-44-1053

FILE FOR RECORD

2012 JAN 12 PM 1:25

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

ORDER

Upon his conviction for First Offense Possession with Intent to Distribute Cocaine Base (Crack Cocaine), the Defendant, Roderick Pope, was sentenced by the Court on December 8, 2011, to fifteen (15) years suspended upon service of seven and one half (7 1/2) years with five (5) years of probation to follow his active sentence.

Counsel for Defendant, Roderick Pope, timely made a motion that the Court reconsider the sentence imposed on December 8, 2011. This motion is Denied.

IT IS SO ORDERED.

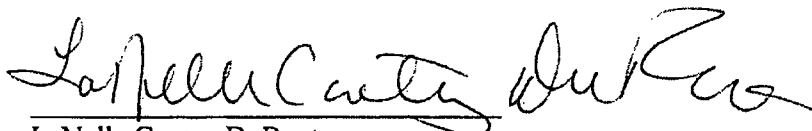

John C. Hayes, III
Presiding Judge

January 11, 2012
York, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 9th, 2013



LaNelle Cantey DuRant
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

IN THE COURT OF APPEALS

RECEIVED

NOV 18 2014

Appeal from Union County

S.C. Supreme Court

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODERICK POPE,

APPELLANT

APPELLATE CASE NO. 2012-207226

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in denying Appellant's motion to suppress the evidence, which consisted of a scale with alleged cocaine residue on it, found during the search of the vehicle in which Appellant was a passenger because there was not sufficient reasonable suspicion to stop the vehicle?
2. Did the trial court err in refusing to suppress the evidence seized during the search of the vehicle in which Appellant was a passenger, when law enforcement did not have probable cause to believe the vehicle contained evidence of criminal activity and no exigent circumstances existed to justify the warrantless search?
3. Did the trial court err in admitting the scale with residue cocaine found in the vehicle and the drugs found in the police car when no chain of custody existed for the scale, and the chain of custody for the drugs in the police car was insufficient?

STATEMENT OF THE CASE

On August 26, 2010, the Union County Grand Jury indicted Roderick Pope on the charge of trafficking crack cocaine more than ten grams but less than twenty-eight grams. On December 6-8, 2011, Pope proceeded to trial before the Honorable John C. Hayes, III. Pope was tried along with his two co-defendants: Lashad Brewton and Randy Crosby. Pope was represented by Doug Brannon, Brewton was represented by Joe St Pierre, and Crosby was represented by Dan Hall and Mark McKinnon. The state was represented by John Anthony.

The jury returned a verdict of guilty for the three co-defendants on the lesser included charge of possession with intent to distribute crack cocaine (PWID). R. 501, ll. 15-17. Judge Hayes sentenced Pope to fifteen years suspended to the service of seven and one-half years and five years probation. R. 514, ll. 13-18.

Pope's attorney filed notice of appeal. This appeal follows.

STATEMENT OF FACTS

Venson Harris was arrested on June 24, 2010, after Harris sold a confidential informant "a quantity of crack cocaine." R. 14, l. 9 – 15, l. 5. Because Harris wanted to get out of jail on bond, he told Officer John Sherfield of the Union County Sheriff's Office that he could help the officers get Harris' supplier and could get the supplier to come to Union County. R. 15, ll. 10-12.

Officer James Johnson made the agreement with Harris that if Harris helped them, Officer Johnson would help Harris obtain a bond. Then, in Officer Johnson's presence, Harris called Pope who allegedly said he had to check and would call him back. Pope called Harris shortly after, and arrangements were made for Harris to purchase \$600 worth of crack. Pope would be in a black Ford Expedition, and would meet him at Aunt M's Store on Highway 176. R. 92, ll. 1 – 25; R. 93, ll. 1 – R. 97, ll. 7.

Deputies set up surveillance along Highway 176 at various points. When Pope called and said he was in front of Lighthouse Fish Camp, Sheriff Taylor activated his blue lights and stopped the car. R. 19, ll. 1-19. Officer Sherfield and others approached the car. Officer Sherfield indicated that three men were in the vehicle. Brewton was driving; Pope was in the front passenger seat; and Crosby was in the right rear seat. Officer Sherfield had Mr. Brewton step out, spoke with him briefly, placed him in hand-cuffs and told him that he was being detained at the time. R. 19, ll. 20 – R. 20, ll. 20. Sheriff Taylor admitted that he had no knowledge of whether Captain McNeil attempted to verify the license plate information of the Ford Expedition. R. 90, ll. 4-16.

Officer Sherfield testified that one of the other officers got Pope and Crosby from the passengers' seats on the passenger's side. R. 20, ll. 7 – 23. Officer Sherfield then said

he went around and searched the vehicle and "I found a digital scale with white residue on it under the seat where Crosby was seated in the back." R. 20, l. 21 – 21, l. 1.

Officer Sherfield recalled that the white residue tested positive for cocaine when he conducted a field test of the white residue. R. 21, ll. 5-13. Officer Sherfield stated all three men were then arrested for the possession of cocaine. R. 21, ll. 14-20. No money was found on Pope, but \$280 was found on Brewton and \$570 on Crosby. R. 21, ll. 22 – R. 22, ll. 9. When the State asked Officer Sherfield if any drugs were found on the three men when they were searched on the side of the road, Officer Sherfield replied, "*No, sir.*" R. 22, ll. 7-9 (emphasis added). Officer Sherfield reiterated on cross-examination, "I put [co-defendant Brewton] in hand-cuffs, told him that he was being detained, then we searched the car, found a scale, told them they were under arrest, that all three of them were under arrest." R. 34, ll. 9-14.

On cross-examination, Officer Sherfield admitted that he did not ask for consent to search the vehicle, and did not have consent. He did not obtain a search warrant either. R. 58, ll. 1 – R. 59, ll. 8.

Officer Russell Vinson transported Brewton and Crosby to the detention center in his patrol car. After the two co-defendants were taken into the jail, Officer Vinson discovered crack cocaine under the seat of the back seat of his patrol car. R. 290, ll. 24 - R. 294, ll. 25. He confirmed that Pope was transported in a different car by someone else. R. 306, ll. 6 – 12.

On cross-examination, Officer Sherfield admitted: (1) that he first met Venson Harris, the drug dealer, on the day of his arrest/search of the vehicle based on the information provided by Harris; (2) that law enforcement searched the vehicle without

consent; (3) that the seal broke on the original evidence bag containing the weighing scale, so he put the scale in a new evidence bag; (4) that the scale was missing a battery; (5) that there was no chain of custody written on the form for the scale; (6) that the incident report did not list the scale as an item seized during the search; and (7) that the incident report listed Officer Vinson as recovering the crack cocaine from the patrol car that transported Appellant and co-defendant Brewton, yet Officer Sherfield wrote on the affidavit of the BEST bag that he had seized the evidence from Appellant, Brewton, and Pope. R. 36, l. 5 – 42, l. 3; R. 52, ll. 1-13; 54. 89, ll. 1-8; R. 57, l. 8 – 95, l. 9; R. 75, l. 2 – 77, l. 10.

In a pre-trial motion, Pope's defense counsel moved to suppress the drug evidence seized during the search of the vehicle. R. 10, ll. 4-5. The trial court acknowledged that Co-defendants Crosby and Brewton joined the motion to suppress. R. 10, ll. 13-14.

Pope's counsel argued that his motion to suppress included the traffic stop; the search of the vehicle; the scale that was found in the vehicle and any drug substances they alleged were found on the scale; and the chain of custody for the crack that was seized in the police car. R. 11, ll. 20 – 25.

After the pretrial testimony as seen above, defense counsel argued that the informant Harris lacked credibility and reliability. Counsel argued this was not a traffic stop but an ambush; no citations were issued; and his client said guns were drawn although the officers claimed they did not remember. Counsel argued that reasonable suspicion is a lesser standard than probable cause and allows officer to make a stop when there is some manifestation of criminal activity. Counsel said this was not a high crime area; it occurred at 6:00 PM on June 24 so the hour was not late. The car was travelling legally, and there was no evasive behavior by the defendants. The car stopped at the blue light, and there was no

attempt at flight. Counsel argued this case did not rise to level of reasonable suspicion. R. 126, ll. 9 – R. 134, ll. 1.

Counsel then argued there was not probable cause to search the vehicle after the stop. The police got the men out of the car. The car was then not going anywhere. The police did not get consent to search and did not obtain a search warrant. Because the car was not a risk of flight at that point, a search warrant was needed. None of the men had drugs on them, and the scale had not been found then. Counsel argued that there was just no probable cause to search the vehicle other than the unverified word of Harris whom no one knew anything about. Counsel again argued there was no chain of custody for the scale, and the drug residue was never tested after the field test. He argued for the scale and drug residue to be suppressed. Counsel said the fact that the drugs were found in the patrol car was not sufficient for actual or constructive possession. He argued for those drugs to be suppressed also. R. 130, ll. 7 – R. 134, ll. 1.

Crosby's attorney, who joined in the motion to suppress, argued that "no reasonable suspicion existed for the traffic stop," that law enforcement did not have probable cause to search the vehicle, and that "everything after the illegal search of that vehicle is fruit of the poisonous tree[.]" R. 137, ll. 7-25. In support of his argument, defense counsel listed the following factors: (1) the inherent unreliability of Harris, the recently arrested drug-dealer who set up the alleged drug transaction; (2) law enforcement failed to verify the information on the license plate of the Ford Expedition; (3) law enforcement failed to wait until the Ford Expedition arrived at the agreed upon destination for the alleged drug transaction; (4) law enforcement failed to verify whether Harris actually called co-defendant Pope; (5) there was "no discernible criminal activity observed by any of the officers before the stop[.]" (6) the

occupants of the vehicle did not consent to the search of the vehicle; and (7) no exigent circumstances were present. R. 134, l. 4 – 137, l. 25; R. 144, l. 12 – 145, l. 8. In sum, defense counsel argued, “[The police] simply pulled three men over, hand-cuffed them, [and then] searched the car with no new facts discovered.” R. 137, ll. 7-9.

