

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

Lee S. Alford, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JOMAR ANTAVIS ROBINSON,

PETITIONER

APPENDIX

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

The State, Respondent,

v.

Jomar Antavis Robinson, Appellant.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 4942
Heard October 3, 2011 – Filed February 15, 2012

AFFIRMED

Appellate Defender Elizabeth Franklin-Best, of Columbia,
for Appellant.

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General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Senior Attorney General
Harold M. Coombs, and Solicitor Kevin Brackett, all of
Columbia, for Respondent.

WILLIAMS, J.: Jomar Antavis Robinson (Robinson) was convicted of possession of crack cocaine with intent to distribute, possession of crack cocaine with intent to distribute within one-half mile of a public park, unlawful carrying of a pistol, possession of marijuana, and resisting arrest. The circuit court sentenced Robinson to life imprisonment. Robinson appeals, arguing the circuit court erred in (1) denying Robinson's motion to suppress drugs found as a result of an illegal search and seizure; and (2) allowing the State to qualify the Commander of the Drug Enforcement Unit as an expert witness. We affirm.

FACTS/PROCEDURAL HISTORY

On March 20, 2010, Sergeant Rayford Louis Ervin, Jr. (Ervin) with the York County Drug Enforcement Unit (the Drug Enforcement Unit) conducted surveillance of the Hall Street Apartments in response to numerous anonymous complaints of criminal activity in the area. Ervin stated he observed conduct consistent with drug transactions and called for back-up. Lieutenant James M. Ligon (Ligon) and Officer Brian Schettler (Schettler) with the Drug Enforcement Unit responded. Upon their arrival, Ervin informed the officers he observed an individual, wearing a black leather jacket, meeting vehicles that pulled into the parking lot, going up to the vehicles' windows for a short time, and then returning to the porch of an apartment.

Ligon and Schettler approached the porch and smelled a strong odor of marijuana. Of the five

individuals on the porch, two men were wearing black jackets matching Ervin's description. Ligon and Schettler asked the men for their identification. Ligon noticed one of the individuals, later identified as Robinson, had a pistol hanging out of the right pocket of his jacket. Ligon told the two individuals he could smell marijuana and see Robinson's pistol, and he was going to conduct a Terry^[1] search. As Robinson began to retreat, both Ligon and Robinson reached for Robinson's pistol, and a fight between Ligon and Robinson ensued. During the struggle, Robinson's jacket fell to the ground and Robinson fled the scene. Ligon pursued him, and after an altercation, Ligon placed Robinson in handcuffs. Once Robinson was in custody, Schettler searched the inside of Robinson's jacket and found the pistol, a bag containing marijuana, and a bag containing crack cocaine.

A York County grand jury indicted Robinson for possession of crack cocaine with intent to distribute, possession of crack cocaine with intent to distribute within one-half mile of a public park, unlawful carrying of a pistol, possession of marijuana, and resisting arrest.

Robinson moved in limine to suppress the pistol, marijuana, and crack cocaine found in Robinson's pocket, arguing the contents of his jacket were the result of an illegal search. The circuit court denied this motion finding the search did not violate Robinson's Fourth Amendment rights; Robinson did not have an expectation of privacy on the porch; and the officers had reasonable suspicion to investigate. When the State introduced the pistol and crack cocaine into evidence during trial, Robinson timely objected. However, despite his motion in limine to suppress the marijuana, Robinson offered the bag of marijuana into evidence during the cross-examination of one of the State's witnesses as a trial strategy.^[2]

The State called Commander Marvin Brown (Commander Brown) of the Drug Enforcement Unit as a witness. The State offered Commander Brown as an expert in "how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the different habits between the typical addict, the user, and the typical drug dealer." Robinson objected, arguing Commander Brown was not qualified as an expert witness under Rule 702 of the South Carolina Rules of Evidence. After voir dire of Commander Brown, the circuit court concluded he was qualified to testify as an expert.

Following the State's case-in-chief, Robinson moved for a directed verdict. In addition, Robinson renewed his motion to suppress the evidence obtained from the search, but he specifically conceded the marijuana was admissible based on his introduction of the marijuana during trial. The court denied Robinson's motions. Robinson was convicted of all charges and was subsequently sentenced to life imprisonment pursuant to section 17-25-45 of the South Carolina Code (Supp. 2010).^[3] This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court reviews errors of law only. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). The appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

LAW/ ANALYSIS

I. Motion to Suppress

Robinson argues the marijuana and cocaine were improperly admitted at trial because they were obtained in an unlawful manner. We disagree.

a. Marijuana

Robinson introduced the marijuana into evidence during his cross-examination of Ligon; therefore, he cannot now complain of its admission on appeal. See State v. Johnson, 298 S.C. 496, 498, 381 S.E.2d

732, 733 (1989) (holding a defendant who expressly consented to the admission of evidence at trial waived any right to raise the issue of admissibility on appeal); State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (holding a defendant may not complain of admission of evidence when he introduced the same kind of evidence on cross-examination); State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999) (holding a defendant cannot complain about the admission of evidence on appeal when he opened the door to the introduction of that evidence).

b. Crack Cocaine

Robinson argues the circuit court erred in admitting the crack cocaine at trial when (1) he had a reasonable expectation of privacy on the porch; and (2) Ligon and Schettler entered without a warrant and in the absence of exigent circumstances. We disagree and address each argument in turn.

i. Expectation of Privacy

Robinson contends the search was in violation of his Fourth Amendment rights because he had an expectation of privacy on the porch. We disagree.

For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch. See State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) ("To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched."). "A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable." Id. (quoting Oliver v. U.S., 466 U.S. 170, 177 (1984)).

"A reasonable expectation of privacy exists in property being searched when the defendant has a relationship with the property or property owner." State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 728 (Ct. App. 2004). While an overnight guest may have a reasonable expectation of privacy in the host's property, "a person present only intermittently or for a purely commercial purpose does not have a reasonable expectation of privacy." Id.

Here, the circuit court found Robinson did not have the same expectation of privacy as he would have in his own home. Robinson did not live in the apartment connected to the porch or any apartment located in the Hall Street Apartment complex. Furthermore, there is no evidence he was an overnight guest or otherwise had a connection to the premises or apartment lessee to give him a reasonable expectation of privacy. Robinson failed to establish he had an expectation of not being discovered on the porch, nor did he ask the police to leave. See In the Matter of Brazen, 275 S.C. 436, 436, 272 S.E.2d 178, 178 (1980) (finding the defendant did not have a subjective expectation of privacy in an open garage when he had an opportunity to demonstrate an expectation of privacy or ask the police to leave, but instead did nothing). Therefore, Robinson failed to show he had a reasonable expectation of privacy on the porch.

ii. Reasonable Suspicion

Robinson also argues Ligon and Schettler violated his Fourth Amendment rights because they entered the porch without a warrant and in the absence of exigent circumstances. We disagree.

"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. Taylor, 388 S.C. 101, 109, 694 S.E.2d 60, 64 (Ct. App. 2010) (quoting State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999)). "'Reasonable suspicion' requires a 'particularized and objective basis that would lead one to suspect another of criminal activity.'" State v.

4 Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting U.S. v. Cortez, 449 U.S. 411, 418 (1981)). In determining whether reasonable suspicion exists, the totality of the circumstances should be evaluated. State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009). While anonymous tips do not supply the indicia of reliability to establish reasonable suspicion, an "anonymous tip can provide the basis of an investigatory stop if the officer conducting the stop verifies the tip's reliability by observing the suspect engaged in criminal activity." Taylor, 388 S.C. at 114, 694 S.E.2d at 66. The officer's experience and intuition is an additional factor to consider in determining whether reasonable suspicion exists. Id. at 116, 694 S.E.2d at 68.

Here, the circuit court held:

[T]aking the totality of the circumstances, the officer's knowledge about the area, what had been reasonably observed, that there were anonymous tips, the police officers investigation and observing the area, . . . the drug transactions [that] were going on in the parking lot based on an officer's knowledge of what drug transactions look like in those situations, . . . they are going there simply to determine the identification of the people who are there; . . . heightened by the fact that they smelled the green marijuana, and heightened by the fact that they saw a weapon hanging out of the defendant's pocket. So all of that, taking the totality of the circumstances they would have reasonable suspicion to investigate further and to pat down the defendant

Ligon and Schettler testified to specific and articulable facts to show they had reasonable suspicion that criminal activity was afoot. Based on Ervin's observation of conduct consistent with drug transactions, Ligon and Schettler approached the porch, and Ligon asked for Robinson's identification. Ligon and Schettler both testified this was a consensual encounter, and Robinson could have terminated the encounter at any time. See State v. Foster, 269 S.C. 373, 380, 237 S.E.2d 589, 592 (1977) (holding an officer's request to see identification does not constitute a seizure within the meaning of the Fourth Amendment). The fact that the officers smelled marijuana as they approached the porch reasonably heightened their suspicion. See State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) (holding the court recognizes there is an "indisputable nexus between drugs and guns" to justify a frisk for weapons when an officer has reasonable suspicion that drugs are present) (internal citation omitted). When Schettler saw the pistol hanging out of Robinson's jacket pocket, he had reasonable suspicion to frisk Robinson for weapons. We find the police had reasonable suspicion to stop Robinson, and thus did not violate his Fourth Amendment rights.

Accordingly, we affirm the circuit court's denial of Robinson's motion to suppress the crack cocaine.

II. Expert Witness Qualification

Robinson next argues the circuit court erred in qualifying Commander Brown as an expert witness. We disagree.

A person is competent as an expert when he or she has acquired knowledge, skill, or experience so that he or she is better able than the jury to form an opinion on the subject matter. Rule 702, SCRE; see also Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997) ("To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'") (internal citation omitted). "An expert is not limited to any class of persons acting professionally." Id. at 252, 487 S.E.2d at 598 (internal citation omitted). "The party offering the expert has the burden of showing his witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony." State v. Schumpert, 312 S.C. 502, 505, 435 S.E.2d 859, 861 (1993). However, defects in the amount or quality of education or experience go to the weight of the expert's testimony and not its admissibility. State v. Myers, 301 S.C.

Robinson questioned Commander Brown regarding writings, publications, and experience in the area of narcotics enforcement. Commander Brown indicated he wrote an article in a national magazine for the United States Attorney's Office detailing how the Drug Enforcement Unit was organized. He testified he teaches three classes: search and seizure, asset forfeiture, and basic narcotics. In addition, Commander Brown makes an annual appearance as a guest instructor at a commander's school for the United States Attorney's Office regarding drug enforcement and drug trends. Commander Brown testified he was the narcotics supervisor for over twenty years. Further, he stated he worked on the first crack cocaine case in York County and has observed crack cocaine "evolve as to how it's packaged and sold throughout the years, especially . . . in York County." Moreover, Commander Brown stated he had been qualified more than six times as an expert in previous state court criminal cases in "how cocaine is packaged, sold, the going price, the typical intoxicating dose." Commander Brown also affirmed that he has been qualified as an expert in federal court twice on the same subject matter.

We find Commander Brown's thirty years of experience in narcotics enforcement coupled with his involvement in hundreds of crack cocaine cases sufficient to qualify him as an expert on this topic. See State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 466 (Ct. App. 1997) ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge.").

Moreover, because the qualification of Commander Brown did not require the jury to give his testimony any greater weight than that given to a lay witness, Robinson did not suffer any prejudice from Commander Brown's expert qualification. See State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009) (finding a defendant was not prejudiced by the witness's expert qualification because the fact that the witness was qualified as an expert did not require the jury to accord her testimony any greater weight than that given to any other witness); State v. White, 382 S.C. 265, 271, 676 S.E.2d 684, 687 (2009) (finding the circuit court properly instructed the jury to give the expert witness's testimony "such weight and credibility as you deem appropriate as you will with any and all witnesses that will testify at this trial"); State v. Commander, 384 S.C. 66, 75, 681 S.E.2d 31, 35 (Ct. App. 2009) ("As with any witness, the jury is free to accept or reject the testimony of an expert witness.") (internal citation omitted).

The State offered Commander Brown's testimony to advise the jury as to how crack cocaine was sold and packaged, which is information not commonly known to the average juror. Further, this information would aid the jury in determining whether Robinson intended to distribute the crack cocaine or only possessed the crack cocaine for personal use. Therefore, the circuit court did not abuse its discretion in qualifying Commander Brown as an expert witness.

CONCLUSION

Accordingly, the circuit court's rulings are

AFFIRMED.

SHORT and GEATHERS, JJ., concur.

[1] Terry v. Ohio, 392 U.S. 1 (1968).

[2] Robinson's attorney affirmed at trial he introduced the marijuana into evidence as a trial strategy.

cocaine with intent to distribute within one-half mile of a public park:

"[A] person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for: (1) a serious offense; (2) a most serious offense; (3) a federal or out-of-state offense that would be classified as a serious offense or most serious offense under this section; or (4) any combination of the offenses listed in (1), (2), and (3) above."

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JOMAR ANTAVIS ROBINSON,

APPELLANT

Appeal from York County

Lee S. Alford, Circuit Court Judge

Opinion No. 4942

PETITION FOR REHEARING

Petitioner respectfully asks this Court, pursuant to SCAR, Rule 221(a) to rehear his case. Petitioner submits this Court has overlooked or misapprehended points necessary to the proper resolution of this case. Specifically, this Court erred when it held that petitioner did not have an expectation of privacy on the porch, and that reasonable suspicion justified the officers' intrusions onto it, and the Court erred when it found that a police officer was properly qualified as an expert under 702 in issues related to drug dealing.

RELEVANT FACTS

Issue 1: The search and seizure of petitioner was unjustified the officers lacked reasonable suspicion to enter the porch.

On March 20, 2006, an officer with the York County Multi-jurisdictional Task Force, Sergeant Rayford Ervin, Jr., was hiding out in the woods with binoculars, observing a public housing project. It was a Thursday night, and officers testified that they had received "anonymous complaints" about drug dealing and "people carrying guns" in the area. ROA 128, ll. 3-5. An officer testified that they received a complaint on that particular night, although he could not offer any specific information about it:

Q: Now, in the—first of all, you tell me that you had numerous complaints?

A: Yes, sir.

Q: Are those documented anywhere?

A: Yes, sir, they were.

Q: Where are they documented?

A: We have a—we have in-tell (sic) sheets that come in and we also have citizen complaints that come in through via the telephone, and we also have arrest cases that have also been made in that area, some that I have actually made myself in that area for drug possessions and things of that nature. Even some trafficking cases have been made there directly in that parking lot at that very spot.