The trial court ultimately denied the motions to suppress. Specifically, the trial court held, “I’m going to deny the motion to suppress. I think the ice here is thin, but I think it’s thick enough to support the arrest, the stop first, then the search and then the arrest, and they went in that order.” R. 157, ll. 10-14. The trial court found that Harris, the drug dealer, “is somewhere between the confidential informant and [an] anonymous tipster.” R. 157, ll. 14-25. The trial court also found that law enforcement had probable cause to stop the vehicle:

Not a lot of information, that’s true, but enough, I think, to establish probable cause to make the stop, and that corroboration is that a black Ford Expedition would be coming from Spartanburg to Union on 176 out of Spartanburg. That alone would not be enough . . . [Harris] gave information that he had been contacted by whoever was on the other end of that phone, whether it was Pope or not, that the car in question was passing the Lighthouse fish camp, and that was confirmed by Mr. McNeil, Officer McNeil. So I think that’s enough to create probable cause for the stop.

R. 158, l. 10 – 9, l. 1.

Furthermore, the trial court further held, “As to the search, the three individuals were taken out of the car. They were not arrested. They were detained. They were, in fact, handcuffed.” R. 159, ll. 2-4. Interestingly, the trial court ruled that the search was proper because exigent circumstances existed under the automobile exception. Specifically, the trial court stated:

I’ve got to determine whether or not under the totality of circumstances there was a legal basis for the search. That

would come down to whether or not - - at least in my opinion, whether or not the automobile exception would apply.

...

I find that the exigency of the circumstances - - that is, that at the time they had probable cause to stop; they detained these individuals and found no contraband or anything that would give rise to a right to reason to arrest them but they had information that was credible only because it had been corroborated that the Ford Expedition would have contraband in it; that that was exigency enough. They couldn't arrest them because they didn't have grounds for it. So they couldn't detain them forever because you can't detain people longer than necessary. And so I believe that created exigent circumstances.

R. 159, l. 7 - 160, l. 3.

The trial court noted, "As to the scales, . . . there's certainly a lot of questions about the way it was handled, but it was not a fungible item. . . . In fact, the battery was missing, but the character of it is not readily changeable, is not fungible; that is, it cannot be mixed with something else and be confused." R. 160, ll. 9-16. The trial court held, "I'm not going to suppress the introduction of the scales." R. 160, ll. 24-25.

At trial, the trial court entered the scales into evidence over defense counsel's objection. R. 205, 23 - 207, l. 6. After the testimony revealed that Captain McNeil did not actually see the Ford Expedition at the Lighthouse, but a mile down the same highway, defense counsel renewed his motion to suppress. R. 311, l. 7 - 312, l. 2. The trial court admitted:

I'm very concerned about that because my corroboration was based, for lack of a better way to put it, kind of a three-legged stool . . . they were expecting a black Ford Expedition; that there was more than one person in the car, which was confirmed by Officer Sherfield when he followed the car and saw somebody in the back; and that the car was coordinated

to be at the Lighthouse when Mr. Pope said it was by an officer. . . . It's a crucial fact in the decision I reached.

R. 312, l. 14 – 313, l. 5. The trial court stated, "I am going to still not grant the motion to suppress. I am, as you can probably tell, disturbed about the way this has fallen into place."

R. 318, ll. 16-18. The trial court subsequently ruled, "I still find it is sufficient . . . nexus in time and place to establish the settlement corroboration or Harris's testimony . . . [the] motions to suppress are again denied on behalf of all three defendants." R. 319, ll. 15-21.

Pope's counsel objected to the admissibility of the crack cocaine "based on the testimony of the State's expert witness, that had he known the affidavit, which is beginning of the chain of custody that was submitted to SLED were false, that he would not have tested the material, that he would [have] returned it to the agency and told them that they had a problem with their chain." R. 344, l. 24 – 345, l. 19. The trial court overruled the motion and stated, "the Court has to determine whether or not the chain exists, not whether were [sic] there some flaw in the chain[.]" R. 346, ll. 3-17.

Additionally, after the jury found Appellant guilty of the lesser-included offense of possession with intent to distribute crack cocaine, defense counsel renewed all objections and motions and moved for a new trial. R. 503, ll. 1-20.

ARGUMENT

1.

The trial court erred in denying Appellant's motion to suppress the evidence which consisted of a scale with alleged cocaine residue on it found during the search of the vehicle in which Appellant was a passenger because there was not sufficient reasonable suspicion to stop the vehicle.

Traffic stops are reviewed under the standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), because a traffic stop is more analogous to an investigative detention than a custodial arrest. See *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992). In *Terry*, the United States Supreme Court outlined a two-prong test for analyzing the constitutionality of a traffic stop: (1) whether the police officer's action was justified at the inception of the traffic stop; and (2) whether the police officer's subsequent actions were reasonably related in scope and duration to the circumstances that justified the stop. *Rusher*, 966 F.2d at 875. Notably, temporary detention of individuals during a traffic stop by police, even if only for a brief period and for a limited purpose, constitutes a seizure of the persons within the meaning of the Fourth Amendment. See *Whren v. United States*, 517 U.S. 806, 809–10 (1996); see also *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (noting the Fourth Amendment's protection against “unreasonable searches and seizures” extends to “brief investigatory stops of persons or vehicles”).

In *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400 (2007) the United States Supreme Court ruled that passengers of vehicles may challenge the constitutionality of a stop. The court noted that “the stopping of a vehicle and the detention of its occupants constitute a “seizure” within the meaning of the Fourth Amendment.” 551 U. S. at 256, 127

S.Ct. at 2406 quoting *Colorado v. Bannister*, 449 U.S. 1, 4, n. 3, 101 S.Ct. 42 (1980) In Brendlin the court ruled that the passenger was seized from the moment the driver's car came to a halt on the side of the road. In our case appellant was seized when their car was detained. "Inarticulate hunches" do not support detentions. *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 99 S.Ct. 1391 (1979); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

"To justify a brief stop [or] detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity." *State v. Robinson*, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991). The term "reasonable suspicion" requires a particularized and objective basis that would lead one to suspect another of criminal activity. See *United States v. Cortez*, 449 U.S. 411 (1981); see *State v. Woodruff*, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001). In determining whether reasonable suspicion exists, the whole picture must be considered. See *United States v. Sokolow*, 490 U.S. 1 (1989). The burden is on the State to articulate facts sufficient to support reasonable suspicion. See *State v. Butler*, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000); see also *State v. Pichardo*, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005).

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. *United States v. Calandra*, 414 U.S. 338 (1974). The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. See *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); see also *State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding evidence is not admissible under the "fruit of the poisonous tree" doctrine when the police exploit an unlawful search to seize evidence that would not have otherwise come to light). The Fourteenth Amendment incorporates the rule of

excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

“The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)). The United States Supreme Court and the Supreme Court of this State have recognized and applied the principle that police officers are not granted under *Terry*, “a general warrant to rummage and seize at will” and that any evidence seized from an unlawful detention must be excluded as “fruit of the poisonous tree.” *State v. Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296-97, n. 1 (citing *Texas v. Brown*, 460 U.S. 730, 748 (1983) (Stevens, J., concurring) (The United States Supreme Court “*has been sensitive to the danger . . . that officers will enlarge a specific authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will*”) (emphasis added).

In Pope’s case, law enforcement did not have reasonable suspicion to justify the traffic stop because: (1) the information provided by Harris, the drug dealer, is inherently unreliable because Harris was not known by law enforcement; (2) this was not a high crime area; (3) the car was traveling legally and no citations were issued; (4) there was no evidence of attempted flight; (5) there was no evidence of evasive behavior; (6) the hour was not late as it was 6:00 PM on June 24th; (7) the trial court relied on incorrect information that Captain McNeil saw the Ford Expedition at the Lighthouse, when he was actually a mile down the interstate; (8) law enforcement failed to verify any

information regarding the black Ford Expedition prior to the stop. See *Woodruff*, 344 S.C. 537, 544 S.E.2d 290. Therefore, the trial court erred in refusing to suppress the evidence seized by law enforcement. R. 157, l. 10 – 9, l. 1; See *Wong Sun*, 371 U.S. at 484; see also *Nelson*, 336 S.C. 186, 519 S.E.2d 786.

ARGUMENT

2.

The trial court erred in refusing to suppress the evidence seized during the search of the vehicle in which Appellant was a passenger, when law enforcement did not have probable cause to believe the vehicle contained evidence of criminal activity and no exigent circumstances existed to justify the warrantless search.

“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967); *see also State v. Peters*, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). One of these exceptions is the automobile exception, which provides that police officers may conduct a warrantless search of an automobile when the officers have probable cause to believe the automobile contains evidence of criminal activity. *See Carroll v. United States*, 267 U.S. 132, 153 (1925); *see also Maryland v. Dyson*, 527 U.S. 465 (1999). The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation. *State v. Cox*, 290 S.C. 489, 351 S.E.2d 570 (1986). The automobile exception does not contain a separate exigency requirement. *See Dyson*, 527 U.S. 465.

In *United States v. Ross*, 456 U.S. 798, 800 (1982), the Court defined the scope of the search in such situations as permitting officers to search as thorough as a magistrate could authorize in a warrant “particularly describing the place to be searched.” The *Ross*

Court also explained that the probable cause determination must be made based upon objective facts that could justify the issuance of a search warrant by a magistrate. *Id.* at 808. In other words, the facts must justify the issuance of a warrant, even though a warrant was not actually obtained. *Id.* at 809. As explained by this Court, the standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant. *Peters*, 271 S.C. at 502, 248 S.E.2d at 477 (1978; *see also State v. Bultron*, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995).

“[U]nder the automobile exception, probable cause *alone* is sufficient to justify a warrantless search.” *Cox*, at 492, 351 S.E.2d at 571-72. “The standard for probable cause to conduct a warrantless search is the same as that for a search with a warrant.” *Bultron*, 318 S.C. at 332, 457 S.E.2d at 621. This requires, “a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved.” *Id.*

When a confidential informant is involved, it is necessary to examine the reliability and credibility of the informant for determining the existence of probable cause. *Illinois v. Gates*, 462 U.S. 213, 230-235 (1983). In determining whether the information relied upon by law enforcement is reliable, no one factor is necessary or sufficient to establish probable cause. Instead, probable cause arises from the totality of the circumstances, and “[a] deficiency in one [factor] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.” *Id.* The Court explained:

If, for example, a particular informant is known for the unusual reliability of his predictions of certain types of criminal activities in a locality, his failure, in a particular case, to thoroughly set forth the basis of his knowledge surely should not serve as an absolute bar to a finding of probable cause based on his tip. . . . Likewise, if an unquestionably honest citizen comes forward with a report of criminal activity – which if fabricated would subject him to criminal liability – we have found rigorous scrutiny of the basis of his knowledge unnecessary. . . . Conversely, even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case.

Id.; see also *State v. Hill*, 245 S.C. 76, 138 S.E.2d 829 (1964).

Similar to this case, our Supreme Court's decision in *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007) does not involve a confidential informant and it is instructive on the issue of probable cause supporting a warrantless search of an automobile. In *Weaver*, Officers developed the defendant as a murder suspect at the scene of the crime and learned that the defendant had been driving a green Jeep around the time of the murder. When law enforcement located the Jeep, it smelled of bleach and had a wet interior. Our Supreme Court concluded that to the officers, it seemed apparent there had been an attempt to destroy evidence in the Jeep. Thus, probable cause existed to search the Jeep because the vehicle was connected to the suspect, the investigation revealed evidence would be in the Jeep, and the condition of the Jeep could result in the loss of the evidence. *Id.* at 320, 649 S.E.2d at 482.

In Pope's case, law enforcement did not have probable cause to believe that the vehicle in which Appellant was a passenger contained evidence of criminal activity. See *Carroll*, 267 U.S. at 153. This is because law enforcement failed to conduct an investigation

to gain probable cause; instead, the officers handcuffed the occupants and immediately searched the car without consent. The incident does not meet the automobile exception because the car was not mobile once the men were removed. The men did not have drugs nor weapons on them.

Notably, this instant case is distinct from our Supreme Court's decision in *Weaver*, where the murder suspect's Jeep smelled of bleach and had a wet interior after the murder. *Weaver*, 374 S.C. 313, 649 S.E.2d 479. The officers had only the unreliable information provided by the recently arrested drug dealer who was facing serious jail time. Accordingly, the trial court erred in refusing to suppress the evidence seized by law enforcement. R. 159 l. 2 – 160, l. 3; *See Wong Sun*, 371 U.S. at 484; *see also Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296-97, n. 1 (citing *Brown*, 460 U.S. 730, 748 (1983) (Stevens, J., concurring)).

ARGUMENT

3

The trial court erred in admitting the scale with residue cocaine found in the vehicle and the drugs found in the police car when no chain of custody existed for the scale, and the chain of custody for the drugs in the police car was insufficient.

“[Our Supreme] Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable.” *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007); *see also Benton v. Pellum*, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957) (stating “it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence”). “Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.” *Benton*, 232 S.C. at 33-34, 100 S.E.2d at 537 (citation omitted). “Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility.” *Sweet*, 374 S.C. at 7, 647 S.E.2d at 206 (citing *State v. Taylor*, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct. App. 2004).

Furthermore, “[w]here other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.” *Id.* “Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.” *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). “In applying this rule, we have found evidence

inadmissible only where there is a missing link in the chain of possession *because the identity of those who handled the [substance] was not established at least as far as practicable.*” *Id.*(emphasis added).

Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. See *State v. Hatcher*, 392 S.C. 86, 94-95, 708 S.E.2d 750, 754-55 (2011) (citing *United States v. De Larosa*, 450 F.2d 1057, 1068 (3rd Cir. 1971)). “The trial judge’s exercise of discretion must be reviewed in the light of the following factors: . . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.” *Id.* (internal quotation marks and citation omitted). “If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence.” *Hatcher*, 392 S.C. at 94-95, 708 S.E.2d at 754-55 (quoting *Gallego v. United States*, 276 F.2d 914, 917 (9th Cir. 1960). Accordingly, our Supreme Court held, “The State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable. This determination will necessarily depend on the unique factual circumstances of each case.” *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755.

In Pope’s case, the “unique factual circumstances” of this case establish that a sufficient chain of custody did not exist. Our Supreme Court has noted, “[T]he mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody.” *Hatcher*, 392 S.C. at 94-95, 708 S.E.2d at 754-55.

The scales had not been in a secured evidence bag and one of its batteries was missing when it was retrieved—not when it was placed in the drawer. The scales were kept in a drawer with other scales in a vault, and the original bag in which the scales were contained was broken. R. 36, ll. 1 – R. 38, ll. 11.

As to the crack cocaine, the officers provided false information on the accompanying affidavit of the evidence bag. Therefore, the trial court erred in finding a sufficient chain of custody existed. R. 160, ll. 9-25; R. 390, l. 24 – 391, l. 19; *See Carter*, 344 S.C. at 424, 544 S.E.2d at 837 (“Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.”).

State v. Glenn, 328 S.C. 300, 492 S.E.2d 393, 395 (1997), succinctly summarizes the chain-of-custody law:

Because fungible items such as drugs or blood samples are not readily identifiable and may be easily tampered with, the party offering such items into evidence must establish a chain-of-custody as far as practicable. [Citations omitted.] Where the analyzed substance is passed through several hands, the evidence must not leave it to conjecture as to had it and what was done with it between the taking an analysis. However, the proof of chain-of-custody need not negate all possibility of tampering, but instead must only establish a complete chain of evidence as far as practicable. [Citations omitted.]

While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence – that is evidence that is unique and identifiable – the establishment of a strict chain of custody is not required ... [i]f the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit nearly on the basis of testimony that the item is the one in question and is in a substantially unchanged condition. On the other hand, if the offered evidence is of such a nature as not to be readily

identifiable, or to be susceptible to alteration by tampering or contamination, the sound exercise of the trial court's discretion may require a substantially more elaborate foundation. A foundation of the latter sort will commonly entail testimony tracing the "chain-of-custody" of the item with sufficient completeness to render it reasonably probable that the original item has neither been exchanged with another nor been contaminated or tampered with. [Citations and quotation marks omitted.]

See, also, *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737 (2006).

CONCLUSION

Based on the foregoing reasons, the conviction and sentence should be reversed, and the case remanded for a new trial with the evidence seized by law enforcement to be suppressed.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

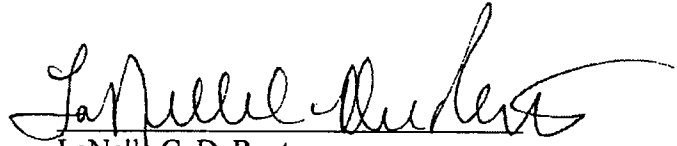
ATTORNEY FOR APPELLANT

This 9th day of December, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 9th, 2013

A handwritten signature in black ink, appearing to read "LaNelle C. DuRant", with a long horizontal flourish extending to the right.

LaNelle C. DuRant

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
John C. Hayes, III, Circuit Court Judge

THE STATE, _____

RESPONDENT,

V.

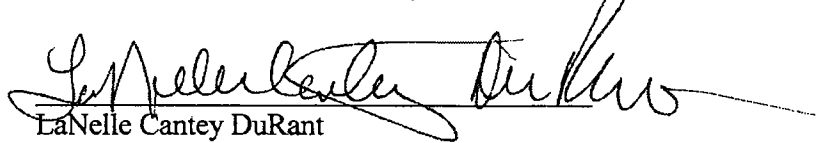
RODERICK POPE,

APPELLANT

APPELLATE CASE NO. 2012-207226

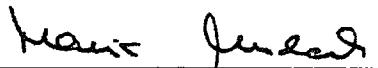
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of December, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.



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December 9, 2013

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Re: The State v. Roderick Pope

Dear Mark:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/mpm

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 13 2014

Appeal from Union County
Honorable John C. Hayes, Circuit Court Judge
Appellate Case No. 2012-207226

S.C. Supreme Court

THE STATE,

Respondent,

vs.

RODERICK POPE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search Appellant's vehicle after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search.

II.

The trial judge properly admitted both the scale and the crack cocaine into evidence during trial because testimony was presented establishing that the scale offered into evidence was the one located in the search of the black Ford Expedition and was in substantially unchanged condition and because testimony was presented establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D.

STATEMENT OF THE CASE

In June of 2010, Appellant Roderick Pope was arrested along with two other men following a narcotics investigation and automobile stop. In August of 2010, the Union County grand jury indicted Appellant for one count of trafficking in crack cocaine in an amount between ten and twenty-eight grams. On December 6, 2011, a jury trial was commenced in the Union County court of general sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial two days later, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine with intent to distribute. Following the verdict, the trial judge sentenced Appellant to a fifteen-year term of imprisonment suspended to seven-and-a-half years and five years of probation. At the conclusion of the sentencing proceedings, Appellant moved for reconsideration of his sentence, and the trial judge took the motion under advisement. Subsequently, on January 11, 2012, the trial judge denied Appellant's motion. Appellant then filed a timely notice of appeal.¹

¹ The other men arrested with Appellant, Randy Jarrod Crosby and Lashad Demond Brewton, were also indicted for one count each of trafficking in crack cocaine in an amount between ten and twenty-eight grams, and both men were tried together with Appellant. Like Appellant, Crosby and Brewton were convicted of possession of crack cocaine with intent to distribute, and the trial judge sentenced Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation and Brewton to a ten-year term of imprisonment suspended to five years and five years of probation. Also like Appellant, both men moved for reconsideration of their sentences. Subsequently, the trial judge denied Crosby's motion, granted Brewton's motion, and resentedenced Brewton to a ten-year term of imprisonment suspended to thirty months and five years of probation.