Q: Okay. Let me ask you this. You said you had a call that night?

A: Actually we had a complaint and we were sitting up watching it, yes, sir.

Q: Who was the complaint from?

A: We have anonymous tips that come in.

Q: So do you not know the source of the complaint?

A: No, sir, I do not.

ROA 18, ll. 10-24.

During this particular night of surveillance, Ervin testified that he observed five cars approach the parking lot and which were met by one of five young men standing on a porch. Ervin believed this conduct was consistent with drug dealing, and he called for back up. ROA 129, l. 9-131, l.4. Law enforcement did not take any notes documenting this significant traffic which led them to believe that drug dealing was afoot on that particular night. ROA 136, ll. 8-14. The lack of documentary evidence in this case was consistent with these officers' view of the need: "Well, you have got three officers that came up here and testified. I'm sure that's just as good as a picture." ROA 169, ll. 18-19. Counsel asked Ervin:

Q: Now, this is a little apartment complex and there is a lot of traffic in people hanging out on the porches, aren't there?

A: Yes, sir.

Q: And all those people aren't dealing drugs, are they?

A: Not all of them.

ROA 136, ll. 15-20.

It was part of this police set-up that officers would follow cars leaving the public housing project, and then pull them for minor traffic violations so they could search the cars.

Q: Would he call in license plates, or anything like that? How would he know to tell somebody to follow for a traffic stop?

A: Basically he would give a description on the vehicle, and we sat up in that area somewhat tight to where we can have pretty much most avenues covered in that area. He will give out the description of the vehicle and the officers would then pick that vehicle up as it left the area. He would be able to tell us if it took a left or a right turn on Charlotte Avenue from Hall Street, or if it went up to 49, or what we call North Congress and make a left or right from North Congress.

Q: So the purpose of that is to try and stop the vehicle, correct?

A: Yes, sir, it is.

Q: Because you want to search for drugs, or whatever else is there, correct?

A: If they make a traffic violation, yes sir.

Q: I understand. That's doesn't—your motivation is to search for the drugs, but you are looking for an excuse if they have a traffic violation, correct? If they violate the law, or cross the line, or something—

A: Yes, sir, if they violate the law.

Q: You are allowed to—

A: Yes, sir.

Q: So it's not really a traffic stop, like a normal traffic stop? You are going there with a specific purpose, aren't you?

A: Yes, sir.

Q: And you are going to want to get in the search of the car, correct?

A: Yes, sir.

ROA 25, l. 22-27, l. 3.

On this night, a car was pulled and searched, and no drugs were found. ROA 140, ll.6-8. A stolen pistol, however, was found, and its owner arrested. ROA 132, l. 16- p. 133, l. 8; ROA 21, ll. 14-21. Despite the absence of drugs found in the searched vehicle, the officers approached the porch area to engage in a "consensual encounter" with the five young men. Critically, the officers entered onto the porch area and then asked the men for their identifications. On this porch were 5 young men, and two chairs. Appellant, and others, gave law enforcement their ID's.

Lieutenant Mike Ligon testified that "as soon as coming up on the porch and encountering these five individuals" they could smell a "strong odor of green marijuana." ROA 10, ll. 10-17 (emphasis added). He also testified that, "[a]s we actually got to them" is when they could smell the 3.2 grams of marijuana, sealed in a plastic bag, and located in appellant's jacket pocket. ROA 30, ll.

19-21; ROA 31, l. 21- 32, l. 8 (emphasis added). Of the five people located on the porch, Ligon testified that he could tell that either appellant, or another male, had the marijuana. ROA 33, ll.2-11.

In explaining why they so readily identified themselves as police officers as they approached the young men, Ligon testified they did so out of a concern that otherwise they would be physically attacked by the black men:

Q: And by pulling out your badge, you are essentially giving a show of authority to let them know that you are the police and you want to—you are going to detain them to talk to them, correct?

A: No, sir, it's to—basically for safety issues. If we—you know, if we don't identify yourselves (sic) as the police and then somebody wants to come back and—just say an instance with Mr. Robinson.

Q: Uh-huh.

A: You know, you have two white male subjects entering an area that's predominantly black.

Q: Yes sir.

A: If they don't identify themselves as police officers, you know, things could potentially get bad in those areas.

ROA 27, l. 18- p. 28, l. 6.

As the officers approached the men—onto the porch-- they had their badges around their necks, and their flashlights. They kept their guns in plain view. ROA 71, l. 18- p. 72, l. 14.

As the officers were standing on the porch, and while checking the young men's identifications, Ligon testified that he observed the butt of a pistol hanging out of appellant's right jacket pocket. ROA 76, ll. 4-9. At that point, Ligon testified that he informed the men that he was going to conduct a Terry¹ frisk. ROA 77, ll. 4-5. When asked why he did not simply reach for the gun, the officer testified that he did not know:

¹ Terry v. Ohio, 392 U.S. 1 (1968).

Q: -- and then you had the opportunity right there at that point to get on him.

So why are you telling him you are going to search him and alert him to the fact that you are now going for the gun, instead of just going for the gun?

A: I don't know. I can't tell you.

ROA 106, ll. 16-22.

According to Ligon, at that point, appellant began to back away from him, which scared him, and so he then grabbed for appellant's weapon. ROA 77, ll. 4-16. A tussle ensued, and Ligon managed to remove appellant's jacket. Appellant then took off running. Shortly thereafter, he was caught, and handcuffed. The drugs were found in appellant's jacket pocket and he was subsequently charged with these crimes. ROA 15, l. 7- p. 16, l. 7. Appellant argued a motion to suppress before trial started. ROA 6- 59. The court denied the motion:

And so the court denies your motion. I think they had—each step of the process created reasonable suspicion or more reasonable suspicion, up and including the time that they smelled the marijuana there and saw the gun hanging out of his pocket, so the court would deny your motion to suppress.

ROA 55, l. 24- p. 56, l. 4.

And so based on all of that information, taking the totality of the circumstances, the officer's knowledge about the area, what had been reasonably observed, that there were anonymous tips, the police officers investigation and observing the area, that, furthered by their coming that drug activity, drug transactions were going on in the parking lot, based on an officer's knowledge of what drug transactions look like in those situations, indicative of a drug transaction, they are going there simply to determine the identification of people who were there, then that's heightened by the fact that they smelled the green marijuana, and heightened by the fact that they saw a weapon hanging out of the defendant's pocket.

ROA 57, ll. 8-20.

And, again, looking at the totality of circumstances and deciding that the police officer, or police officers, the court finds there was reasonable suspicion to investigate, and that was heightened into probable cause, based on the fact of smelling marijuana and believing that there was a crime under foot or had been committed or was being committed in their presence. Further observation of the weapon hanging out—the pistol hanging out of his pocket, they had a right to frisk at

that point the defendant. And his subsequent actions in response to that frisk brought about the arrest of what happened, insofar as the facts of this case.

So, again, the court will deny the motion to suppress.

ROA 59, ll. 3-14.

The judge was also concerned that this was a public housing project:

THE COURT: Let me ask you this. In looking at State's Exhibit 1 and for purposes of this hearing that appears to be a public housing project, is that correct?

MR. SPRINGS: It is, yes, sir.

THE COURT: And so the parking lot we talking about really is a public parking lot, is that correct? I mean, it goes with the public housing, correct?

MR. SPRINGS: It does. It does. I pondered whether going into the question of how private—private property—

THE COURT: Well, that's not the key issue, but I'm just—the point I'm trying to make is that that appears to be a public housing project, right?

MR. SPRINGS: It is.

THE COURT: And, you know, certain people are allowed to live there, obviously, and meet certain criteria, and that sort of thing, as I understand it. But, in any event, the parking lot has a number of people. There are several apartments there, correct?

MR. SPRINGS: Yes, sir.

THE COURT: So there is—the parking lot out there really, there's people coming and going, but people live there and that. And so it's not like a house that you got right here and then you have got a little bit of yard, that's your house and that's your yard. Here you have got several apartments in one building, and there is more there, but all of these people have access to this parking lot, is that correct?

MR. SPRINGS: Yes, sir. Yes, sir.

ROA 48, l. 5- 49, l. 8.

Counsel renewed the objection at the time the drugs were admitted. ROA 179-180. The trial court erred because appellant had a reasonable expectation of privacy on the porch, and the officers entered that area without a warrant and in the absence of any exigent circumstances. The

porch was located appurtenant to the apartment area, and is a place where individuals engage in domestic activities. See United States v. Dunn, 480 U.S. 294 (1987); Oliver v. United States, 466 U.S. 170 (1984); Rogers v. Pendleton, 249 F.3d 279 (4th Cir. 2001); State v. Herring, ___ S.E.2d ___, 2009 WL 4893656 (December 21, 2009) (Kittredge, J. and Pleicones, J. concurring); U.S.C.A. 4, 14. The officers needed a warrant to enter onto the porch. In the absence of the warrant or the existence of exigent circumstances, the search was unreasonable. The fruits of that search should have been suppressed. Wong Sun v. United States, 371 U.S. 471 (1963). Additionally, citizens who live in housing projects do not have a lesser expectation of privacy than those who do not. U.S.C.A. 4, 14. Appellant respectfully asks this Court to reverse his convictions.

Issue 2: Brown was improperly qualified as an expert.

Commander Marvin Brown is in charge of the narcotics unit for York County. Over objection, he was allowed to testify as an expert in “how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the difference in habits between the typical addict, the user, and the typical drug dealer.” ROA 191, ll. 7-11. Counsel argued that he was not qualified under SCRE, Rule 702. ROA 194, ll. 12-13.

Rule 702 states:

Testimony by experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.

The state then elicited testimony that multiple bags are consistent with drug dealing, ROA 200, l. 20- 201, l. 12, and that pistols are commonly found on drug dealers. ROA 200, ll. 14-24.

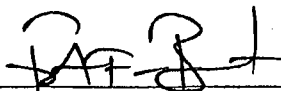
The judge erred in qualifying Brown as an expert because he is not qualified as an expert under the statute. The statute is not intended to allow police officers, who are charged with the responsibility of removing criminals from the streets, to testify that they are doing their job correctly. Whether appellant was a dealer or not was a question for the jury, but here this "expert" was allowed to usurp that role by testifying that his colleagues correctly charged appellant with drug dealing. The testimony was improper:

"[I]t is a little too convenient that the Government has found an individual who is expert on precisely those facts that the Government must prove to secure a guilty verdict—even more so when that expert happens to be one of the Government's own investigators . . . When the Government skips the intermediate steps and proceeds directly from internal expertise to trial, and when those officer experts come to court and simply disgorge their factual knowledge to the jury, the experts are no longer aiding the jury in its factfinding; they are instructing the jury on the existence of facts needed to satisfy the elements of the charged offense."

United States v. Mejia, 545 F.3d 179, 191 (2nd Cir. 2008).

Appellant respectfully asks this Court to rehear his case.

Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender

This 1st day of March, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOMAR ANTAVIS ROBINSON,

APPELLANT

CERTIFICATE OF SERVICE

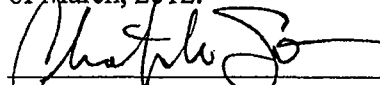
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire, this 1st day of March, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day
of March, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

The South Carolina Court of Appeals

The State,

Respondent,

v.

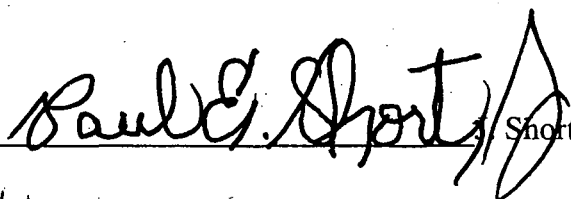
Jomar Antavis Robinson,

Appellant.

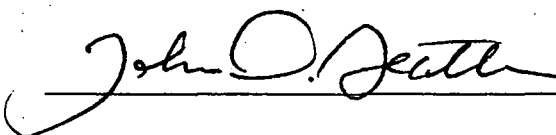
The Honorable Lee S. Alford
York County
Trial Court Case No. 2008-GS-46-03141
2008-GS-46-03142
2008-GS-46-03143
2008-GS-46-03144
2008-GS-46-03145

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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. It is, therefore, ordered that the Petition for Rehearing be denied.


Short


J. Williams


J. Geathers

Columbia, South Carolina

cc: Appellate Defender Elizabeth Franklin-Best
Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Attorney General Harold M. Coombs
Solicitor Kevin Brackett

FILED

March 29, 2012

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

JUN - 8 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JOMAR ANTAVIS ROBINSON,

APPELLANT

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6 JOMAR ANTAVIS ROBINSON,) 2008-GS-46-3142
7 DEFENDANT.) 2008-GS-46-3143
8) 2008-GS-46-3144
9) 2008-GS-46-3145
10) FEBRUARY 9, 2009
11) YORK, SOUTH CAROLINA

12 (VOLUME I)

13 B E F O R E:

14 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

16 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
17 ATTORNEY FOR THE STATE

18 J. CHRISTOPHER MILLS, ESQUIRE
19 JAMES MORTON, ESQUIRE
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, FEBRUARY 9, 2009)

2 MR. SPRINGS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. SPRINGS: Your Honor, I would propose that if
5 I'm able to lay the foundation that the defendant was given
6 notice that he be tried today, that we go ahead and pick his
7 jury. The court could make some innocuous comment, he's not
8 here for jury selection. And if he comes over the lunch
9 hour. That's all for the good. No harm, no foul, but we do
10 have those folks waiting downstairs.

11 THE COURT: All right. If you want to call the
12 case and provide whatever you need to provide the court
13 today that you have with regards to try him, you know, in
14 his absence.

15 MR. SPRINGS: Thank you, Your Honor.

16 Your Honor, the next matter for this Honorable
17 Court is the State of South Carolina versus Jomar Antavis
18 Robinson.

19 I'm holding a total of five indictments. First
20 charges him with possession of cocaine base with intent to
21 distribute. The number is 2008-GS-46-3142.

22 The second is possession of cocaine base with
23 intent to distribute within proximity of a public park on
24 2008-GS-46-3141.

25 Resisting arrest under B paragraph on

1 about eleven after -- excuse me, twenty-one after two.
2 Let's be back at 3:15. 3:15, and we will take up the
3 pretrial.