STATEMENT OF FACTS

On the afternoon of June 24, 2010, a confidential informant working with the Union County Sheriff's Office purchased crack cocaine from an individual he knew as "Vince" at a convenience store located off of Highway 176 in Union County while law enforcement officers covertly monitored the transaction. (R. pp. 14-15; pp. 27-28; p. 46; pp. 92-93; p. 118; pp. 187-188; pp. 237-238; p. 241; p. 323; p. 343). Once the transaction was completed, the officers moved in and arrested "Vince," who was subsequently identified as Vinson Eugene Harris, and his wife for distribution of crack cocaine. (R. pp. 14-15; pp. 27-28; p. 46; pp. 92-93; p. 118; pp. 187-188; pp. 237-238; p. 323; p. 343).

After Harris and his wife were arrested, they were transported to the Union County jail, and Harris asked to speak with a law enforcement officer. (R. p. 99; pp. 323-324; p. 336; pp. 342-344). Following Harris' request, Sergeant James Johnson, a narcotics investigator with the Union County Sheriff's Office, went to meet with Harris, and Harris advised the officer that he needed to obtain bond so he could go to work the next day. (R. p. 15; pp. 93-94; pp. 99-100; p. 324; p. 336; pp. 342-345). In exchange for assistance in obtaining bond, Harris offered to arrange for Appellant Roderick Pope, his narcotics supplier, to bring crack cocaine to Union County. (R. p. 15; pp. 93-94; pp. 99-100; p. 324; p. 336 pp. 342-345). In response, Sergeant Johnson accepted Harris' offer, returned Harris' cell phone to him, and notified Lieutenant John Sherfield of the Union County Sheriff's Office about the arrangement.² (R. pp. 15-16; pp. 65-66; p. 93; p. 97; p. 345).

² Harris' cell phone was returned to him because Harris indicated that he needed to use his own phone in order to be able to arrange a narcotics transaction with Appellant because Appellant would not answer a phone call from an unknown number. (R. pp. 65-66; p. 93).

Subsequently, with Sergeant Johnson present, Harris called Appellant to arrange for the delivery of crack cocaine, and Appellant indicated he would attempt to get some crack cocaine for Harris.³ (R. p. 16; pp. 93-94; pp. 324-325; p. 344; p. 346). Shortly thereafter, Appellant called Harris back, and the two agreed for Appellant to drive to Union County from Spartanburg County along Highway 176, meet Harris at a convenience store located off of the highway, and deliver half of an ounce of crack cocaine to Harris in exchange for \$650. (R. p. 30; pp. 95-97; pp. 325-326; pp. 347-349). Following the call, Harris informed Sergeant Johnson of the details of the arranged transaction and noted that Appellant always drove or rode in a black Ford Expedition, and Sergeant Johnson relayed those details to Lieutenant Sherfield. (R. p. 17; p. 96; pp. 113-114; pp. 326-327; p. 348).

In response, Lieutenant Sherfield and other officers with the Union County Sheriff's Office set up surveillance at various points along Highway 176 to wait for the black Ford Expedition to arrive. (R. p. 17; p. 194). Meanwhile, Harris and Appellant continued to exchange phone calls, and Harris updated Sergeant Johnson with the information he received from Appellant, which Sergeant Johnson then provided to the other officers.⁴ (R. p. 97; p. 194). During one of the calls, Appellant informed Harris that he was passing the Lighthouse Fish Camp on Highway 176 and entering Union County, and that information was passed along to the officers conducting surveillance along the highway. (R. p. 18; p. 97; p. 326; p. 348).

³ Sergeant Johnson was only able to hear Harris speaking during Harris' conversations with Appellant and could not hear Appellant's side of the conversations. (R. p. 107).

⁴ During the calls, Harris noted that he could hear other individuals in the background in addition to Appellant. (R. p. 26; p. 72; pp. 95-96; p. 326).

Following the update about Appellant's location, Captain James McNeil of the Union County Sheriff's Office began driving in the direction of the Lighthouse Fish Camp. (R. pp. 275-276). Shortly thereafter, Captain McNeil encountered a black Ford Expedition driving in the opposite direction on Highway 176 and going into Union County approximately a mile to a mile and a half before McNeil would have reached the Lighthouse Fish Camp and after the black Ford Expedition would have passed the restaurant. (R. p. 276; p. 286; p. 289). Upon seeing the black Ford Expedition, Captain McNeil immediately relayed the vehicle's location to the other officers involved in the investigation and turned around to follow it. (R. p. 276). Moments later, Union County Sheriff David Taylor saw the black Ford Expedition approaching his position on Highway 176, and he turned around to follow it while activating his blue lights. (R. p. 19; pp. 79-80; pp. 196-197). In response to the blue lights, the passenger in the back seat of the vehicle leaned forward, and the driver of the vehicle momentarily continued to drive along Highway 176 before partially pulling over into the median of the highway approximately two miles away from the location where Harris had arranged for Appellant to meet him. (R. pp. 19-20; p. 30; p. 197).

After the driver of the black Ford Expedition pulled over, several officers responded to the scene, and Lieutenant Sherfield approached the driver's side of the vehicle. (R. p. 19; p. 197). When he did so, he saw Lashad Demond Brewton seated in the driver's seat, Appellant seated in the front passenger's seat with a cell phone in his hand, and Randy Jarrod Crosby seated in the rear passenger's seat. (R. pp. 19-20; pp. 197-198; p. 259). The officer then asked Brewton to step out of the vehicle, spoke with him briefly, advised him of his rights, placed him in handcuffs, and let him know that he was being detained. (R. p. 24; p. 34; p. 198). Meanwhile, other officers removed

Appellant and Crosby from the vehicle and similarly secured them. (R. p. 34; p. 58; p. 198).

Once the men were secured, Lieutenant Sherfield searched the passenger compartment of the black Ford Expedition.⁵ (R. p. 20; p. 29). Inside, he found a cell phone on Appellant's seat and a gray digital scale without a battery cover and with white residue on it hidden underneath the seat that Crosby had been sitting in at the time of the stop.⁶ (R. pp. 20-21; p. 71; p. 199; p. 259). Upon finding the scale, Lieutenant Sherfield conducted a field test on the white residue, and the residue tested positive for cocaine.⁷ (R. pp. 20-21). In response, he immediately arrested Appellant and the others for possession of cocaine.⁸ (R. p. 21; p. 199). The officers then briefly searched the men's outer clothing and located \$573 in cash on Crosby and a cell phone and \$280 in cash on Brewton.⁹ (R. pp. 21-23; pp. 34-35; pp. 68-69; pp. 199-200; p. 217; p. 266; pp. 277-278; p. 282).

⁵ The black Ford Expedition was subsequently determined to be registered to Barbara Pope, an individual with the same last name as Appellant. (R. p. 248).

⁶ Following the automobile stop, Lieutenant Sherfield inspected Appellant's cell phone and discovered that the phone contained contact information for an individual named "Vince." (R. p. 208). Furthermore, Lieutenant Sherfield discovered that the phone's records reflected that "Vince" called Appellant five times between 4:39 p.m. and 6:04 p.m. on the day of the automobile stop and that Appellant called "Vince" eleven times between 5:18 p.m. and 6:33 p.m. on the day of the stop. (R. pp. 210-212).

⁷ The scale was subsequently transported to the Union County drug task force office and secured in a locked evidence cabinet with similar evidence until Appellant and his co-defendants' trial. (R. pp. 22-23; pp. 36-38).

⁸ Subsequent to the arrests, Sergeant Johnson spoke to a magistrate about Harris' assistance with the narcotics investigation, and Harris was able to obtain release on bond. (R. p. 98; p. 100; pp. 104-105; p. 327; pp. 349-351). Harris later pled guilty to distribution of crack cocaine and was sentenced to a three-year term of incarceration, which he was serving at the time of Appellant and his co-defendants' trial. (R. p. 118; pp. 327-328).

⁹ After the money was discovered during the search, Brewton refused to reveal how he acquired it but confirmed to Lieutenant Sherfield that he was unemployed. (R. p. 23; p. 25).

After Appellant and his co-defendants were arrested and searched, Lieutenant Sherfield asked Corporal Russell Vinson of the Union County Sheriff's Office, another officer involved in the narcotics investigation, to inspect the back area of his law enforcement vehicle before transporting Brewton and Crosby to the Union County jail. (R. p. 200; pp. 291-292). Corporal Vinson complied with Lieutenant Sherfield's request, found nothing inside of his vehicle, and then transported Brewton and Crosby to the jail. (R. pp. 292-293). Once he had done so, Corporal Vinson searched his vehicle and discovered a small plastic bag containing what appeared to be crack cocaine hidden underneath the seat that Crosby had been sitting in. (R. p. 59; p. 76; p. 33; p. 85; pp. 124-125; pp. 131-132). Corporal Vinson then secured the bag, and the substance was later transported to S.L.E.D. for analysis, where it was determined to be eleven-and-a-half grams of crack cocaine.¹⁰ (R. p. 62; p. 77; pp. pp. 202-203; 293-294; pp. 297-298; pp. 373-374).

Subsequently, Appellant and his co-defendants were indicted for trafficking in crack cocaine in an amount between ten and twenty-eight grams, and they jointly proceeded to trial. (R. p. 4; pp. 519-520). At the outset of trial, Appellant, Crosby, and Brewton all moved for the trial judge to suppress the evidence discovered during and after the automobile stop and search, and the trial judge conducted a hearing on their suppression motions. (R. pp. 5-6; pp. 10-14). During the hearing, Lieutenant Sherfield, Sergeant Johnson, and the other officers testified about the details of Harris' arrest, the subsequent stop and search of the black Ford Expedition, and the discovery of the crack cocaine in the vehicle used to transport Brewton and Crosby to the jail. (R. pp. 14-20; p. 59; pp. 92-98). During Lieutenant Sherfield's testimony, he asserted that the vehicle was

¹⁰ One half of an ounce is approximately fourteen grams. (R. p. 264).

stopped after Captain McNeil spotted a black Ford Expedition "right at" the Lighthouse Fish Camp following Harris' report that Appellant was travelling past that location. (R. pp. 16-20; pp. 25-26; p. 46; p. 72). Furthermore, Lieutenant Sherfield noted that the scale he found during his search of the vehicle did not have a battery cover at the time it was seized, indicated that one of the batteries from the scale had fallen out prior to the trial, stated that the scale's evidence bag had broken prior to trial, and admitted that he incorrectly asserted on a chain of custody affidavit that he seized the crack cocaine from Appellant, Brewton, and Crosby when, in fact, he actually took custody of the narcotics from Corporal Vinson. (R. pp. 36-38; p. 59; pp. 61-62; pp. 71-72; pp. 76-77).

At the conclusion of the suppression hearing, Appellant and his co-defendants moved for the evidence discovered as a result of the automobile stop to be suppressed, arguing that there was no reasonable suspicion supporting the stop of the black Ford Expedition and no probable cause supporting the search of the vehicle. (R. pp. 123-125; p. 127; pp. 130-131; pp. 133-134; pp. 136-137). Furthermore, Appellant and the others challenged the chain of custody regarding the scale found during the search of the vehicle, and Appellant argued that there was no evidence that he or the other defendants were in actual or constructive possession of the crack cocaine located in Corporal Vinson's vehicle following their arrest. (R. pp. 125-126; pp. 132-133; p. 137).

In response, the solicitor noted that Harris arranged a drug transaction with Appellant and provided law enforcement officers with information that was subsequently corroborated regarding Appellant's vehicle color, vehicle make, vehicle model, direction of travel, and precise location at a specific time. (R. pp. 138-140). Under those circumstances, the solicitor argued that the officers had probable cause to believe drugs would be located in the black Ford Expedition, justifying the stop and search of that

vehicle. (R. pp. 138-140). Additionally, regarding the challenge to the admissibility of the scale, the solicitor noted that the arguments raised by the defendants regarding the chain of custody could potentially impact the weight of the evidence but did not affect its admissibility. (R. pp. 140-141).

Following the arguments of counsel, the trial judge took the matter under advisement to consider the motions overnight. (R. pp. 142-143). Thereafter, on the following morning, the trial judge denied the suppression motions. (R. p. 157). In denying the motions, the trial judge found that the law enforcement officers' corroboration of the information provided by Harris regarding Appellant's vehicle make, vehicle model, vehicle color, direction of travel, and specific location established probable cause to believe contraband would be contained in the vehicle, which justified the stop and the search. (R. pp. 157-160; pp. 162-163). Furthermore, the trial judge declined to suppress the scale based on the alleged issue with the chain of custody after finding the scale was not a fungible item. (R. pp. 160-161). Finally, the trial judge declined to suppress the crack cocaine found in the law enforcement vehicle following the arrests of Appellant, Crosby, and Brewton. (R. p. 161; pp. 163-165).

Subsequently, during trial, Lieutenant Sherfield testified about Harris' arrest and the ensuing investigation that led to the arrests of Appellant, Brewton, and Crosby, the discovery of a scale in the black Ford Expedition, and the discovery of a bag of crack cocaine in the vehicle used to transport Brewton and Crosby to jail. (R. pp. 187-188; pp. 193-204). Regarding the crack cocaine, Lieutenant Sherfield indicated that he received the crack cocaine from Corporal Vinson, sealed it in an evidence bag, secured the bag in an evidence vault, and then subsequently transported the bag to the evidence intake area at S.L.E.D. where he delivered the crack cocaine to Nikki Perry, an evidence technician.

(R. pp. 202-205). Additionally, Lieutenant Sherfield acknowledged that he incorrectly listed on a chain of custody affidavit that he seized the crack cocaine from Appellant, Brewton, and Crosby when he actually received it from Corporal Vinson. (R. pp. 231-232). Furthermore, in regard to the scale, Lieutenant Sherfield identified the scale, which he stated was an item commonly used in the drug trade, as the one he found under Crosby's seat in the black Ford Expedition and noted that a battery was currently missing from the scale, and the scale was admitted into evidence over the objection of Appellant and his co-defendants. (R. pp. 205-207).

In addition to Lieutenant Sherfield's testimony, Captain McNeil testified about his role in the narcotics investigation and automobile stop, noting that he received word that a black Ford Expedition was passing the Lighthouse Fish Camp, he immediately began driving in the direction of the restaurant, and he encountered a black Ford Expedition at an intersection on Highway 176 approximately a mile to a mile and a half away from the restaurant. (R. pp. 275-276; p. 286; p. 289). Furthermore, Corporal Vinson testified about his role in the investigation and noted that he responded to the location of the automobile stop after the black Ford Expedition had been detained. (R. pp. 291-292). After he arrived, Corporal Vinson stated that Lieutenant Sherfield asked him to check the rear area of his vehicle before transporting two of the suspects to jail and that he complied with the lieutenant's request. (R. pp. 292-293). Corporal Vinson indicated he then transported Brewton and Crosby to jail and searched the back of his vehicle after dropping them off. (R. p. 293). When he did so, Corporal Vinson testified that he found a bag of crack cocaine hidden underneath Crosby's seat, secured the drugs in an evidence bag, and gave them to Lieutenant Sherfield when the lieutenant arrived at the jail. (R. pp. 293-294; pp. 297-298; pp. 300-301).

Following the officers' testimony, Appellant renewed his motion for the crack cocaine to be suppressed on the basis that he believed the testimony from the suppression hearing differed from the trial testimony regarding where the black Ford Expedition was first observed. (R. p. 311). In response, the solicitor argued that Captain McNeil saw the black Ford Expedition on the same highway that the Lighthouse Fish Camp was located on approximately one mile after the vehicle would have passed the restaurant, which he asserted corroborated the information provided by Harris about the location of Appellant's vehicle at that time. (R. pp. 313-314). The trial judge then took the matter under advisement, and Crosby and Brewton joined in Appellant's objection. (R. p. 315; pp. 317-318). Thereafter, the trial judge denied the motion, concluding that he would not have suppressed the narcotics had he been provided with Captain McNeil's trial testimony during the suppression hearing. (R. p. 318). In reaching that conclusion, the trial judge noted the fact that the black Ford Expedition was observed approximately a mile away from the location that Harris reported that the vehicle had just passed sufficiently corroborated Harris' information. (R. pp. 318-319).

Subsequently, Sergeant Johnson testified about Harris' arrest and subsequent offer to assist their investigation by arranging for Appellant to bring half of an ounce of crack cocaine to Union County. (R. pp. 343-345; p. 349). Sergeant Johnson indicated that Harris then provided him with information derived from phone calls Harris made to Appellant and that he relayed that information to Lieutenant Sherfield. (R. pp. 345-348). Specifically, Sergeant Johnson noted that he advised Lieutenant Sherfield that Appellant would be travelling in a black Ford Expedition along with other people and that he notified Lieutenant Sherfield when Appellant passed the Lighthouse Fish Camp. (R. p. 348). Furthermore, after the automobile stop was made, Sergeant Johnson testified that

he spoke to a magistrate on Harris' behalf regarding bond, which led to bond being set for Harris. (R. pp. 350-351).

Following Sergeant Johnson's testimony, the trial was recessed for the day. (R. p. 364). Then, on the third day of trial, Agent Willie Smith, a chemist in the S.L.E.D. drug analysis department and an expert in drug analysis, testified about his receipt and analysis of the drugs found in Corporal Vinson's law enforcement vehicle. (R. pp. 368-371). Regarding his acquisition of the drugs, Agent Smith indicated he received the crack cocaine that he subsequently tested from Doris Yarborough, who worked in the S.L.E.D. log-in department. (R. pp. 370-371). After that, Agent Smith testified that he secured the evidence in a drug vault that only he could access. (R. pp. 371-372). Thereafter, he stated he verified that the evidence bag was sealed and intact prior to conducting his analysis, analyzed the substance in the evidence bag, and determined that it was eleven-and-a-half grams of crack cocaine. (R. pp. 371-374).

At the conclusion of Agent Smith's testimony on direct examination, the solicitor moved to admit the crack cocaine into evidence. (R. pp. 376-377). Appellant then objected and asked the trial judge to refrain from ruling on the objection until after he completed his cross-examination of Agent Smith. (R. pp. 376-377). Thereafter, on cross-examination, Agent Smith confirmed that Perry received the evidence from an officer, took it into the drug intake area at S.L.E.D., and secured it until Yarborough retrieved the evidence and transported it to him. (R. pp. 380-381). He further noted that he would not have tested the submitted substance if the evidence bag had been tampered with and indicated that he would have returned the evidence to the submitting law enforcement agency if he had knowledge of a problem with the chain of custody. (R. p. 384; p. 386).

Following Agent Smith's testimony, Appellant and his co-defendants objected to the admission of the crack cocaine on the basis that Agent Smith stated he would not have tested the drugs if he was aware that there was a problem with the chain of custody, which they argued existed in light of the incorrect information on Lieutenant Sherfield's affidavit. (R. pp. 390-391). In response, the solicitor asserted that the chain of custody was established by the testimony presented during trial and that the arguments raised by Appellant and his co-defendants merely impacted the weight of the evidence as opposed to its admissibility. (R. pp. 391-392). After considering the issue, the trial judge agreed with the solicitor, found that the chain of custody had been established in regard to the narcotics, admitted the crack cocaine over objection, and noted that the issues with the affidavit could be argued to the jury but did not affect the admissibility of the drugs. (R. pp. 392-393).