4 MR. SPRINGS: Thank you, Your Honor.

5 MR. MILLS: Thank you, Your Honor.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right, counsel, ready to proceed
9 in pretrial?

10 MR. MILLS: Yes, sir.

11 MR. SPRINGS: If the court is ready, I'll let the
12 defense articulate any motions they have for suppression.

13 THE COURT: Yes, sir.

14 MR. MILLS: Your Honor, we suppress the
15 statement -- the seizure of Mr. Robinson, and I guess we
16 will call Officer Ligon to the stand.

Motion
to
Suppress

17 THE COURT: Yes, sir.

18 MR. MILLS: I am not prepared to argue until I
19 have his testimony.

20 THE COURT: Well, I understand, but I think the
21 State can put him up and let him present that, if you want.
22 I believe since you are making the motion, it's up to
23 them --

24 MR. SPRINGS: Yes.

25 THE COURT: -- to show that there were drugs.

1 MR. SPRINGS: We are ready to make that proffer.
2 We do call Lieutenant Mike Ligon.

3 LIEUTENANT MIKE LIGON, having been first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. SPRINGS:

6 Q. Lieutenant, state your name, please.

7 A. James M. Ligon.

8 Q. And are you a narcotics officer with the York County
9 Drug Enforcement Unit?

10 A. Yes, sir, I am.

11 Q. And were you working as a narcotics officer the night
12 of March 20th, 2008?

13 A. Yes, sir, I was.

14 Q. Did you and Officer Schettler go over to the Hall
15 Street Apartments that night about 10:30?

16 A. Yes, sir, we did.

17 Q. And why? Explain why you went over to Hall Street
18 Apartments.

19 A. We had received numerous complaints that there were
20 drugs being sold there and also individuals there carrying
21 guns on the premises.

22 We actually had an officer located in that area
23 conducting surveillance on that particular area.

24 Q. Would that be Sergeant Ervin?

25 A. Yes, sir, it would.

Q. 7
A. 7
P. 7
H. 7
T. 7

1 Q. All right. Did he communicate to you that he had seen
2 some things?

3 A. Yes, sir, he did.

4 Q. What did he say he had seen?

5 A. He observed -- he observed what appeared to be him, in
6 his training experience in narcotics, to be drug
7 transactions taking place there in the parking lot.

8 Q. Okay. This is a preliminary matter, go ahead and tell
9 what he told you and explain why he went to Hall Street?
10 What did he say?

11 A. Basically officer -- Sergeant Ervin advised us that
12 there was an individual coming from the porch of 122 Hall
13 Street Apartments and going out and meeting with vehicles as
14 they pulled up there in the parking lot. There would be a
15 short time, that subject would go to the window. A short
16 time they would then walk back to the porch where they come
17 from and the vehicles would drive off.

18 Q. All right. And was this man by himself or was he with
19 a group?

20 A. There was a group standing there on the porch.

21 Q. About how many people were in the group, including the
22 man that went to the car?

23 A. There were five.

24 Q. Okay. And did Sergeant Rayford give you a description
25 of the man that was going to meet the cars?

1 A. Yes, sir, he did.

2 Q. What was the description?

3 A. Black male, baggy pants and a big black jacket.

4 Q. Okay. I'm showing you State's Exhibit 1 for
5 identification.

6 MR. MILLS: No problem.

7 BY MR. SPRINGS:

8 Q. And hold that up so Judge Alford can see it. Point out
9 Apartment 122?

10 A. 122 would be the one closest to the end here on this
11 porch.

12 Q. That's where the group was?

13 A. Yes, sir.

14 Q. All right. And so you and Officer Schettler went to
15 122?

16 A. Yes, sir, we did.

17 Q. Just the two of you?

18 A. Yes, sir.

19 Q. When you got to 122, when you arrived on the scene, did
20 you, in fact, see about five people up on the porch?

21 A. Yes, sir, we did.

22 Q. Now, the sergeant that told you the man going to the
23 cars was wearing a black jacket?

24 A. Yes, sir.

25 Q. How many people in the group of five were wearing black

1 jackets?

2 A. Two.

3 Q. Did you know which one of the two would be going to the
4 cars?

5 A. No, sir, we didn't.

6 Q. All right. Did you and Schettler approach the porch?

7 A. Yes, sir, we did.

8 Q. And talk us through slow motion, tell the story. As
9 you got up to the porch, what did you do, point by point?

10 A. As we approached the porch, myself and Officer
11 Schettler, as soon as coming up on the porch and
12 encountering these five individuals, there was a strong odor
13 of green marijuana. Not burnt marijuana, but actually green
14 marijuana.

15 As the two individuals that fit the description that
16 Sergeant Ervin had given, we asked them for identification,
17 at which time they produced identification.

18 During that --

19 Q. Let me stop you. The names on the two identifications
20 that's who -- these are all men, right?

21 A. Yes, sir.

22 Q. Group of five?

23 A. Yes, sir.

24 Q. What were the names on the two pieces of
25 identification?

1 A. One was Laquaris Patton and the other one was Jomar
2 Robinson.

3 Q. Okay. So they gave you their identification?

4 A. Yes, sir.

5 Q. As you were looking -- and you are holding the two
6 pieces of identification?

7 A. Yes, sir. I actually had them both in one hand. I had
8 my flashlight in my other hand.

9 Q. Okay. And is this up on the porch, or is it out in the
10 yard in front of the apartment?

11 A. Yes, they are actually -- they are actually standing on
12 the porch and we are right at the edge of the porch where
13 they are standing on the porch right there.

14 Q. Okay. Who was closest to Jomar Robinson between you
15 and Schettler? Who was closer to him?

16 A. I was.

17 Q. Who had the better view of Jomar Robinson?

18 A. I did.

19 Q. Now, as you were looking at the identification and you
20 are smelling green marijuana, unburnt marijuana, did you
21 notice anything unusual about Jomar Robinson?

22 A. Yes, sir, I did.

23 Q. What was that?

24 A. There was a pistol hanging out of his right pocket of
25 his jacket.

1 Q. All right. Did you get a clear view of some part of
2 the pistol?

3 A. Yes, sir, I did. The handle of it.

4 Q. Okay. Do you know what the handle of a pistol looks
5 like?

6 A. Yes, sir, I do.

7 Q. All right. Did you immediately act on that or not
8 immediately act on it?

9 A. I didn't immediately act on it.

10 Q. So then what's the next step, the next thing that
11 happened?

12 A. Once that -- once that took place, I advised both Mr.
13 Patton and Mr. Robinson that I could smell green marijuana.
14 Also seen the gun. I advised them that I was going to
15 search them.

16 Q. A Terry search?

17 A. Yes, sir, a Terry pat-down.

18 Q. Okay. When you told these men that you were going to
19 search them, what did Jomar Robinson do?

20 A. He began to back up towards the wall of the apartments.

21 Q. Was he backing away from you?

22 A. Yes, sir, he was backing away from me.

23 Q. So seeing him back away and after having seen the butt
24 of the pistol in his, what, a jacket, the black jacket
25 pocket?

1 A. Yes, sir.

2 Q. Did you have some concerns?

3 A. Yes, sir, I did.

4 Q. And as he starts to back away, what did you do?

5 A. I grabbed the pistol.

6 Q. Did he try to grab the pistol?

7 A. Yes, sir, he did.

8 MR. MILLS: Your Honor, I realize it's a
9 preliminary matter, but I really wish Mr. Springs wouldn't
10 suggest the answer to the witness.

11 THE COURT: I think he's just trying to speed it
12 up.

13 MR. SPRINGS: Yes, sir.

14 THE COURT: Let's ask a question instead of
15 leading him quite as much.

16 BY MR. SPRINGS:

17 Q. As you are grabbing at the pistol, what does Jomar
18 Robinson do?

19 A. He attempts to grab the pistol also.

20 Q. Whose hand got to the pistol butt first?

21 A. Mine did.

22 Q. And at that point what happened?

23 A. A fight ensued. We went off the porch. Mr. Robinson
24 began assaulting me while I maintained control of the weapon
25 that was in his pocket, at which time I then stripped the

1 jacket off of Mr. Robinson. And when it fell to the ground
2 with the gun in it, I advised Officer Schettler that the
3 jacket and the pistol were on the ground directly behind
4 him.

5 Q. Okay. Before the jacket came off, had you said
6 anything to Schettler before that?

7 A. Yes, sir, I advised him that Mr. Robinson had a gun. I
8 hollered gun several times.

9 Q. Okay. What did you see Schettler do whenever you
10 yelled? Did you notice? I notice that you were busy.

11 A. No, sir, I didn't -- I wasn't -- I wasn't exactly sure
12 at that time what had taken place, because I was dealing
13 with Mr. Robinson, but Officer Schettler had drawn his
14 service weapon and advised the other four individuals to get
15 on the ground and showed him their hands.

16 Q. Come on down, if you will.

17 (Witness off the witness stand)

18 BY MR. SPRINGS:

19 Q. Pretend I'm Jomar Robinson. Which jacket pocket was
20 the gun, the pistol?

21 A. Here.

22 Q. So you had your hand on the gun?

23 A. Yes, sir.

24 Q. And then how did you strip off the jacket?

25 A. Basically --

1 Q. Generally.

2 A. Well, initially while I was getting assaulted while
3 holding this hand, I had my hand on my service weapon, to
4 make sure if he did go for his weapon, that I would do what
5 I needed to do.

6 Q. Okay.

7 A. At which time basically I grabbed and I grabbed the
8 jacket and I jerked the jacket off. I pulled it off his
9 shoulder.

10 Q. I just got --

11 A. Okay.

12 Q. Go back up there.

13 (Witness back on the witness stand)

14 BY MR. SPRINGS:

15 Q. The jacket comes off?

16 A. Yes, sir.

17 Q. Does it fall on the ground?

18 A. Yes, sir, it does.

19 Q. As the jacket comes off and falls on the ground, where
20 is the pistol?

21 A. It's inside the jacket still.

22 Q. As the jacket comes off and falls on the ground, what
23 did Jomar Robinson do?

24 A. He took off. He began to run. He ran. He fled the
25 scene.

1 Q. What did you do?

2 A. I -- I ran after him.

3 Q. And did you catch him?

4 A. Yes, sir, I did.

5 Q. What happened when you caught him?

6 A. He then again assaulted me, and I was able to subdue
7 him and place into handcuffs.

8 Q. Okay. And did you bring him back to the area of
9 Apartment 122?

10 A. Yes, sir, I did.

11 Q. Okay. Now, are you familiar with the provisions of the
12 South Carolina law on a concealed carry permit or a permit
13 to carry a concealed pistol?

14 A. Yes, sir.

15 Q. Under those laws, is one of the requirements --

16 Let me back up. As you approached the porch --

17 A. Yes, sir.

18 Q. -- right at the beginning, what kind of identification
19 did you have showing that you were a police officer?

20 A. We walked up -- and with us working in plainclothes,
21 our badge, we will take our badge and we will hang it around
22 our neck, such as this, to identify us as police officers,
23 and we also advise them se are police policers. We had our
24 flashlights on. We actually shine the flashlights on our
25 badge, identified ourselves.

1 Q. You said that you were police officers?

2 A. Yes, sir.

3 Q. Now, let's go back to a concealed carry permit.

4 As part of the laws of a concealed carry permit, as a
5 holder, a valid holder required, when approached by a police
6 officer, to tell them if he, in fact, is carrying a
7 concealed weapon?

8 A. Yes, sir, they are. They actually -- if they are a
9 valid concealed weapons permit holder, they actually have a
10 concealed weapons permit that is pretty much identical to a
11 South Carolina driver's license or South Carolina ID. They
12 are supposed to present that and also advise any officers
13 that approach them that they do have a weapon on their
14 person, advise them where it's at.

15 Q. Okay. And did Mr. Robinson tell you, as you approached
16 them and were talking to him and asking for ID, that he had
17 a concealed weapons permit?

18 A. No, sir, he did not.

19 Q. All right. Did you, in fact, find out later that he
20 did not?

21 A. Yes, sir, we did.

22 Q. All right. If you would answer any questions that the
23 defense attorney has for you.

24 CROSS EXAMINATION BY MR. MILLS:

25 Q. Officer Ligon, I believe that you -- is it Ligon?

1 A. Yes, sir.

2 Q. You prepared a summary, correct?

3 A. Yes, sir.

4 Q. Now, in the -- first of all, you tell me that you had
5 numerous complaints?

6 A. Yes, sir.

7 Q. Are those documented anywhere?

8 A. Yes, sir, they were.

9 Q. Where are they documented?

10 A. We have a -- we have in-tell sheets that come in and we
11 also have citizen complaints that come in through via the
12 telephone, and we also have arrest cases that have also been
13 made in that area, some that I have actually made myself in
14 that area for drug possessions and things of that nature.
15 Even some trafficking cases have been made there directly in
16 that parking lot at that very same spot.

17 Q. Okay. Let me just ask you this. You said that you had
18 a call that night?

19 A. Actually we had a complaint and we were sitting up
20 watching it, yes, sir.

21 Q. Who was the complaint from?

22 A. We have anonymous tips that come in.

23 Q. So do you not know the source of the complaint?

24 A. No, sir, I do not.

25 Q. So you do not know the believability or the veracity of

1 that individual, correct?

2 A. Not that particular one, no, sir.

3 Q. Okay. And you don't know what that person's ability to
4 see or observe or make that statement, do you?

5 A. No, sir.

6 Q. Okay. So you have no information on the believability
7 of that person. And you have no information whether that
8 individual was an opportunity to see that, is that correct?

9 A. No, sir, other than what Officer Ervin's observations
10 were that night, as far as the accounts that took place.

11 Q. You say Ervin was there under surveillance, is that
12 correct?

13 A. Yes, he was.

14 Q. How was he surveilling? What was he doing?

15 A. He was basically posted up in a position where he could
16 observe them there with binoculars --

17 Q. Okay.

18 A. -- and.

19 Q. Where was that?

20 A. In a wooded area there close by.

21 Q. Where in a wooded area close by?

22 A. Right across from the apartments.

23 Q. Well, I have been to those apartments and across the
24 street there is just some buildings.

25 A. There is some buildings --

*In the
woods
watching
them.*

- 1 Q. There is that church there. You know where I'm talking
2 about, right?
- 3 A. There is also a wooded area there.
- 4 Q. Are you talking about on the -- catty-corner across
5 from that church?
- 6 A. Yes, sir.
- 7 Q. So he was in there?
- 8 A. Yes, sir.
- 9 Q. Does he have a camera?
- 10 A. Sir?
- 11 Q. Does he have a camera?
- 12 A. No, sir, he has his binoculars and his radio.
- 13 Q. Just looking through binoculars from there?
- 14 A. Yes, sir.
- 15 Q. So he is hidden in the woods looking through
16 binoculars?
- 17 A. Yes, sir.
- 18 Q. And he's had radio contact with y'all?
- 19 A. Yes, sir, he does.
- 20 Q. What channel are you on?
- 21 A. A narc channel, which is --
- 22 Q. What?
- 23 A. A narc channel, which is a secured channel.
- 24 Q. Okay. So that means no one could hear it?
- 25 A. Correct.