Subsequently, the State rested its case, Appellant and his co-defendants moved for directed verdicts while also renewing their previous motions, and the trial judge denied all of the motions. (R. pp. 416-429). Appellant and the others then raised new objections to the admission of the crack cocaine, arguing that it should not have been admitted because Corporal Vinson was not asked to specifically identify the bag of crack cocaine offered into evidence during trial as the one he found in his law enforcement vehicle. (R. pp. 430-432). Again, the trial judge denied the motions after finding that the chain of custody regarding the crack cocaine had been sufficiently established. (R. pp. 433-434). Appellant, Brewton, and Crosby then rested their cases, and the parties presented their closing arguments to the jury. (R. pp. 434-435; pp. 441-483). During Appellant and his co-defendants' closing arguments, they challenged the credibility of Lieutenant Sherfield's testimony and repeatedly called the jury's attention to the loss of the battery

from the scale and Lieutenant Sherfield's misstatement on the chain of custody affidavit.

(R. pp. 452-453; pp. 458-459; p. 464; p. 468; pp. 480-481).

Thereafter, at the conclusion of trial, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine with intent to distribute. (R. p. 501).

Following the verdict, the trial judge sentenced Appellant to a fifteen-year term of imprisonment suspended to seven-and-a-half years and five years of probation.^{11 12} (R. p. 514). Appellant then moved for reconsideration of his sentence, and the trial judge took the motion under advisement. (R. pp. 516-517). Subsequently, the trial judge issued an order denying Appellant's motion. (R. p. 522).

¹¹ During the sentencing proceedings, Appellant and Crosby expressed remorse to the trial judge, and Crosby indicated the incident would not be repeated. (R. p. 509; p. 514).

¹² Brewton and Crosby were both also convicted of the lesser included offense of possession of crack cocaine with intent to distribute. (R. p. 501). Similar to Appellant, the trial judge sentenced Brewton to a ten-year term of imprisonment suspended to five years and five years of probation and sentenced Crosby to a fifteen-year term of imprisonment suspended to ten years and five years of probation. (R. p. 507; p. 509).

ARGUMENT

I.

The trial judge properly denied Appellant's suppression motion because, under the totality of the circumstances, the officers possessed reasonable suspicion to conduct an investigatory stop and probable cause to search Appellant's vehicle after they received reliable information from a cooperating informant about the informant's crack cocaine supplier and corroborated significant aspects of that information prior to conducting the stop and search.

Appellant contends that the trial judge erred in denying his motion to suppress the evidence discovered as a result of the investigatory stop and search of the black Ford Expedition. In support of those contentions, Appellant maintains that there was no reasonable suspicion justifying the investigatory stop and no probable cause justifying the search of the vehicle. To the contrary, the officers obtained reasonable suspicion to conduct the investigatory stop and probable cause to search the vehicle after the officers received information from a reliable cooperating informant about his narcotics suppliers, whom he identified as Appellant, and corroborated significant aspects of that information, including the color, make, model, direction of travel, and precise location of Appellant's vehicle, before conducting the stop and search. Critically, based on the information received by the officers and the corroboration of that information prior to the stop and search, the officers reasonably believed crack cocaine would be found in the black Ford Expedition. As a result, the trial judge properly denied Appellant's suppression motion, and his ruling was supported by the evidence presented during trial. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and

seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). Critically, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

ANALYSIS

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

Pursuant to the Fourth Amendment, “[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) (“To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity.”); see also United States v. Sokolow, 490 U.S. 1, 7 (1989) (“[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” (citation omitted)). The reasonableness of a stop or detention “is measured in objective terms by examining the totality of the circumstances.” Ohio v. Robinette, 519 U.S. 33, 39 (1996).

For Fourth Amendment purposes, an automobile stop, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). However, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred or reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (“Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.”); State v. Morris, 312

S.C. 116, 117, 439 S.E.2d 291, 292 (Ct. App. 1993) (“[U]nder Terry, an officer may stop an automobile.”); see also Whren v. United States, 517 U.S. 806, 810 (1996) (“An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”).

Reasonable suspicion consists of “ ‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). “Reasonable suspicion ‘is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.’ ” State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). “In this highly fact-specific inquiry, reasonable suspicion ‘is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.’ ” State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The reasonable suspicion standard “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). “Reasonable suspicion is more than a general hunch but less than what is required for probable cause.” State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006)

("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.").

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the automobile stop must not be considered piecemeal or in isolation. See United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and inference[.]" (citations omitted)). Instead, all of the circumstances of the stop, including the officer's own experience and specialized training, must be considered as a whole to determine whether the officer's actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) ("[J]ust as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion."); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[W]e have said repeatedly that [reviewing courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " (citations omitted)). "In applying the concept of reasonable suspicion to the various facts of a case, '[i]t is the entire mosaic that counts, not single tiles.' " Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)).

However, even if an automobile stop is supported by reasonable suspicion, an automobile search is not constitutionally permissible unless it is reasonable under the circumstances. See U.S. Const. amend. IV (prohibiting “unreasonable searches and seizures”). The well-settled rule is warrantless searches are unreasonable per se unless they fall under an exception to the Fourth Amendment’s warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). Notably, South Carolina courts have recognized several exceptions to the warrant requirement, including the automobile exception. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Morris, 395 S.C. 600, 609, 720 S.E.2d 468, 472 (Ct. App. 2011) (“[T]he ready mobility of and the lessened expectation of privacy in automobiles endorse an exception to that rule based upon probable cause.”).

The automobile exception is based on: (1) the ready mobility of automobiles along with the potential that evidence may be lost or removed before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles. State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986). Under this exception, law enforcement officers can conduct a warrantless search of an automobile based on probable cause alone. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995). “If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.” State v. Weaver, 374 S.C. 313, 320, 649 S.E.2d 479, 482 (2007). Moreover, “[t]he justification to conduct such a warrantless search does not vanish once the car has been immobilized.” Id. at 321, 649 S.E.2d at 482; see Willard, 374 S.C. at 135, 647 S.E.2d at 255 (“[T]emporary immobility may still be considered readily mobile so as to qualify for the automobile exception.”).

Probable cause is “a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved.”

Bultron, 318 S.C. at 332, 457 S.E.2d at 621. “Probable cause may be found somewhere between suspicion and sufficient evidence to convict.” Blassingame, 338 S.C. at 250, 525 S.E.2d at 540. However, the probable cause standard does not require absolute certainty. In re Care and Treatment of Brown v. State, 372 S.C. 611, 619, 643 S.E.2d 118, 122 (Ct. App. 2007); see also Illinois v. Gates, 462 U.S. 213, 235 (1983) (“[I]t is clear that ‘only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.’” (citations omitted)); Adams v. Williams, 407 U.S. 143, 149 (1972) (“Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction.”).

Significantly, in Alabama v. White, 496 U.S. 325, 326-327 (1990), law enforcement officers received an anonymous tip indicating that a person named Vanessa White would be leaving a particular apartment building at a particular time in a brown Plymouth station wagon with a broken right taillight lens and would be travelling to a motel in possession of an ounce of cocaine concealed in a brown attaché case. Id. at 327. After receiving the tip, the officers went to the apartment complex identified by the anonymous caller and observed a woman exit the building and leave in a vehicle matching the description provided by the caller. Id. at 331. The officers then followed the woman’s vehicle and initiated an investigatory stop as she drove in the direction of the motel identified by the anonymous caller as White’s destination. Id. at 331. Following the stop, White, who turned out to be the woman in the vehicle, provided

consent to search, and the officers located marijuana inside a locked attaché case in the vehicle and cocaine inside White's purse. Id. at 327. White was then arrested, and she subsequently pled guilty to possession of marijuana and possession of cocaine after her motion seeking the suppression of the drugs was denied. Id. at 327-328. Thereafter, White appealed, the Alabama Court of Criminal Appeals reversed the denial of the suppression motion after finding there was no reasonable suspicion justifying the investigatory stop, and the Alabama Supreme Court subsequently denied the State's petition for a writ of certiorari. Id. at 328. The State then filed a petition for a writ of certiorari in the United States Supreme Court, and the Supreme Court reversed the Court of Appeals' decision after granting the State's petition. Id. at 328. In reversing the decision, the Supreme Court found that the officers' corroboration of several significant aspects of the anonymous caller's tip, including the corroboration of the caller's predictions about what White was going to do, was sufficient to impart a degree of reliability to the information provided by the caller. Id. at 331-332. Importantly, because the anonymous caller had been right about some things, the Supreme Court explained that it was reasonable to conclude that the caller would be right about other things, including that White was engaged in criminal activity. Id. at 331. For those reasons, the Supreme Court held that the investigatory stop of White's vehicle was constitutionally permissible and supported by reasonable suspicion. Id. at 332.

Likewise, in Blich v. State, __ Ga. App. __, 747 S.E.2d 863, 864 (Ga. Ct. App. 2013), Thomas Webb was arrested after selling cocaine to an undercover police officer. Following his arrest, Webb agreed to cooperate with the police and identified his cocaine supplier as an individual known as "Big Man." Id. Thereafter, with officers listening in, Webb used his cell phone to arrange for "Big Man" to sell crack cocaine to him at a

particular convenience store within ten minutes. Id. After the transaction was arranged, officers set up surveillance in the area of the convenience store, and Webb placed additional calls to "Big Man." Id. During one of the calls, "Big Man" indicated he was about to pull into the convenience store's parking lot in a Lincoln. Id. Moments later, officers observed a green Lincoln Town Car driving through the parking lot, initiated a stop, removed Blitch from the vehicle, handcuffed him, obtained his consent, and searched the car. Id. at 864-865. During the ensuing search, officers located crack cocaine, and Blitch was arrested. Id. at 865. Blitch was then charged with possession of cocaine with intent to distribute and convicted of the offense. Id. Following his conviction, Blitch appealed, challenging the propriety of the warrantless search of his vehicle. Id. On appeal, the Georgia Court of Appeals affirmed. Id. In reaching that decision, the Court of Appeals initially noted that Blitch consented to the search. Id. However, the Court of Appeals instructed that the search was nonetheless valid because the officers had probable cause to search under the circumstances. Id. Specifically, the Court of Appeals noted that Webb necessarily had to have a source for cocaine and a means for setting up drug transactions since he was a known seller of cocaine. Id. at 866. The Court of Appeals further found that Webb's reliability was further established by his agreement with the officers to lead them to his supplier and by the officers' corroboration of the information provided by Webb. Id. Based on the information provided by Webb and the corroboration of that information by the officers, the Court of Appeals concluded that the officers had probable cause to search Blitch's vehicle. Id.