1 Q. You did speak with each other?

2 A. Yes, sir.

3 Q. And how about dispatch? No one can hear it on the
4 road?

5 A. No, sir.

6 Q. All right. So it's just is coming -- kind of a way to
7 communicate with each other and let each other know what's
8 going on?

9 A. Yes, sir.

10 Q. Now, in your report you mentioned something about
11 somebody coming by and driving away and there be being a
12 stop?

13 A. Yes, sir.

14 Q. You didn't mention that in your direct testimony. Can
15 you tell me about that?

16 A. There was a vehicle that Officer Ervin had called out.
17 One of these individuals, either Mr. Patton or it was Mr.
18 Robinson, met with this vehicle. When this vehicle left, we
19 got it for a traffic offense. And also subsequent to a
20 search of the vehicle, located a stolen pistol inside that
21 vehicle.

22 Q. I think in your report you said, in fact, it was Mr.
23 Patton who went to that car?

24 A. Yes, sir.

25 Q. Is that right?

(Car
LA,
stopped)

-Pistol in
the
car,
lost
driver

1 A. Yes, sir.

2 Q. So Mr. Robinson had nothing to do with that?

3 A. No, sir, not -- no, sir.

4 Q. Okay. And, in fact, there was never any -- you or Mr.
5 Robinson going to any car during that surveillance, just Mr.
6 Patton, is that correct?

7 A. As far as we could tell, yes, sir. Once we approached
8 the porch, there were two people dressed alike in the --

9 Q. I understand, but --

10 A. Yes, sir.

11 Q. I'm saying in the report it suggests that the person
12 you later identified as Patton was the person that Ervin saw
13 going back and forth?

14 A. Yes, sir.

15 Q. I think Mr. Patton has pled guilty to distribution of
16 crack cocaine, is that right?

17 A. That I do not know, sir.

18 Q. Well -- so did this -- did this stop at all have
19 anything to do with your approaching them, this stop of this
20 car?

21 A. Yes.

22 Q. Who stopped it?

23 A. Sir?

24 Q. Do you know who stopped that car?

25 A. I believe it was officers -- was it Welch and

1 Truesdale, I believe? I believe it was officers Welch and
2 Truesdale.

3 Q. Are they sheriff's deputies?

4 A. One works for Rock Hill City and one works with Tega
5 Caye police department, but they are assigned to the York
6 County Multi-Jurisdictional Drug Enforcement Unit.

7 Q. So that's the narc unit?

8 A. Yes, sir.

9 Q. So would they in patrol cars or were they in unmarked
10 cars?

11 A. Unmarked cars.

12 Q. And would they go to dispatch at all if they were
13 making a stop?

14 A. Yes, sir, they would. If they went -- if they stopped
15 that vehicle and were calling out licenses and things of
16 that nature, yes, sir, they would go through dispatch.

17 Q. And how far before your approach of them did that
18 occur?

19 A. Twenty minutes, maybe. Twenty-five minutes, thirty
20 minutes, approximately.

21 Q. You mean the stop occurred twenty-five minutes
22 beforehand?

23 A. Possibly. Somewhere about twenty minutes, roughly,
24 give or take.

25 Q. So you sat on that information for twenty-five minutes

1 before you went and approached these individuals?

2 A. Yes, sir.

3 Q. All right. Now, you were just describing that you
4 approached with your badge out --

5 A. Yes, sir.

6 Q. -- is that correct?

7 A. Yes, sir.

8 Q. And with the flashlight?

9 A. Yes, sir.

10 Q. And it's a small little place, it's -- I'm sorry?

11 THE COURT: It's right here.

12 MR MILLS: Thank you, Your Honor.

13 BY MR. MILLS:

14 Q. It's a small little porch, right?

15 A. Yes, sir, it is.

16 Q. Okay. And just looking at what's been marked as
17 State's Exhibit 1 --

18 A. Yes.

19 Q. -- there is a bush right here, is that correct?

20 A. Yes, sir, it is.

21 Q. Okay. And did y'all pull in here like where this white
22 car is?

23 A. Yes, sir, we pulled -- we pulled right into this area
24 here. We just pulled right up here where the headlights
25 were actually on them and then we exited the vehicle and

1 stepped out to talk with them.

2 Q. So your headlights would have been flooding the area,
3 is that correct?

4 A. Yes, sir.

5 Q. So it's to your back? That light is coming from your
6 back side, is that correct?

7 A. Yes, sir.

8 Q. Otherwise then your badge, how are you dressed?

9 A. Plainclothes.

10 Q. Okay. Would it be dark clothes?

11 A. No, sir. Just blue jeans, jacket, things of that
12 nature.

13 Q. Okay. Now, I think you testified that prior to going
14 there you had seen activity that you believed was indicative
15 of drug transactions. Is that what -- or you didn't see it.
16 It was just told to you, is that correct?

17 A. Yes, sir.

18 Q. So you had no -- you didn't see it yourself?

19 A. No, sir, I didn't.

20 Q. You are just relying on what Officer Ervin told you?

21 A. Yes, sir, what Sergeant Ervin told me, yes.

22 Q. Would he call in license plates, or anything like that?
23 How would he know to tell somebody to follow somebody for a
24 traffic stop?

25 A. Basically he would give a description on the vehicle,

1 and we sat up in that area somewhat tight to where we can
2 have pretty much most avenues covered in that area. He will
3 give out the description of the vehicle and the officers
4 would then pick that vehicle up as it left the area. He
5 would be able to tell us if it took a left or a right turn
6 on Charlotte Avenue from Hall Street, or if it went up to
7 49, or what we call North Congress and make a left or right
8 from North Congress.

9 Q. So the purpose of that is to try and stop the vehicle,
10 correct?

11 A. Yes, sir, it is.

12 Q. Because you want to search for drugs, or whatever else
13 is there, correct?

14 A. If they make a traffic violation, yes, sir.

15 Q. I understand. That's doesn't -- your motivation is to
16 search for the drugs, but you are looking for an excuse if
17 they have a traffic violation, correct? If they violate the
18 law, or cross the line, or something --

19 A. Yes, sir, if they violate the law.

20 Q. You are allowed to --

21 A. Yes, sir.

22 Q. So it's not really a traffic stop, like a normal
23 traffic stop? You are going there with a specific purpose,
24 aren't you?

25 A. Yes, sir.

*Get up
the spot
sh. could
engage
illegal
searcher*

1 Q. And you are going to want to get in the search of the
2 car, correct?

3 A. Yes, sir.

4 Q. Now, was somebody arrested as a result of this stolen
5 gun that was stopped in this car?

6 A. Yes, sir.

7 Q. Who was it?

8 A. I have no idea. I could not tell you his name.

9 Q. Would that have been called into the sheriff's
10 department?

11 A. Yes, sir, it would have.

12 Q. And there would have been a record of it, correct?

13 A. Yes, sir.

14 Q. Now, so knowing this, the weapon was there, seen these
15 drugs transactions, when you approached them, you were going
16 to investigate a crime, were you not?

17 A. Yes, sir, we were.

18 Q. And by pulling out your badge, you are essentially
19 giving a show of authority to let them know that you are the
20 police and you want to -- you are going to detain them to
21 talk to them, correct?

22 A. No, sir, it's to -- basically for safety issues. If
23 we -- you know, if we don't identify yourselves as the
24 police and then somebody wants to come back and -- just say
25 an instance with Mr. Robinson.

1 Q. Uh-huh.

2 A. You know, you have two white male subjects entering an
3 area that's predominantly black.

4 Q. Yes, sir.

5 A. If they don't identify themselves as police officers,
6 you know, things could potentially get bad in those areas.

7 Q. So -- and I understand that, but you are going in
8 there -- this is not a consensual encounter. You are
9 actually going in there to seize them, to ask them
10 questions, correct?

11 A. No, sir, we go in -- we have a consensual encounter
12 with these individuals when we go to deal with them.

13 Are we investigating -- are we conducting the narcotics
14 investigation there --

15 Q. Yes, sir.

16 A. -- yes, sir.

17 Would we -- would we detain somebody
18 unconstitutionally, no, sir.

19 Q. I appreciate your anticipating that, but if you let
20 court make that determination, I would appreciate it as
21 well.

22 So you are going up there and the idea is you want to
23 talk to them. You know, of course, they don't have to give
24 you their license, any identification, do they?

25 A. No, sir.

*Want to
conduct
search
because
they're
white
officers.
is a
black
area*

1 Q. So at that point, from what you are telling me, if they
2 did not give you identification, they could turn around and
3 leave them? They were free to leave?

4 A. Yes, sir.

5 Q. And you would not step them whatsoever?

6 A. No, sir.

7 Q. Okay. So when you said "Mr. Robinson, see your ID,"
8 and he left, he was free to do that?

9 A. Yes, sir, he was, but he didn't. He stayed.

10 Q. I understand, but you are saying there is no seizure at
11 that point whatsoever?

12 A. No, sir, there was not.

13 Q. Okay. Even though you took his ID from him?

14 A. He consented -- he consensually gave the ID to me.

15 Q. You told him to give it to you, didn't you?

16 A. I asked him for his identification. I didn't say "give
17 me your ID." I asked him "may I see your ID?"

18 Q. Okay. Now, you said that you smelled green marijuana,
19 right?

20 A. Yes, sir.

21 Q. And in narcotics you have some drug dogs, don't you?

22 A. Yes, sir, we do. In fact, I worked one for six years.

23 Q. Oh, great. So you are familiar with all the
24 training --

25 A. Yes, sir.

took H.
ID
from
H.R.

1 Q. -- that they go through?

2 A. Yes, sir.

3 Q. And the records that are kept?

4 A. Yes, sir.

5 Q. And you understand -- what's the -- it's about 250
6 times better olfactories than humans, is that about right?

7 A. Or more so.

8 Q. Okay. And certainly they are trained to do -- they
9 don't know they are smelling pot. They just know they are
10 smelling some substance and getting rewarded, is that
11 correct?

12 A. Yes, sir.

13 Q. Now, humans don't have that type of olfactories, do
14 they?

15 A. No, sir.

16 Q. Now, is your testimony before this court that you
17 smelled green marijuana, unburnt green marijuana, as you got
18 out of your car and approached them?

19 A. As we actually got to them is when we could smell the
20 marijuana. When I was possibly within three foot, four
21 foot, of these individuals.

22 Q. Okay. And which individual was it coming from?

23 A. It appeared -- because Mr. Patton and Mr. Robinson had
24 then stepped away from the group, it appeared that it was
25 coming from one of the two, either Mr. Robinson or Mr.

1 Patton.

2 Q. So you could tell kind of where it was coming from
3 which individual there?

4 A. Yes, sir.

5 Q. This is March 20th, right?

6 A. Yes, sir.

7 Q. Spring time?

8 A. Yes, sir.

9 Q. Things are blooming?

10 A. Yes, sir.

11 Q. A lot of pollen in the air?

12 A. Yes, sir.

13 Q. All right.

14 A. I guess.

15 Q. But you are smelling -- well, this is the marijuana
16 over here, isn't it?

17 A. Yes, sir.

18 MR. MILLS: May I see it, please?

19 MR. SPRINGS: Sure.

20 BY MR. MILLS:

21 Q. This is what you are talking about, right?

22 A. Yes, sir.

23 Q. And you are smelling that from three feet here?

24 A. Yes, sir.

25 Q. In somebody's pocket?

1 A. Yes, sir.

2 Q. In a plastic bag?

3 A. Yes, sir.

4 Q. In a jacket?

5 A. Yes, sir.

6 Q. So at that point I think you stated you said you had
7 probable cause?

8 A. Yes, sir.

9 Q. Because your nose is as sensitive as a dog?

10 A. No, sir, it's not, but not only smelling the green
11 marijuana, but also observing the pistol that was hanging
12 out of Mr. Robinson's coat pocket.

13 Q. So at that point you were seizing them, correct?

14 A. Yes, sir, I had probable cause to arrest, based off the
15 pistol, him not showing concealed weapons permit.

16 Therefore, he was unlawfully carrying that pistol.

17 Q. I appreciate you going on, Mr. Ligon. I haven't even
18 asked the questions yet. I wish you would just respond to
19 what I ask you.

20 At that time you smelled the marijuana and you felt you
21 had probable cause to arrest?

22 A. Yes, sir.

23 Q. And your testimony is that you could tell which
24 individual it was coming from?

25 A. I could tell it was between either Mr. Robinson or Mr.

1 Patton.

2 Q. And because they were, what, one foot, two foot away
3 from the other people on the porch?

4 A. Yes, sir.

5 Q. And your nose is good enough to be able to distinguish
6 between five individuals within a five foot radius and you
7 could determine which individual was there, which individual
8 is holding that pot and smelling it, is that right?

9 A. Between those -- it was between those two individuals.
10 I could tell it wasn't the other three gentlemen. It was
11 between those two gentlemen, yes, sir.

12 Q. And then you also said you saw a gun?

13 A. Yes, sir.

14 Q. But instead of immediately securing the gun, you
15 decided that you are going to tell them that you are getting
16 ready to search?

17 A. Yes, sir.

18 Q. Is that consistent with your training, sir?

19 A. Yes, sir, it is. First of all, action is quicker than
20 reaction. If I would have said "hey, I see that gun in your
21 pocket," his action would have been quicker than my reaction
22 to what he was going to do. Therefore, when I advised them
23 that I was going to do a Terry frisk and he started to back
24 away, I knew at that point in time that his intentions could
25 possibly mean harm towards myself and Officer Schettler, at

1 which time I took action.

2 Q. But you could have just taken actions straight up
3 without saying anything to him, right, because you observed
4 this gun? He hadn't identified it was concealed weapon, and
5 at that point your biggest concern is officers safety, is it
6 not?

7 A. Yes, sir, but we also had three other gentleman --
8 well, four, including Mr. Patton there, who we couldn't see,
9 who we couldn't tell whether they had weapons or not, at
10 which time when I saw him back away, I knew that something
11 had to be done at that point.

12 Q. So you are still running the risk of these other people
13 having weapons, but they are not -- at this point you think
14 it's okay to take the action?

15 A. Yes, sir.

16 Q. And you said that y'all went through -- is that this
17 picture again. Did you just like go off to your left?

18 A. Yes, sir, we went off to the left.

19 Q. The bush?

20 A. Yes, sir, we went off to the left right here and the
21 fight ensued right in this area here, sir.

22 Q. Right in that bush?

23 A. Yes, sir. Right past the bush.

24 Q. All right. And I believe you were describing to the
25 court, or with Mr. Springs here, how you got this weapon?

1 A. Yes, sir.

2 Q. If I could get you to do a little reenactment for me
3 again here.

4 (Witness off the witness stand)

5 BY MR. MILLS:

6 Q. You are telling me that you grabbed the left pocket
7 with your left -- right pocket with your left hand, is that
8 correct?

9 A. Yes, sir.

10 Q. And then you said that you were securing your weapon?

11 A. I was sitting here while it --

12 Q. So you are securing your weapon and he's getting free
13 shots at you like this?

14 A. Yes, sir.

15 Q. And he's hitting you?

16 A. Yes, sir.

17 Q. And then you are telling me you are pulling off his
18 jacket, right?

19 A. I then grabbed.

20 Q. So he's hitting you as you are pulling that jacket off?

21 A. At this point -- at this point he decides it's time for
22 him to run. When he tries --

23 Q. So he turns to the left?

24 A. No, sir, he turns to the right.

25 Q. Okay. He runs?

1 A. You are looking at a bombers jacket, not a form fitting
2 jacket.

3 Q. Okay.

4 A. It's more -- have you ever seen a flight jacket?

5 Q. Sure, I have. Right. I appreciate it.

6 (Witness back on the witness stand)

7 MR. MILLS: One moment, please, Your Honor.

8 THE COURT: Yes, sir.

9 (Off the record)

10 (Back on the record)

11 MR. MILLS: That's all I have, Your Honor.

12 MR. SPRINGS: I have got to ask two questions, if
13 I may?

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION BY MR. SPRINGS:

16 Q. Did you tell Jomar Robinson he was under arrest?

17 A. Yes, sir. After I hollered that he had a gun, I --
18 after I hollered three or four times he had a gun to Officer
19 Schettler to where Officer Schettler could do what he felt
20 was appropriate, I told him -- I told to him stop, you are
21 under arrest.

22 (Gun marked as State's Exhibit No. 9 for
23 identification)

24 BY MR. MILLS:

25 Q. This is State's Exhibit 9. Pull out what's in there

1 and tell the court if you recognize it.

2 A. I sure do. P-89 pistol, a 9-millimeter.

3 Q. Where have you seen it before?

4 A. It was in Mr. Robinson's jacket pocket.

5 Q. Okay. And it was loaded with these bullets?

6 A. Yes, sir. When we say loaded, it was a magazine inside
7 and one actually chambered in the weapon.

8 Q. Okay.

9 MR. SPRINGS: That's all. Thank you.

10 MR. MILLS: Just one followup question.

11 RECROSS EXAMINATION BY MR. MILLS:

12 Q. Now, you were telling me about the black bomber jacket?

13 A. Yes, sir, if you -- have you ever seen the flight
14 jackets?

15 Q. Sure.

16 A. A lot of kids wear them nowadays. They are black ones.
17 Even police officers wear them. They are quilted. They
18 have orange on the inside of them.

19 Q. And they have got two little side pockets?

20 A. And they have got two little side pockets that really
21 ain't much bigger than what you put your hands in.

22 Q. Put your hands in to keep them warm?

23 A. Yes, sir.

24 Q. And your testimony is that you drove up casually?

25 A. Yes, sir.

1 Q. Got out of the car just normal?

2 A. Yes, sir.

3 Q. Police and all that, and Mr. Robinson is just leaving
4 this gun hanging out of his pocket as you are walking up?

5 A. Yes, sir.

6 Q. Making no effort to leave, not walking away or
7 anything?

8 A. No, sir, he didn't.

9 Q. He made no effort at that point to --

10 So, as you got out and walked up, your testimony is
11 everybody could walk and you would have no basis to detain
12 them and they were free to go?

13 A. Yes.

14 Q. That's all. Thank you, lieutenant.

15 MR. SPRINGS: Come down.

16 Officer Schettler.

17 OFFICER BRIAN SCHETTTLER, having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. SPRINGS:

20 Q. Officer, tell the court your name.

21 A. Brian Edward Schettler.

22 Q. Were you with Lieutenant Ligon out at Hall Street
23 Apartments the night of March 20th, 2008?

24 A. Yes, I was.

25 Q. Okay. And did you see him, in fact, chase Jomar

1 Robinson away?

2 A. Yes, I did.

3 Q. What did Jomar Robinson drop on the ground there?

4 A. Officer Ligon advised me there was a coat with a gun in
5 it on the ground, at which point then I collected it.

6 Q. Okay. All right.

7 Did anybody get to that coat before you did?

8 A. No.

9 Q. And after Officer Ligon took Jomar Robinson, the
10 defendant, into custody, did you search inside the jacket?

11 A. Yes, I did.

12 Q. And did you -- just ask you, State's Exhibit No. 9,
13 have you ever seen that before?

14 A. Yes, I have.

15 Q. And where did you see that before?

16 A. It was the gun that I recovered out of the jacket.

17 Q. Okay.

18 (Drugs marked as State's Exhibit No. 10 for
19 identification)

20 (Drugs marked as State's Exhibit No. 11 for
21 identification)

22 BY MR. SPRINGS:

23 Q. I'm showing you State's Exhibit 10 and 11. Have you
24 ever seen those things in these bags before?

25 A. Yes, I do.

1 Q. Where did you see or find those at the first?

2 A. I located both of these items from the jacket.

3 Q. Okay. And what is the substance in that bag appear to
4 be?

5 A. That's marijuana.

6 Q. And the substance in that bag, what did it appear to
7 be?

8 A. Crack cocaine.

9 Q. Is that what appeared to be the night of March 20th,
10 2008?

11 A. Yes, sir.

12 Q. Okay.

13 MR. SPRINGS: Nothing further.

14 CROSS EXAMINATION BY MR. MILLS:

15 Q. Officer Schettler, so you are there, you have your
16 weapon, correct, with you?

17 A. That night?

18 Q. Yes, sir.

19 A. Yes, sir.

20 Q. I mean, obviously. And you are seeing your officer in
21 a life and death struggle for a gun, right?

22 A. Your words, but yes.

23 Q. You don't think it was life or death?

24 A. I've trained with Lieutenant Ligon quite a bit and I'm
25 sure he could handle the situation.

1 Q. You don't think fighting over a gun is a life and death
2 situation?

3 A. Have you ever been a police officer, sir?

4 Q. You don't get to ask me questions.

5 A. Okay. Because I know Officer Ligon and I worked with
6 him and I trust my life to him, I turn my back to him.

7 Q. So he's fighting with somebody and turned your back to
8 him and what do you do?

9 A. I go ahead and detain the other four subjects.

10 Q. How do you do that?

11 A. Draw my service weapon.

12 Q. Pardon me?

13 A. Draw my service weapon.

14 Q. Okay. So you have your weapon now on these four
15 individuals?

16 A. Correct.

17 Q. No question they are seized, right?

18 A. At that point, yes.

19 Q. Okay. And you are not saying a word to Officer Ligon?
20 You are not saying a word to Jomar Robinson, who is
21 supposedly in this fight with Officer Ligon?

22 A. What do I need to say to him? I'm worrying about the
23 other four individuals.

24 Q. "You stop or I'll shoot"?

25 A. Stop who or shoot who?

1 Q. Jomar Robinson.

2 A. Why would I shoot him?

3 Q. You would be lawfully entitled to do that, wouldn't
4 you?

5 A. Well, that's officer's decision. I was worried about
6 the four individuals in front of me.

7 Q. You didn't want them to get away, right?

8 A. At that point I didn't know whether or not they had
9 weapons or not. It was a safety issue.

10 Q. Yeah, you are worried about them, you got them under
11 control and you don't want them to get away, right?

12 A. Not -- it's not a question of whether I want them to
13 get away or not. It's a question of whether or not it was
14 officer's safety. I don't know whether or not they have
15 weapons. There is obviously a struggle ensuing over one
16 weapon. There could be multiple weapons there.

17 Q. Okay. So what did you have them do?

18 A. I had them prone down on the ground.

19 Q. How many?

20 A. Four.

21 Q. Okay. And what's going on with Officer Ligon at this
22 time?

23 A. Officer Ligon is handling business behind me.

24 Q. What kind of time frame are we talking about?

25 A. I have no idea.

1 Q. Five seconds?

2 A. I didn't have time to time it.

3 Q. Ten seconds?

4 A. I don't know.

5 Q. You have no idea? You don't know if it was one second,
6 or thirty seconds?

7 A. No, sir, I don't.

8 Q. Why not?

9 A. Because I'm worried about what's in front of me, not
10 worrying about what's behind me.

11 Q. As you are focusing on what's in front of you, what are
12 you seeing?

13 A. I'm seeing four people that I have prone down on the
14 ground.

15 Q. What do they do?

16 A. One guy gets up and goes to leave.

17 Q. What do you do?

18 A. Order him back to the ground.

19 Q. What does he do?

20 A. Flees.

21 Q. Okay. And so you just let him go?

22 A. Correct.

23 Q. What's happening with Officer Ligon now?

24 A. Officer Ligon is in a foot pursuit.

25 Q. So he's already left the scene?

1 A. Correct.

2 MR. MILLS: One moment, please.

3 (Off the record)

4 (Back on the record)

5 BY MR. MILLS:

6 Q. Thank you, Officer Schettler.

7 MR. SPRINGS: Nothing further and that is our
8 proffer.

9 MR. MILLS: Your Honor, I would move to suppress
10 the evidence seized on a number of grounds from Mr. --
11 allegedly seized from Mr. Robinson.

12 First of all, they are entering onto private
13 property and they do not have a search warrant. And to
14 enter onto property, whether it's the curtilage or the
15 actual property, you have to have a search warrant, unless
16 you fit into one of those exceptions.

17 Officer Ligon testified that it was a purely
18 consensual encounter, that he did not have any basis at that
19 point, that they were free to leave. And so there is,
20 therefore, no exception to the warrant requirement of him
21 coming onto property.

22 He also came on and took -- he showed his police
23 badge, took possession of the document. So he actually
24 seized the individuals at that moment. Again, without
25 exigent circumstances, he's not allowed for them to step

1 onto that private property and make that seizure. He's
2 saying that he is not observing any crime at that time. So
3 it's only after he has illegally placed himself into that
4 position does he claim that he saw a gun.

5 I would also point out the highly -- I would tell
6 the court it is an objective test that you have to have in
7 determining this. And the testimony by Officer Ligon is
8 simply incredible that he smelled green marijuana in a
9 plastic bag from a distance. Your Honor, the marijuana is
10 right there. You can open it. You can see if you can even
11 begin to smell it in a bag from three feet. I submit that
12 was not a basis -- his decision to seize the individuals on
13 that basis is not objectively reasonable and, therefore, it
14 was an unconstitutional seizure and any evidence that was
15 gained as a result of that would be the fruit of the
16 poisonous tree and subject to suppression.

17 THE COURT: Thank you, sir.

18 Mr. Springs, do you wish to be heard?

19 MR. SPRINGS: I won't beat this to death, Your
20 Honor, but basically we tendered a memorandum of law on this
21 to the court previously after a conference with the
22 defendant. The police aren't trespassing on someone's
23 private party when they had legal cause or good excuse to be
24 there. They we went up to Apartment 122, responding to the
25 claims of drug activity and after one of their officers saw

1 something that looked like it could be drug sales taking
2 place on the porch of that house. No one told them to
3 leave, get off my property. As a matter of fact, Jomar
4 Robinson didn't live there. It wasn't his property. The
5 police had every right to come up and strike up a
6 conversation with someone.

7 Identification as a police officer and request to
8 see a driver's license or ID is not a seizure. I'm quoting
9 there from State v. Foster. For their safety, the police, I
10 think the officers could have searched all of these people,
11 once they came up and started talking to them. Pursuant to
12 our court's realization that guns or drugs so often go
13 together, that the mere investigation of a drug crime can
14 justify patting somebody down for weapons. But, in fact,
15 Lieutenant Ligon saw a pistol sticking out of Jomar
16 Robinson's pocket. At that point he had probable cause to
17 arrest him for unlawful carrying of a pistol.

18 The marijuana odor is of no event one way or the
19 other. Nothing here turns on the odor of marijuana. In
20 fact, that's just something to give a heightened, a danger
21 and suspense to the officers as they are dealing with these
22 people.

23 So the officer would have had legal cause to pat
24 down Jomar Robinson and find the pistol that hadn't been
25 visible. But once it's visible, the officer had every right

1 to arrest him. And when he laid hands on him to get that
2 pistol, he had every right to go for his own
3 self-preservation and affect the arrest. At that point the
4 defendant is resisting the arrest. He was lawfully
5 arrested. His jacket was searched pursuant to that arrest
6 and the evidence was lawfully found.

7 MR. MILLS: Your Honor, the law is seeing a crime
8 be committed in your presence. In this instance it's under
9 surveillance. There is no hesitation and he's not -- you
10 know, they are having it both ways. We walk up and
11 consensual encounter. Therefore, we are not subject to the
12 Fourth Amendment, but also now we can because we see
13 something in plain view. Your Honor, it's a little
14 disingenuous that they are just going to pick and choose
15 when it's a seizure and when it's not.

16 I submit that if you do not have any evidence to
17 come up there and were not investigating it, and he
18 indicates they are out there for that purpose, so the mere
19 suggestion that this is kind of coming up there to have a
20 talk see, to -- you know, supposedly all this danger, they
21 are just kind of walk up there and just talk is just not
22 credible. It's not just objectively reasonable. So,
23 therefore, I think the only conclusion is that they did go
24 up there with intent to seize. They did through show of
25 authority, as well as taking possession of those documents,

1 seize those individuals at the time they did not have
2 reasonable suspicion. It's after that point that he says he
3 saw a gun and at that point he -- they had the encounter and
4 the struggle.