In the case sub judice, the trial judge properly denied Appellant's suppression motion because the officers' decisions to conduct an investigatory stop and search of the black Ford Expedition were reasonable under the totality of the circumstances and were

supported by reasonable suspicion and probable cause. Critically, the officers' decisions were reasonable because the officers obtained reliable information about Appellant's involvement in illegal activity from a cooperating informant and, just like the officers in White and Blich, independently corroborated important aspects of that information.

Based on the officers' corroboration of the information, it was reasonable for the officers to believe that crack cocaine would be located in the black Ford Expedition at the time of the stop, which justified the investigatory stop and search of the vehicle. As a result, the trial judge correctly declined to suppress the scale, crack cocaine, and other evidence discovered during and after the investigatory stop and search.

Looking to the specific information known to the officers prior to the stop and search, Harris, the cooperating informant, arranged a drug transaction with his narcotics supplier, whom he identified as Appellant. Harris then provided information to the officers about the make, model, and color of Appellant's vehicle, Appellant's reported direction of travel, and Appellant's expected route into Union County. Although the officers had not previously worked with Harris, it was reasonable for the officers to rely on the information provided by Harris because his admission of having a drug supplier was decidedly against his best interests and provided the officers with powerful evidence that could be used against him in any future trial on the distribution of crack cocaine charge for which he had been arrested earlier that day. See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of

probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct."); see also United States v. Tyler, 238 F.3d 1036, 1039 (8th Cir. 2001) ("Mr. Garza's disclosures were presumptively credible because they were made against his penal interest. . . . After the police caught Mr. Garza with drugs in his possession, he admitted not only that he had obtained the drugs from Mr. Tyler but also that he had purchased drugs from Mr. Tyler on 'numerous occasions' over the previous years. Thus, Mr. Garza's statements cannot be taken merely as blame-shifting because they admitted to criminal activities beyond those of which the police already knew him to be guilty."); Lopez v. State, 292 Ga. App. 518, 521, 664 S.E.2d 866, 869 (Ga. Ct. App. 2008) ("[T]he admissions against penal interest of a known informant in the hands of police (even though that informant's name is not disclosed at the trial of the accused) are valuable facts indicating that the informant is telling the truth and is reliable."); see, e.g., State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge also acted against his best interests by providing the police with information that possibly linked him to the crime."). Additionally, the officers' reliance on the information provided by Harris was further justified because Harris could have been held responsible if the information he provided proved to be false since his identity was known to the officers and he was in the officers' custody. See Driggers, 322 S.C. at 511, 473 S.E.2d at 60 ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false."). In fact, had Harris provided false information to the officers, Harris' chances of achieving his desired objective of getting the officers to assist him in obtaining bond would have been greatly diminished.

Furthermore, because Harris' status as a drug dealer was unquestionable in light of his earlier arrest for distributing crack cocaine, the officers were fully justified in accepting Harris' statements about his narcotics supplier, which he logically had to have in order to successfully serve as a crack cocaine dealer. See Blitch, 747 S.E.2d at 866 ("Webb's basis of knowledge was self-evident because, as a seller of cocaine, he would necessarily have a source that supplied him with cocaine and had the means of setting up the drug transaction."). Under those circumstances, the officers justifiably relied on the information provided by Harris, and Harris' reliability was sufficiently established to make the officers' reliance on his information entirely reasonable. See Gates, 462 U.S. at 233 ("[An informant's veracity and basis of knowledge] are better understood as relevant consideration in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see, e.g., State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("The required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip.").

However, beyond the inherent reliability of Harris' information itself under the circumstances, the reasonableness of the officers' actions in conducting the investigatory stop and search was established by the officers' corroboration of significant aspects of the information provided by Harris before they acted on that information. Critically, prior to the stop, Harris informed the officers that Appellant would be travelling in a black Ford Expedition on Highway 176 and would be coming into Union County towards a convenience store located off of the highway. Thereafter, as the officers waited along the highway for the described vehicle to arrive, Harris informed the officers that Appellant

had just driven past the Lighthouse Fish Camp. Moments later, the officers observed a black Ford Expedition driving into Union County along Highway 176 approximately a mile to a mile and half after it would have passed the Lighthouse Fish Camp and only a few miles away from the location where Harris arranged to meet Appellant. Thus, before initiating the investigatory stop of the black Ford Expedition, the officers verified that the vehicle matched the description of the make, model, and color of the vehicle identified by Harris, that the vehicle was travelling towards the location where Appellant was supposed to meet Harris, and that it had recently driven by a specific location on the highway that Appellant reported he had just passed. See White, 496 U.S. at 332 (“Because only a small number of people are generally privy to an individual’s itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual’s illegal activities.”); see also Gates, 462 U.S. at 244-245 (“It is enough, for purposes of assessing probable cause, that ‘corroboration through other sources of information reduced the chances of a reckless or prevaricating tale,’ thus providing ‘a substantial basis for crediting the hearsay.’ ” (citation omitted)). Because the officers were able to corroborate those substantial details, including the information regarding the black Ford Expedition’s precise location at a specific time, it was entirely reasonable for the officers to believe that Harris was also correct when he indicated that Appellant was involved in criminal activity and that crack cocaine would be found in the black Ford Expedition. See White, 496 U.S. at 331 (“[B]ecause an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity.”); see also State v. Martinez, 150 N.C. App. 364, 369, 562 S.E.2d 914, 917 (N.C. Ct. App. 2002) (“Although Goff was not a known

informant, the officers independently verified the information that he provided to them. Based on Goff's information and the officers' independent verification of that information, the officers had probable cause to believe that defendant and Zavala were committing a felony in their presence."); see, e.g., Gates, 462 U.S. at 241 ("Our decisions applying the totality-of-the-circumstances analysis . . . have consistently recognized the value of corroboration of details of an informant's tip by independent police work."). As a result, the investigatory stop and search were entirely reasonable under the circumstances.

However, further supporting the reasonableness of the search, the officers further corroborated the information provided by Harris after initiating the stop but before conducting the search. Specifically, upon approaching the black Ford Expedition, the officers saw multiple people inside of the vehicle just as Harris had reported and observed Appellant with a cell phone in his hand, which was entirely consistent with the fact that Appellant was speaking to Harris on the phone shortly before the stop was initiated. See United States v. Draper, 358 U.S. 307, 313-314 (1959) ("Marsh[, the narcotics agent,] had personally verified every fact of the information given him by Hereford[, the informant,] except whether the petitioner had accomplished his mission and had three ounces of heroin on his person or in his bag. And surely, with every other bit of Hereford's information being thus personally verified, March had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information – that Draper would have the heroin with him – was likewise true. . . . [U]nder the facts and circumstances here, Marsh had probable cause and reasonable grounds to believe that petitioner was committing a violation of the laws of the United States relating to narcotic drugs at the time he arrested him."). Thus, just like in Blich, the corroboration of the

significant details of the information provided by Harris after Harris identified Appellant as his narcotics supplier gave the officers a probable cause basis to believe that crack cocaine would be located in the black Ford Expedition. See Harris, 403 U.S. at 583-584 (finding an admission by an informant of involvement in a crime is "sufficient at least to support a finding of probable cause to search"); see also State v. Foreshaw, 245 N.J. Super 166, 175, 584 A.2d 832, 836 (N.J. Super. Ct. App. Div. 1991) ("After receiving the informer's tip, the officers properly corroborated the data provided. Just as the informer had predicted, the officers observed a silver-gray Eldorado bearing New Jersey license plates traveling southbound on the Turnpike. Inside the vehicle were two males and a female. As was also foretold, the vehicle exited the highway at Exit 4 and headed towards Camden. Once the officers established that the informant had been correct, they had probable cause to believe that defendants' car contained contraband and as such properly stopped and searched the vehicle."); Lopez, 292 Ga. App. at 522, 664 S.E.2d at 869 ("Here the informant told police in advance the make, approximate model year, and color of the car the supplier would be driving, the location at which the car would be arriving, the gender of the supplier who would be driving the vehicle, and the time of the vehicle's arrival (the supplier would arrive within moments after the informant received the phone call). Police were able to personally witness and corroborate each of these details, which lent credibility to the informant's claim that the supplier was bringing drugs to the location."). Under those circumstances, the officers' decisions to stop and detain the vehicle were entirely reasonable and were supported by both reasonable suspicion and probable cause.¹³

¹³ On appeal, Appellant contends that the automobile exception did not apply to the black Ford Expedition because the vehicle was allegedly not mobile once Appellant and his accomplices were removed from it. However, even assuming the removal of the occupants of a vehicle temporarily prevented it from being

In light of the fact that the officers corroborated the information provided to them by an informant who could be held responsible if he was found to have given them false information, the officers were in possession of sufficient facts to establish reasonable suspicion and probable cause, which justified the investigatory stop and search of the black Ford Expedition. Compare Rogers, 396 S.C. at 535-536, 629 S.E.2d at 682-683 (finding an investigatory stop was supported by reasonable suspicion where "the officer received the information from a known, accountable informant whose reputation could be assessed and who explained how he knew about the planned robbery, thereby supplying a basis, outside of his already proven reliability for [the officer] to believe the confidential information had inside information on the matter."); with State v. Green, 341 S.C. 214, 218, 532 S.E.2d 896, 898 (Ct. App. 2000) (finding an investigatory stop was not supported by reasonable suspicion where "[t]he only information available to the officer was the statement of an unknown, unaccountable informant who neither explained how he knew about the money and narcotics, nor supplied any basis for the officer to believe he had inside information about Green"). Just like the officers in White, the officers' decision to conduct the stop in Appellant's case was entirely reasonable and did not violate Appellant's constitutional rights even though the officers were not able to verify that Appellant was in possession of crack cocaine until after the stop was conducted. Cf. White, 496 U.S. at 331 (finding an investigatory stop was constitutionally permissible based on the officers' corroboration of several pieces of information provided by an anonymous caller even though the officers did not verify the reported name of the woman

moved, such a fact did not render the automobile exception inapplicable to the black Ford Expedition, which was readily mobile by its nature. See Weaver, 374 S.C. at 321, 649 S.E.2d at 482 ("The justification to conduct such a warrantless search does not vanish once the car has been immobilized."); see also United States v. Ross, 456 U.S. 798, 825 (1982) (holding that the automobile exception justified the warrantless search of a vehicle where probable cause existed even though Ross had been arrested and handcuffed prior to the search of the vehicle's trunk).