5 THE COURT: Let me ask you this. In looking at
6 State's Exhibit 1 and for purposes of this hearing, that
7 appears to be the public housing project, is that correct?

8 MR. SPRINGS: It is, yes, sir.

9 THE COURT: And so the parking lot we talking
10 about really is a public parking lot, is that correct? I
11 mean, it goes with the public housing, correct?

12 MR. SPRINGS: It does. It does. I pondered
13 whether going into the question of how private -- private
14 property --

15 THE COURT: Well, that's not the key issue, but
16 I'm just -- the point I'm trying to make is that that
17 appears to be a public housing project, right?

18 MR. SPRINGS: It is.

19 THE COURT: And, you know, certain people are
20 allowed to live there, obviously, and meet certain criteria,
21 and that sort of thing, as I understand it. But, in any
22 event, the parking lot has a number of people. There are
23 several apartments there, correct?

24 MR. SPRINGS: Yes, sir.

25 THE COURT: So there is -- the parking lot out

1 there really, there's people coming and going, but people
2 live there and that. And so it's not like a house that you
3 got right here and then you have got a little bit of yard,
4 that's your house and that's your yard. Here you have got
5 several apartments in one building, and there is more there,
6 but all of these people have access to this parking lot, is
7 that correct?

8 MR. SPRINGS: Yes, sir. Yes, sir.

9 THE COURT: Now, as I understand it, the facts I
10 have heard today, is, first of all, the police had
11 complaints that drug activity was taking place in this
12 particular -- right from this particular residence, from
13 that front porch, or from right in that area, say those
14 apartments. They had that complaint, a citizen complaint,
15 even though it's anonymous, they don't know who called in
16 the complaints.

17 MR. SPRINGS: My understanding is it was various
18 porches and in a parking lot and not specifically 122.

19 And let me ask officer? Is that it?

20 THE WITNESS: Yes.

21 MR. SPRINGS: Just that whole area, basically.

22 THE COURT: Okay.

23 MR. SPRINGS: Not specifically 122.

24 THE COURT: So they were surveilling the area and
25 had an officer out there in the woods across from where he

1 could see what was going on.

2 And as I understand it, there were -- he believed
3 that there were transactions going on, based on his
4 experience as a police officer, because people were coming
5 in in a short period of time, somebody coming out to the
6 car, and then they drive off a short time later. And that
7 was indicative to him that drug transactions were taking
8 place at that particular location. And he called that in to
9 other officers, who came in then to further investigate
10 that. So you start off with citizens complaints, but they
11 are unidentified persons. They are anonymous persons, tips.

12 So you start off with that. That's not enough to
13 create a reasonable suspicion that drug activity is going
14 on. But you also -- the police officer is aware they had
15 made a number of drug arrests in this same area, the drug
16 activity. This is a place where a lot of drug activity goes
17 on, as I understand the police officer's testimony. He's
18 made a number of arrest, including trafficking in these
19 drugs in the same area. So they have all that information.

20 And the courts have made it clear that the court,
21 trial courts, decide whether evidence comes in or not should
22 consider what the police know and their experience, not just
23 what an average person might know or consider. So with
24 police officers that has special knowledge and based on what
25 they know from the previous investigations and cases, that

1 the courts consider that as well and any special knowledge
2 that they might have about drug activity.

3 In this case then they went to -- and the
4 information was that there were somebody in a black jacket
5 is -- there were individuals on the porch at this particular
6 location. Somebody in a black jacket was the one going out
7 to the cars and what appeared to make the drug transaction.
8 And that -- so they went in to investigate further and they
9 pulled into the parking lot there, their headlights on the
10 persons on the porch, and walked up, as I understand it to
11 the porch. But there were two people wearing dark jackets
12 and they weren't sure which one was the person that Sergeant
13 Ervin indicated that was walking out to the car or not, or
14 really, I guess, was the same person or not. But, in any
15 event, somebody in a black jacket walking out there off that
16 porch. So they come out and approach the porch where the
17 individuals are, identify themselves as police officers and
18 ask for some identification.

19 Now, I believe in -- and this was reminding me of
20 a case that the solicitor's office handed up to me, but in
21 having read it, In the Matter of Barry Bassett, who was a
22 minor under the age of seventeen years. The court said that
23 a defendant did not have a reasonable expectation of privacy
24 in an open garage on his own property. And the police
25 officer who was investigating disturbance, which was

1 apparently emanating from the garage, had a right to
2 lawfully enter the garage to further investigate, based on
3 the complaint that he had. So the question is whether the
4 deputy at that time had lawfully entered the garage. And
5 once he was in there, he detected the odor of marijuana and
6 he confronted the defendant about it and seized the
7 contraband from appellant's pocket. So, you know, that to
8 me -- these officers, in that case they were investigating a
9 crime, in that case a loud noise, came into the garage.
10 Now, I think he could have told them to leave the garage,
11 they had no right there, or something like that, perhaps,
12 but, in any event, he didn't do that, so they came into the
13 garage.

14 In this case they came up on an outside area, not
15 even in an enclosed area like a garage. So they came up on
16 the outside area on the porch and approached them. And as
17 they did in that case, asked for identification. And so
18 that's all they were doing at that time was asking for
19 identification, and the defendants proffered the
20 identification. The officer testified then he smelled green
21 marijuana at that time, and which is marijuana that has not
22 been smoked, which I don't know about smelling marijuana. I
23 haven't been around it, honestly. One time here in court we
24 had a big bag of it and somehow it got opened and just about
25 had to close the courtroom down because the smell was so

1 strong. That's the truth, and we all had to just take a
2 break from it. I got a headache from it. I just -- and I
3 don't know what they could smell or couldn't smell with the
4 marijuana. He says he could smell it, based on experience,
5 and I assume that he's got more experience in smelling
6 marijuana than the court does. And so he says he could
7 smell the marijuana, which would indicate at that time a
8 crime was being committed. If someone was in illegal --
9 possession of illegal drugs, then that was an indication
10 that a crime was being committed there in his presence by
11 the person having it.

12 Now, so at that point you go from citizen's tip,
13 knowledge by the police officer, drug activity was going on
14 in that area, because they made arrests there and all of
15 that. You go from that. You go into the parking lot. You
16 have an officer who has given them information that somebody
17 in a dark jacket is coming from the porch out to the car and
18 doing what appears to be a drug transactions out at the car.
19 So you go from anonymous tip, to investigation, the opinion
20 of an officer drug activity is going on, based on his
21 experience and knowledge in dealing with these kind of
22 issues, drug activity is going on, which is increased a
23 reasonable -- it certainly gives them a reasonable suspicion
24 drug activity was taken on at that location. They go in and
25 they ask for identification at the same time they smell the

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1 marijuana, which further adds to the reasonable suspicion,
2 to the point the officer felt like he had at that time
3 probable cause really to make an arrest, or at least to
4 search to determine the source of the marijuana. And so at
5 that point he believes -- it certainly increases the
6 reasonable suspicion and reasonable further into the drug
7 activity is going on and whether somebody has got drugs
8 there, marijuana. Then he sees a handgun hanging out of Mr.
9 Robinson's pocket. And so, now, he already has his driver's
10 license, his address on it, is that correct?

11 MR. SPRINGS: Yes.

12 THE COURT: Wasn't that particular address, or was
13 it?

14 OFFICER LIGON: Sir, Your Honor?

15 THE COURT: Was it that particular address?

16 OFFICER LIGON: No, sir, it was 122 Washington
17 Street, York, sir, is actually --

18 THE COURT: A different street altogether?

19 OFFICER LIGON: Yes, Your Honor.

20 THE COURT: All right. And so that's what was on
21 there, and the person had a pistol hanging out of his
22 pocket.

23 Now, you know, again, the courts have held that
24 there is a recognizable connection between drugs and guns.
25 The police officer, once drugs come into play, they have a

1 right to search them for weapons to protect themselves.
2 There is a nexus between the two, which would allow them to
3 do that.

4 Now, you have got they smelled drugs, think a
5 crime has been committed in their presence. They see a gun
6 hanging out, a pistol hanging out of a person's pocket, and
7 certainly probable cause to believe that the person is
8 illegally in possession of a weapon, and so -- so then they
9 say we are going to search. And the court finds that at
10 that particular time, particular point, they had probable
11 cause for the search, based on the smell of the drugs, the
12 weapons, and everything else they had, particularly those.
13 In other words, their reasonable suspicion was increased
14 each time some other indication of the drug activity,
15 culminating in smelling the green marijuana and seeing the
16 gun hanging out of Mr. Robinson's pocket. And so -- and
17 then they had a right to search. When he resisted the
18 search, and officer testified he went for his gun -- backed
19 up, went for his gun. He went for the gun and a fight
20 ensued, etcetera. Ultimately drugs were seized. He pulled
21 the jacket off from him. Ultimately the drugs were seized
22 from the jacket, along with the gun and after an altercation
23 between the two of them.

24 And so the court denies your motion. I think they
25 had -- each step of the process created reasonable suspicion

1 or more reasonable suspicion, up and including the time that
2 they smelled the marijuana there and saw the gun hanging out
3 of his pocket, so the court would deny your motion to
4 suppress.

5 Now, I want to add to what I said insofar as
6 record is concerned.

7 Even in Terry, Terry v. Ohio, even in that case,
8 392 U.S. 1, 88 S.Ct. 1868, even in that case the court says
9 that the police had justifiable suspicion afforded a proper
10 constitutional basis for accosting Terry, restraining his
11 liberty of movement briefly, and addressing questions to him
12 and had no reason whatever to suppose Terry might be armed,
13 apart from the fact he suspected of planning a violent
14 crime. The officer asked Terry his name, in which Terry
15 mumbled something, whereupon McFadden, without asking Terry
16 to speak louder and without giving him any chance to explain
17 his presence or his actions, forcibly frisked him.

18 And so, you know, the police had more reason in
19 this case to frisk the defendants in this case, where they
20 say they smelled marijuana and also saw the gun, which was
21 in Terry they didn't even see a gun or anything. So they
22 simply asked some questions based on his response to it,
23 they decided to do a pat-down.

24 United States v. Arvizu, A-R-V-I-Z-U, Arvizu,
25 found at 122 S.Ct. 744, 534 U.S. 266, 151 Lawyers Edition 2d

1 740, the court said that because the balance between the
2 public interests and an individual's right to personal
3 security tilts in favor of the standard less than probable
4 cause in cases of an investigatory stop, falling short of
5 the traditional arrest. The Fourth Amendment is satisfied
6 when the officer's actions supported by reasonable suspicion
7 to believe that criminal activity may be afoot.

8 And so based on all of that information, taking
9 the totality of the circumstances, the officer's knowledge
10 about the area, what had been reasonably observed, that
11 there were anonymous tips, the police officers investigation
12 and observing the area, that, furthered by their coming that
13 drug activity, drug transactions were going on in the
14 parking lot, based on an officer's knowledge of what drug
15 transactions look like in those situations, indicative of a
16 drug transaction, they are going there simply to determine
17 the identification of people who were there, then that's
18 heightened by the fact that they smelled the green
19 marijuana, and heightened by the fact that they saw a weapon
20 hanging out of the defendant's pocket. So all of that,
21 taking the totality of the circumstances, they would have
22 reasonable suspicion to investigate further and to pat down
23 the defendant and the other individuals they were attempting
24 to pat down. And then the defendant's actions in response
25 to that, and certainly allowing the officers to act to

1 protect themselves and the other officer at the scene and to
2 act as he did in this case, in grabbing the weapon in the
3 efforts of keeping it from being pulled out. As he said,
4 the defendant attempted to pull the pistol out and he beat
5 him to it. He grabbed the jacket and wrestled with him
6 trying to hold onto the jacket and got the jacket off of
7 him. They continued to fight.

8 The court said in that case that although an
9 officer's reliance on a mere hunch is insufficient to
10 justify an investigatory stop, the likelihood of criminal
11 activity need not rise to the level required for probable
12 cause and it falls considerably short of satisfying a
13 preponderance of the evidence standard.

14 Again, in that case the specialized knowledge of
15 an officer's investigation in a drug activity is to be
16 considered by the court in making the determination of
17 whether there was reasonable suspicion to act as the officer
18 did in this case, in order to seize the evidence in this
19 case.

20 MR. SPRINGS: Thank you, Your Honor.

21 THE COURT: I'm trying to make sure my record is
22 complete.

23 I'm not going to get into a lot on the record
24 about expectation of privacy, except to say that the
25 defendant in this case did not have the same expectation of

1 privacy as he would have in his home, or -- you know,
2 sitting in his own home and that sort of thing.

3 And, again, looking at the totality of
4 circumstances and deciding that the police officer, or
5 police officers, the court finds there was reasonable
6 suspicion to investigate, and that was heightened into
7 probable cause, based on the fact of smelling marijuana and
8 believing that there was a crime under foot or had been
9 committed or was being committed in the their presence.
10 Further observation of the weapon hanging out -- the pistol
11 hanging out of his pocket, they had a right to frisk at that
12 point the defendant. And his subsequent actions in response
13 to that frisk brought about the arrest of what happened,
14 insofar as the facts of this case.

15 So, again, the court will deny the motion to
16 suppress.

17 Any other pretrial issues?

18 MR. MILLS: I just have a few things, Your Honor.
19 One is the prior reports. I understand from the suppression
20 hearing the information about prior drug activity and all
21 that, I think based on the anonymity and -- the anonymity of
22 the reports, it would be unfairly prejudicial to my client
23 for them to be able to testify about prior activities,
24 unless they are just saying my individual was involved in
25 it, which raises too much of a specter on unrelated matters

1 not connected with my client. I think both under 403, the
2 probative value outweighs the prejudice.

3 I understand the officer could testify that they
4 were out there and what they saw, but I think it is unfair
5 to suggest to a jury what's gone on in prior instances.

6 MR. SPRINGS: Your Honor, State v. Brown says that
7 we are entitled to explain to the jury why the officers were
8 out there about complaints of drug activity, that that's --
9 that there is nothing wrong with that.