who got into the vehicle, did not verify the reported apartment number from which the woman left, and did not allow the woman to reach her reported destination prior to conducting the stop). Likewise, just like the officers in Blitch, the officers' decision to search the vehicle in the case at bar was reasonable and was supported by probable cause based on the officers' corroboration of the information provided by Harris in regard to his crack cocaine supplier. See Blitch, 747 S.E.2d at 866 (holding that officers had probable cause to search Blitch's vehicle after an informant identified Blitch as his cocaine supplier and arranged a drug transaction with Blitch and then the officers observed Blitch arrive at the location where the transaction was supposed to take place around the time it was supposed to take place in a vehicle matching the description of the one he was supposed to be driving); see also Gates, 462 U.S. at 246 ("[P]robable cause does not demand the certainty we associate with formal trials."). Because the investigatory stop and search were entirely reasonable, the trial judge properly denied Appellant's suppression motion, and his ruling was fully supported by the evidence presented during trial. See Foster, 269 S.C. at 378, 237 S.E.2d at 591 ("It is only unreasonable searches and seizures that are prohibited."); see also State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Appellant's conviction should be affirmed.

II.

The trial judge properly admitted both the scale and the crack cocaine into evidence during trial because testimony was presented establishing that the scale offered into evidence was the one located in the search of the black Ford Expedition and was in substantially unchanged condition and because testimony was presented establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D.

Appellant contends that the trial judge erred in admitting the scale and the crack cocaine into evidence during trial. In support of that contention, Appellant maintains that a sufficient chain of custody was not established in regard to the scale because the scale was kept in a drawer with other scales, the original evidence bag containing the scale broke, and one of the scale's batteries was lost. Appellant further maintains that the chain of custody regarding the crack cocaine was not sufficient because an officer listed incorrect information on a chain of custody affidavit. Contrary to Appellant's contentions, a chain of custody did not have to be established because the scale was a non-fungible item. Before it could be admitted into evidence during trial, the scale simply had to be identified as the scale taken in the search and be in substantially unchanged condition, and testimony was presented satisfying both of those prerequisites. However, even if the establishment of a chain of custody was required, the testimony presented during trial fully established who was in custody of the scale and what happened to it prior to trial. Likewise, the testimony presented during trial established the identity of each person who was in custody of the crack cocaine and what was done with it prior to the analysis of the crack cocaine at S.L.E.D. Accordingly, a complete chain of custody was established in regard to the crack cocaine. For those reasons, the trial judge did not abuse his discretion in admitting both the scale and the crack cocaine into evidence during trial. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal, appellate courts give “great deference” to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) (“[D]eference is due to the trial court’s admission of the evidence.”). Moreover, an appellate court will not reverse a trial judge’s decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge’s broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.”); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) (“A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.”). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

“The ‘chain of custody’ rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.” United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982). “The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be.” State v. Hatcher, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); see Howard-Arias, 679 F.2d at

366 (“The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the ‘Don Frank.’”). Notably, “[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts.” Hatcher, 392 S.C. at 94, 708 S.E.2d at 754.

On one hand, “the establishment of a strict chain of custody is not required” when a party seeks the admission of non-fungible evidence during trial. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005); see State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) (“While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence – that is, evidence that is unique and identifiable – the establishment of a strict chain of custody is not required[.]”); see also State v. Rogers, 361 S.C. 178, 186, 603 S.E.2d 910, 914 (Ct. App. 2004) (“[B]ecause the purse is a non-fungible piece of evidence, chain of custody is not required for its admission.”). Non-fungible evidence is “evidence that is unique and identifiable[.]” Freiburger, 366 S.C. at 134, 620 S.E.2d at 741. “If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition.” Id. at 134, 620 S.E.2d at 741-742.

On the other hand, a complete chain of custody must be established as far as practicable when a party seeks the admission of fungible evidence like drugs or a blood sample during trial. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005); see Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 (“The State need not establish the

identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable.”). However, the proof of the chain of custody need **not** exclude every possibility of tampering. State v. Smith, 326 S.C. 39, 41, 482 S.E.2d 777, 778 (1997); see Rogers, 361 S.C. at 187, 603 S.E.2d at 915 (“South Carolina law does not require testimony as to the exclusion of any possibility of tampering.”). Instead, in order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995). “[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.” State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007). Furthermore, “where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility.” State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001).

In Appellant’s case, the trial judge committed no error in admitting either the scale or the crack cocaine into evidence during trial. Regarding the scale, the scale was a uniquely-identifiable item and, thus, constituted non-fungible evidence. Cf. Freiburger, 366 S.C. at 134, 620 S.E.2d 737 at 742 (instructing that a gun is a non-fungible item); Rogers, 361 S.C. at 186, 603 S.E.2d at 914 (holding that a purse is a non-fungible item); Glenn, 328 S.C. at 305, 492 S.E.2d at 395 (finding that a porcelain fragment was a non-fungible item). As a result, a chain of custody did **not** have to be established before the

scale could be admitted into evidence. See Freiburger, 366 S.C. at 134, 620 S.E.2d at 741 (recognizing that the establishment of a chain of custody is not required prior to the admission of non-fungible items into evidence). Instead, the scale could properly be admitted into evidence if it was identified as the scale found during the search of black Ford Expedition and its condition was substantially unchanged, and Lieutenant Sherfield satisfied those requirements by identifying the scale as the one he found in the search and explaining that the only change that occurred to the condition of the scale was that one of its batteries was missing. See id. at 134, 620 S.E.2d at 741-742 (instructing that non-fungible evidence can properly be admitted on the "basis of testimony that the item is the one in question and is in a substantially unchanged condition"). For those reasons, the trial judge committed no error in admitting the scale into evidence during trial. However, even assuming a chain of custody had to be established before the scale could be admitted, the testimony presented during trial demonstrated that Lieutenant Sherfield was in possession of the scale from the point it was taken during the search to the point it was introduced during trial and did not leave to conjecture what was done with the scale prior to trial. See Rogers, 361 S.C. at 187, 603 S.E.2d at 914-915 ("[E]ven if a chain needed to be established, it had been. At trial, every individual who had possession of the purse, which contained the slip of paper, testified to having it and denied tampering with it."). Accordingly, even if a chain of custody had been required, a chain of custody was sufficiently established to warrant the scale's admission into evidence during trial.

Regarding the crack cocaine, testimony was presented during trial establishing the identity of each person who was in custody of the crack cocaine and what was done with it prior to analysis, which meant a complete chain of custody was established in regard to the crack cocaine. Specifically, Corporal Vinson testified that he secured the crack

cocaine after finding it in his vehicle and turned it over to Lieutenant Sherfield, the lieutenant testified that he secured the narcotics in a locked evidence vault that only he could access and then delivered the drugs to the evidence intake area at S.L.E.D., and Agent Smith testified that an evidence technician brought the crack cocaine to him from the S.L.E.D. evidence intake area before he conducted his analysis. Additionally, Perry and Yarborough, the other S.L.E.D. employees who handled the crack cocaine, were specifically identified through the trial testimony. Thus, every individual who handled the crack cocaine was identified and a full chain of custody was established. See Governor, 362 S.C. at 613, 608 S.E.2d at 476 (finding fungible evidence should have been admitted in light of the fact that a complete chain of custody was presented and noting that discrepancies in the manner in which the evidence was handled were not a proper basis for suppression). Furthermore, Corporal Vinson, Lieutenant Sherfield, and Agent Smith all confirmed that they secured the crack cocaine when it was in their possession, and Agent Smith stated that the evidence bag in which the crack cocaine had been sealed had not been tampered with prior to his analysis, which established as far as practicable that the crack cocaine had not been altered by anyone who handled the drugs. See Benton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957) (“ ‘Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.’ ” (citation omitted)). For those reasons, the trial judge properly admitted the crack cocaine into evidence during trial, and any issues with the incorrect information on the chain of custody affidavit merely impacted the weight of the testimony as opposed to the admissibility of the crack cocaine. See Johnson, 318 S.C. at 196, 456 S.E.2d at 444 (“The State established a continuous chain of custody through the testimony of all people

who had control and possession of the evidence. Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. **A reconciliation of this discrepancy was not necessary to establish the chain of custody**, but merely reflected upon the credibility of the evidence rather than its admissibility.” (emphasis added)).

In conclusion, the trial judge committed no error in admitting either the scale or the crack cocaine into evidence because the scale was a non-fungible item and was specifically identified as the one recovered from the black Ford Expedition and because a complete chain of custody was established in regard to the crack cocaine, which was a fungible item. Critically, the testimony and evidence presented during trial regarding the identity of the scale and the crack cocaine’s chain of custody ensured that the evidentiary items were what they were purported to be. See Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 (“The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be.”). Under those circumstances, the trial judge did not abuse his discretion in admitting the scale and crack cocaine into evidence during trial. See Sweet, 374 S.C. at 6, 647 S.E.2d at 205-206 (“[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.”). Appellant’s conviction should be affirmed.

CONCLUSION

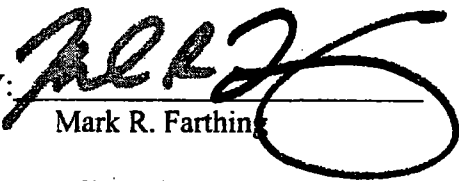
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 10, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-207226

THE STATE,

Respondent,

vs.

RODERICK POPE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 10th day of December, 2013.

EDB

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