10 MR. MILLS: Again, Your Honor, no one is saying --
11 you know, they are entitled to explain that they are out
12 there, but, again, I say the probative value outweighs -- I
13 mean the prejudicial effect outweighs the probative value.
14 It's essentially saying, hey, the drug dealing is bad. We
15 got lots of call. We are not going to tell who they were
16 from, we are not going to show you any warrants. We don't
17 know what these people basis are. Then we get the evidence
18 in, but essentially that's just adding in a prejudicial
19 thing based on not my client, without anybody specific.
20 They haven't given us any names of any arrests, the names of
21 anything else there. General allegation to it and brought
22 in no proof. I think that is just piling on, you know, in
23 an unfair way. They are going to be able to testify that we
24 were out there and observing and this is what we saw. And I
25 understand that, but to suggest that they could then say

1 based on the fact we have had all these prior reports,
2 without bringing those individuals who made the complaints,
3 without offering any other proof about those complaints, is
4 just confuses the jury and predisposes them to something
5 before they even hear any evidence, essentially saying, hey,
6 listen, we have had reports about other people coming out
7 here at other times, and we don't know even who gives those
8 reports, when those other times were, where they were, who
9 the individuals were, and now it's being offered against my
10 client. I think that's improper and I think that's unfair.

11 MR. SPRINGS: That's like the fellow that killed
12 his parents and then complained that he was an orphan. I
13 think that police are entitled to explain why they were out
14 there watching the place. Otherwise, they look like they
15 are going out there like Nazi storm troopers, let's go out
16 there and roust these guys out. I think they are entitled
17 to explain that they were out there for a particular
18 purpose. Not for the truth the matter, but to explain why
19 they were there and why they were devoting resources and
20 officer time to watching the place. And under the law we
21 are entitled to do it under State v. Brown.

22 MR. MILLS: That's not a requirement, Your Honor,
23 and I don't know what motions were made there and under what
24 facts. I still say that they can say we are out there doing
25 surveillance. They do not need to make the specter up.

1 MR. SPRINGS: That's fine. They won't say they
2 are coming out there as Nazi storm troopers. They are out
3 there surveilling and doing their job as narcotics officers
4 and they observed this activity. I don't see where that we
5 have to get into other times, other places, and general
6 insinuation as opposed to fact specific with this defendant
7 at this time.

8 THE COURT: Well, I think the police officers, I
9 think they can testify as to why they were out there.
10 Otherwise, it may very well look like somebody was being
11 picked on for some improper purpose. And so I think they
12 have a right to explain how they came to be out there and
13 why they were surveilling this area. And I believe that the
14 testimony is not going to be that they were out there
15 surveilling this particular apartment, as I understand it.
16 What they said is they were not -- the complaint was not
17 about this particular apartment, but in these apartments
18 generally was complaints they had from -- they had some
19 anonymous tips that drug activities and persons with guns
20 were in that area. And that -- so then they had somebody
21 out there, hidden surveillance in the area watching it. And
22 then based on what that person saw, I think they are
23 entitled to go into that. As to how they got out there, why
24 they were watching the place, and what raised their
25 interests in it gave them reasonable suspicion to believe

1 that something was going on there. I think they have a
2 right to do that as part of their case.

3 Now, I would be more concerned about would be any
4 talk about any drug arrests made at that particular spot or
5 anything like that. So I would -- I think the officer had
6 said that he had made some arrests in that area, but I think
7 that the most that they should be able to say is that this
8 was -- this general area was an area where they had made
9 other arrests, or something like that, or to say that it's
10 a -- to their knowledge it's an area of high crime drug
11 activity.

12 MR. SPRINGS: Yes, Your Honor.

13 THE COURT: But I don't think that -- not tying it
14 down specifically to this particular apartment necessarily,
15 this particular apartment building, but generally in this
16 area that there have had been other cases made for illegal
17 drug activity in the general area. And I think that's
18 permitted to show why they believe that it might be
19 something going on. That would be the -- but nothing else
20 as to this particular apartment.

21 MR. MILLS: Your Honor, if I understood, and not
22 to disagree with the court's ruling, you said I believe by
23 that. I think the only purpose they can offer it for is to
24 explain their location. Not that there was any validity to
25 it, but just why they got out there. Not that there was

1 prior drug dealing there, not that there was activity, but
2 they had a report of that, that's why they went out there.

3 THE COURT: Right.

4 MR. MILLS: And I think beyond that you start to
5 really start stepping over the line.

6 MR. SPRINGS: Well, that's all they can say. They
7 are going to say they had numerous citizens complaints of
8 drug activity and people with guns in the parking lot and on
9 the porches, plural. That's all they are going to say.

10 THE COURT: Well, if he is not going any further
11 than that, I will allow that. I think you are entitled to
12 get into that to show why they were out there and had a
13 reasonable suspicion and reason to be out there, which, of
14 course, became heightened by what was seen.

15 Yes, sir.

16 MR. MILLS: Mr. Springs just added guns. He's
17 going to be able to talk about that too?

18 THE COURT: Well, that was what the officer
19 testified, that anonymous tips were that there were drugs
20 being sold from porches in that area by men with guns.

21 MR. MILLS: All right.

22 Your Honor, I'm now constrained by appellate
23 rules. I understand the motions in limine. I have to renew
24 my objection actually during a trial. I'm kind of loathed
25 to do that in front of the jury out loud in front of Mr.

1 Springs, so I don't know if there is a way I can just
2 perhaps ask for the court's attention.

3 THE COURT: Well, you must just -- what you might
4 do is just -- we get to that particular point you want to
5 object, just say "Your Honor, could you note my prior
6 objection?" And I'll say "it's preserved for the record.
7 You are noted and overruled."

8 MR. MILLS: I just don't want to start making a
9 scene in front of the jury.

10 THE COURT: I understand. You can do it that way,
11 though.

12 MR. MILLS: Thank you.

13 THE COURT: "Your Honor, will you please note it
14 for the record my prior objection?" You won't have to get
15 into --

16 MR. MILLS: And give my prior position on that.

17 THE COURT: Thank you. Okay. So all they are
18 going into is they had citizens complaints. Okay.

19 MR. MILLS: And the last thing, the only other
20 thing I would have, Your Honor, is just I have not tried a
21 case with Mr. Springs yet, but I would just -- in my
22 experience with many solicitors, they often offer their
23 personal opinion about what they believe or what's needed
24 for the community, and I think those are improper comments.
25 You can't essentially appeal to the jury's sense of

1 MR. SPRINGS: We call Lieutenant Ligon.

2 LIEUTENANT MIKE LIGON, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. SPRINGS:

5 Q. Officer, let me remind you to speak up nice and loud so
6 everyone can hear you.

7 Tell us your name, sir.

8 A. James M. Ligon.

9 Q. And what do you do for a living?

10 A. I'm a supervisor of the west side of the York County
11 Multi-Jurisdictional Drug Enforcement Unit.

12 Q. You are a narcotics police officer?

13 A. Yes, sir, I am.

14 Q. How long have you been a police officer?

15 A. Approximately thirteen years.

16 Q. Okay. And, lieutenant, were you involved in a
17 narcotics investigation on the night of March 20th of last
18 year that resulted in the arrest of a man named Jomar
19 Robinson?

20 A. Yes, sir, I was.

21 Q. And about what time that night did this case come to a
22 head?

23 A. Approximately 10:30.

24 Q. Okay. And take us back to the beginning. Why -- what
25 area -- what place did this happen? What was the name of

1 the place?

2 A. Hall Street Apartments.

3 Q. Is that in York?

4 A. Yes, sir, it is.

5 Q. Are all Hall Street Apartments in York County?

6 A. Yes, sir, they are.

7 Q. All right. Were there a number of you, narcotics
8 officers, out in the area of Hall Street Apartments that
9 night?

10 A. Yes, sir.

11 Q. What took you narcotics officers out there that night
12 in the first place? Why were you interested in Hall Street
13 Apartments?

14 A. Citizen complaints in reference to drugs being sold
15 there and individuals also in that area carrying weapons
16 upon their person.

17 Q. Okay. Were you trying to help the folks that lived out
18 there?

19 A. Yes, we were.

20 Q. And did one of your officers set up --

21 MR. MILLS: Objection, Your Honor. He's
22 indicating that he's helping the people out there, and we
23 have anonymous complaints, so I don't know specifically
24 where he's talking about at this point.

25 THE COURT: Noted. Overruled.

1 Proceed.

2 BY MR. SPRINGS:

3 Q. Did you have one of your officers conducting
4 surveillance?

5 A. Yes, sir, we did.

6 Q. That's a fancy word. What does surveillance mean in
7 plain English?

8 A. Surveillance is basically an individual getting in a
9 location which is advantageous to the area that we are
10 conducting observations, surveillance, watching, using
11 binoculars, things of that nature, to be able to watch that
12 area and watch individuals in that area and what their
13 activities are.

14 Q. Would surveillance be done from a hiding place?

15 A. Yes, sir, it would be.

16 Q. And did you have a primary surveillance officer?

17 A. Yes, sir, we did.

18 Q. And did you have other officers around the area?

19 A. Yes, sir, we did.

20 Q. Your primary surveillance officer, did he communicate
21 to you some things that he saw that had aroused his
22 suspicion?

23 A. Yes, sir, he did.

24 Q. And did you go over to Hall Street Apartments, go into
25 the parking lot yourself acting upon his suspicions and what

1 he had seen?

2 A. Yes, sir, we did.

3 Q. Now, did you have another officer with you?

4 A. Yes, sir, I did.

5 Q. And whereabouts? Which apartment did you want to go
6 talk to folks?

7 A. The location that was described to us, as far as an
8 individual in a black jacket and blue jeans coming out and
9 meeting with vehicles, the individual that was coming out
10 that was described to us was actually in the area and off
11 the porch of 122 Hall Street Apartments. *Porch*

12 Q. Apartment 122?

13 A. Yes, sir.

14 Q. I'm showing you what's been marked as State's Exhibit
15 No. 1 for identification. Do you recognize what's shown
16 there?

17 A. Yes, sir, I do.

18 Q. And what is that?

19 A. That would be the Hall Street Apartments.

20 Q. Okay. Is it a true and accurate picture of what it
21 looks like in the daytime?

22 A. Yes, sir, it is.

23 Q. This case took place at night, I believe?

24 A. Yes, sir, it did.

25 MR. SPRINGS: Your Honor, we do offer into

1 evidence State Exhibit No. 1.

2 MR. MILLS: May I see it?

3 No objection.

4 THE COURT: Admitted without objection.

5 BY MR. SPRINGS:

6 Q. Officer, come on down, please.

7 (Witness off the witness stand)

8 BY MR. SPRINGS:

9 Q. And you say that they were going over to Apartment 122?

10 A. Yes, sir, I did.

11 Q. Point out to the jury where Apartment 122 is located.

12 A. This area right here is Apartment 122, this porch here.

13 Q. All right. And as you and -- what was the other
14 officer's name that was with you?

15 A. Officer Schettler.

16 Q. As you two got over there, approximately -- how many
17 people were out there in that area?

18 A. There were five people. There were five people
19 standing on this porch here.

20 Q. Men, women, or mixed, or what?

21 A. Men.

22 Q. Okay. And you said that you were looking for somebody
23 in a black jacket?

24 A. Yes, sir.

25 Q. And as you rolled up, did you see somebody in a black

Mr. Schettler

1 jacket?

2 A. Yes, sir. Actually we saw two individuals wearing --
3 dressed almost identical.

4 Q. You were interested in someone in a black jacket, I
5 believe you said?

6 A. Yes.

7 Q. Did you know of the two which one that you really
8 wanted to focus on?

9 A. No, sir, I didn't.

10 Q. So you focused on who?

11 A. Both.

12 Q. All right. Why don't you stay right there. I'm going
13 to ask you some more questions in a minute.

14 Did you and Schettler get out of your car?

15 A. Yes, sir, we did.

16 Q. And did you have something identifying you as a police
17 officer?

18 A. Yes, sir, we did. Normally we wear plainclothes, which
19 would be like blue jeans, jackets, things of that nature,
20 almost dressed as yourselves there sitting in the jury box,
21 but we keep our guns in plain view, and we also take our
22 badges and we place them around our neck, as such, and wear
23 them to identify us as police officers. Not only do we also
24 identify ourselves, but normally when we get out on a
25 vehicle stop or we get out with a group of people on the

1 porch, we actually take our flashlight that we have. We had
2 a flashlight. Like this evening when it took place, we will
3 actually shine the light to where they can see the badge, so
4 they do know that we, in fact, are police. We are police
5 officers, other than just telling them we are police
6 officers.

7 Q. Did you tell these five men that you were police
8 officers?

9 A. Yes, sir, we did.

10 Q. And you had your badges out?

11 A. Yes, sir, we did.

12 Q. That's you and Schettler?

13 A. Yes, sir.

14 Q. All right. You can go ahead and retake your seat.

15 (Witness back on the witness stand)

16 BY MR. SPRINGS:

17 Q. I'm showing you what's been marked for identification
18 State's Exhibit 2 and 3. Do you recognize what's shown in
19 those pictures?

20 A. Yes, sir, I do.

21 Q. And what are shown in 2 and 3?

22 A. One is actually showing the entrance into Hall Street
23 Apartments, and the other one is basically an overview of
24 the area once again, just maybe a little bit larger pan-out
25 from the area where the incident occurred.

make sure
they know
they're
Cops.

1 Q. All right. True and accurate pictures of Hall Street
2 Apartments in the daytime?

3 A. Yes, sir, it is.

4 Q. All right.

5 MR. SPRINGS: We would offer State's Exhibit 2 and
6 3 into evidence at this time, Your Honor.

7 MR. MILLS: No objection, Your Honor.

8 THE COURT: Admitted without objection.

9 BY MR. SPRINGS:

10 Q. Tell me about the lighting. As you and Schettler
11 approached the five men on the porch, what was the lighting
12 like?

13 A. The lighting, there is a street light there for the
14 parking lot, but we also had lights from the headlight of my
15 vehicle as we pulled in into the parking place, and we also
16 had our flashlights to illuminate the area and illuminate
17 the individuals that we were dealing with.

18 Q. Okay. Now, the five men, were they on the porch
19 itself?

20 A. Yes, sir, they were.

21 Q. Did you and Schettler approach it?

22 A. Yes, sir, we did.

23 Q. I think you said you identified yourself as a police
24 officer?

25 A. Yes, sir.

1 Q. And as you got up to the porch -- you are saying there
2 were five men. The two men in black jackets, where were
3 they?

4 Well, come on down again. Let's point out on the porch
5 where the two men in black jackets were and where the other
6 three fellows were, if you would, please.

7 (Witness off the witness stand)

8 A. The two in the black jackets were actually here, and
9 the other three were just kind of lined up around this area
10 here, kind of almost like in a horseshoe, where these two
11 were here.

12 BY MR. SPRINGS:

13 Q. And when you first walked up, where did you stand and
14 where did Schettler stand?

15 A. When we first walked up, I actually stood here on the
16 porch more towards the individual who was later identified
17 as Mr. Robinson on this side, and right in this area here
18 would have been where Mr. Patton was, and that's where
19 Officer Schettler was.

20 Q. Okay. Come on back and take a seat.

21 (Witness back on the witness stand)

22 BY MR. SPRINGS:

23 Q. As you get up to the two men in black jackets, did
24 anything catch your attention?

25 A. Yes, sir, you could smell a strong odor of what we call

Stood
on the
porch

1 green mari'juana. It was green marijuana. You could smell
2 it.

3 Q. What's green marijuana?

4 A. It's marijuana that hadn't been smoked. It has a very
5 strong odor to it.

6 Q. What did you say? What's the first thing you said to
7 the two men in black jackets?

8 A. I actually asked them for their identification, which
9 they presented and handed to me, at which time as I was
10 looking at their identification, I advised them that I could
11 smell the odor, a strong odor, of green marijuana coming
12 from about the area where they were standing.

13 Q. All right. Slow down now. You talk too fast.
14 Did you grow up in the south?

15 A. Yes, sir, I did.

16 Q. Slow down.

17 Okay. They handed you identification, both of them?

18 A. Yes, sir.

19 Q. Tell us the names on the identification.

20 A. One was Laquaris Patton and the other was Jomar
21 Robinson.

22 Q. Okay. And they handed the ID to you?

23 A. Yes, sir, they did.

24 Q. So you are holding both ID's?

25 A. Yes, sir. In my right hand, yes, sir.

1 Q. And as you are looking at the identification, are you
2 watching Jomar Robinson and Laquaris Patton?

3 A. Yes, sir, I am.

4 Q. Anything about them that got your attention and gave
5 you any concern?

6 A. Yes, sir.

7 Q. What was that?

8 A. Mr. Robinson had the butt of a pistol hanging out of
9 his right jacket pocket.

10 Q. Now, if Mr. Robinson had had a valid South Carolina
11 concealed carry permit, would he have been required under
12 the law to have said something to you by that point, when
13 you were up there with him?

14 A. Yes, sir, he would have had to actually produced it at
15 the time that he produced his South Carolina identification,
16 produced it along with it, and also advised myself and
17 Officer Schettler that he had a concealed weapons permit and
18 advised us where on his person that weapon was.

19 Q. Did he do that?

20 A. No, sir, he didn't.

21 Q. You saw the butt of a pistol. Did you immediately act
22 on it, or just watch it and hold off at the time?

23 A. I took it in the known. I kept -- I just -- I just
24 kept my eyes on it pretty much the whole time while I was
25 speaking with him.

1 Q. Now, they hand you identification and you see the butt
2 of the pistol sticking out of his jacket pocket. Then what
3 did you say to these two men?

4 A. I advised them that we were going to conduct a Terry
5 frisk or a pat-down search of their person at that time.

6 Q. Okay. And when you say that, what did Mr. Robinson do?

7 A. Mr. Robinson then began to back away from me, like he
8 was going to back up into -- basically back up against the
9 wall of the building.

10 Q. Did that give you any concern?

11 A. Yes, sir, it did.

12 Q. Did that scare you?

13 A. Yes, sir, it did.

14 Q. As he starts to back up after you said that you were
15 going to pat him down or frisk him or search him, what did
16 you do?

17 A. I grabbed the weapon.

18 Q. Did you grab it slow and easy --

19 A. No, sir.

20 Q. -- or did you go at it quick?

21 A. I went at it very quick.

22 Q. Did you get your hand on it?

23 A. Yes, sir, I did.

24 Q. And as you are -- as you are lunging for the pistol,
25 what's Jomar Robinson doing?

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Jamar
Terry

Scared Him.

1 A. He's also attempting to grab the pistol.

2 Q. Well, whose hand got to the gun first?

3 A. Mine did.

4 Q. And as your hand goes on the gun, where is his hand
5 going?

6 A. On top of mine.

7 Q. And then what happened?

8 A. A fight ensued. We began to fight.

9 Q. You kept your hand on the gun?

10 A. Yes, sir, I did.

11 Q. As you are fighting Mr. Robinson and you have got your
12 hand on the gun, what finally kind of brought that to a
13 head?

14 A. Well, I initially -- once I grabbed the gun, I actually
15 grabbed for my service weapon also, because in fear he did
16 have his hand on top of mine. If he was able to gain
17 control of that weapon, then a potential shooting would
18 occur at that time. I finally just got tired of basically
19 being hit by Mr. Robinson. When he finally did take his
20 hand off the gun, then he began to hit me, at which point I
21 took my hand off my weapon and I grabbed his jacket and I
22 ripped his jacket off of him.

23 Q. What kind of -- what was the jacket made of, what kind
24 of material?

25 A. Like nylon. It's one of those -- if you are familiar,

1 and some of the kids wear them these days, they're like the
2 black bomber jackets. They are orange on the inside and
3 they kind of short. Some kids wear them real oversized, but
4 they are made out of a nylon material, real kind of slick
5 feeling also, not only to the touch, but on the inside and
6 outside as well.

7 Q. Like a flight jacket?

8 A. Yes, sir.

9 Q. The pockets in those flight jackets, are they deep
10 pocket or just kind of a hand-warming pocket?

11 A. Kind of a hand-warming pocket.

12 Q. Did you get the jacket off?

13 A. Yes, sir, I did.

14 Q. And did you hold onto the jacket or did it go all the
15 way to the ground?

16 A. No, sir. When I initially went for the weapon, I
17 advised Officer Schettler that there was a gun, and I
18 repeated it several times, I'm sure, in the course of that
19 fight. It all went so fast.

20 Q. What are you yelling? Are you yelling or are you --

21 A. No, I'm yelling, yes, sir.

22 Q. What are you yelling to Schettler?

23 A. I'm yelling "gun. Gun." And I -- and I -- and I
24 yelled it probably several times at that point in time, but
25 I did have control of it.

1 Q. Okay.

2 A. We were fighting. I advised the subject he was under
3 arrest, you know.

4 Q. Now, don't use all that police talk. Who did you tell
5 was under arrest?

6 A. Mr. Robinson.

7 Q. Mr. Robinson?

8 A. Yes, sir.

9 Q. All right. Let's go back to the jacket. You peel the
10 jacket off?

11 A. Yes, sir.

12 Q. As the jacket comes off, did you hold onto it, or did
13 it go to the ground?

14 A. It went to the ground.

15 Q. And the jacket comes off of him, what does Jomar
16 Robinson do?

17 A. He flees the scene.

18 Q. All right. What did you do?

19 A. I ran after him.

20 Q. And where was the jacket as you ran after him?

21 A. It was on the ground directly behind Officer Schettler.

22 Q. All right. So you chased Mr. Robinson?

23 A. Yes, sir, I did.

24 MR. SPRINGS: Can we get the lights, Madam Clerk?

25 BY MR. SPRINGS:

1 Q. Come on down here, Lieutenant. Let's look at an aerial
2 photograph.

3 (Witness off the witness stand)

4 MR. MILLS: May I move over here?

5 THE COURT: Yes, sir.

6 MR. MILLS: Thank you.

7 BY MR. SPRINGS:

8 Q. Now, this is a pointer. Point out Hall Street
9 Apartments where --

10 A. This area here.

11 Q. -- this took place.

12 A. This area here would be the Hall Street Apartments.
13 This area here.

14 Q. Okay. And the particular apartment where the five men
15 were on the porch and you got into the struggle with Jomar
16 Robinson, where was that?

17 A. It would be right here.

18 Q. You said he ran and you chased him. Which way did he
19 run?

20 A. He actually ran here and ran out across the front of
21 the building. Came back in, jumped the fence here at a
22 church. This is a church. He jumped the fence. Jumped the
23 fence and we came back out here to the ditch area and I was
24 able to apprehend him here at the ditch.

25 Q. You caught up with him?

Q-
to
porch

1 A. Yes, sir.

2 Q. Once you caught up with him, did he submit to being
3 placed under arrest and that was the end of it?

4 A. No, sir.

5 Q. Well, what happened when you caught up to him?

6 A. He fought again and he scratched me across the right
7 side of my face. Also had -- I don't know if the actual
8 black eye took place during the scuffle for the gun or when
9 we started fighting in the ditch.

10 Q. I understand.

11 (Witness on the witness stand)

12 BY MR. SPRINGS:

13 Q. Did you eventually get him under control?

14 A. Yes, sir, I did.

15 Q. Did you have to shoot him?

16 A. No, sir, I didn't.

17 Q. Did you have to spray him with pepper spray?

18 A. No, sir.

19 Q. Did you have to hit him with a blackjack?

20 A. No, sir.

21 Q. You just wrestled him?

22 A. Yes, sir.

23 Q. Okay. Did you handcuff him?

24 A. Yes, sir, I did.

25 Q. And you said he was beating on you. Were you seriously

1 injured?

2 A. No, sir, not seriously, but I did have cuts to the
3 right side of my face and some bruising just up underneath
4 my left eye.

5 Q. I'm showing you what's been marked for State's Exhibit
6 No. 5 and 6 for identification. Do you recognize those
7 pictures?

8 A. Yes, sir, I do.

9 Q. And who is that?

10 A. That would be me.

11 Q. And when were those taken?

12 A. Right after Mr. Robinson was arrested and we got back
13 to the office at the Moss Justice Center. Probably within
14 twenty to thirty minutes of the incident.

15 Q. Okay. Are they true and accurate pictures of your
16 face?

17 A. Yes, sir, they are.

18 Q. After the scuffle?

19 A. Yes, sir.

20 MR. SPRINGS: Your Honor, we do offer State's
21 Exhibit 5 and 6 into evidence.

22 MR. MILLS: Without objection, Your Honor.

23 THE COURT: Admitted without objection.

24 BY MR. SPRINGS:

25 Q. And I asked you if you were seriously injured. Was Mr.

1 Robinson seriously injured after this that?

2 A. No, sir, he wasn't.

3 Q. I'm showing you State's Exhibit 6, which doesn't want
4 to focus on.

5 Come on down and point out the scratches on your face,
6 if you would, please, sir.

7 (Witness off the witness stand)

8 BY MR. SPRINGS:

9 Q. Okay.

10 A. Here and here.

11 Q. All right. While you are there, let me show you
12 State's Exhibit 5. Point out any scratches that --

13 A. There and there.

14 Q. Okay. Go ahead and retake your seat, please.

15 (Witness back on the witness stand)

16 BY MR. SPRINGS:

17 Q. Did you bring Mr. Robinson back to Apartment 122, to
18 that area in the front there where you had first met him?

19 A. Yes, sir, I did.

20 Q. Now, the other guy in the black jacket, I think you
21 said his name was Patton?

22 A. Yes, sir.

23 Q. Did he get arrested that night?

24 A. Yes, sir, he did.

25 Q. Is his case concluded?

1 A. Yes, sir, it is.

2 Q. And the other three fellows, were they arrested?

3 A. No, sir.

4 Q. Were they let go?

5 A. Yes, sir, I believe they were.

6 Q. Very good.

7 Now, from the place where you came upon Jomar Robinson
8 there in front of 122 Hall Street, is there a public park
9 and/or playground within a half mile of that place?

10 A. Yes, sir, there is.

11 Q. What would be the name of that public park or
12 playground?

13 A. York Recreation Complex.

14 Q. And that's a public park?

15 A. Yes, sir, it is.

16 Q. And what sort of facilities, entertainment and
17 recreational facilities, do they have there?

18 A. It's a softball park, and they also have different
19 things there for the kids to play on. They had a walking
20 track also.

21 Q. Okay. What is the distance from where you came upon
22 Jomar Robinson and saw the pistol sticking out of his
23 pocket, from that place to the edge of the park, what's that
24 distance?

25 A. .3 miles, or three-tenths of a mile.

1 Q. Okay. I'm showing you what's been marked State's
2 Exhibit 8. Describe what that shows.

3 A. This is basically a road map of the inter-city limits
4 of York city.

5 Q. Does it depict the areas that we have been talking
6 about here today, Hall Street and the York Recreational
7 Complex?

8 A. Yes, sir, it does.

9 Q. Is it an accurate road map? Are you familiar with that
10 area?

11 A. Yes, sir.

12 MR. SPRINGS: Your Honor, we do offer State's
13 Exhibit 8 into evidence.

14 MR. MILLS: Without objection, Your Honor.

15 THE COURT: Admitted without objection.

16 BY MR. SPRINGS:

17 Q. Let me get you to come down one more time.

18 (Witness off the witness stand)

19 BY MR. SPRINGS:

20 Q. All right. Would you find Hall Street and where the
21 Hall Street Apartments are?

22 A. Hall Street Apartments are here.

23 Q. Okay.

24 A. The end of the property for Hall Street Apartments
25 stops roughly right in here, just before the corner of

1 Charlotte Street and where the church is that sits here on
2 the corner.

3 You would follow Hall Street across Charlotte, across
4 McClain Street, across Ross Cannon Street, and then Hall
5 Street actually turns into Second Street, and then you have
6 the park there. The property line to the park is there just
7 at the end of Second Street.

8 Q. That dark area there next to --

9 A. Yes.

10 Q. Right next to you, that's the park?

11 A. Yes, sir, it is.

12 Q. Give me the measurement again. You said --

13 A. Three-tenths of a mile. .3 miles.

14 Q. Less than a half mile?

15 A. Yes, less than a half mile.

16 Q. Very good. Very good.

17 Go ahead and retake your seat.

18 (Witness back on the witness stand)

19 MR. SPRINGS: May we approach, Your Honor?

20 THE COURT: Yes, sir.

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 MR. SPRINGS: Beg the court's indulgence, Your
24 Honor.

25 (Off the record)

1 (Back on the record)

2 (Photograph marked as State's Exhibit No. 12 for
3 identification)

4 BY MR. SPRINGS:

5 Q. Lieutenant, I'm showing you what's been marked State's
6 Exhibit 12. Do you recognize who is in that picture?

7 A. Yes, sir, I do.

8 Q. Who is that in that picture?

9 A. That's Jomar Robinson.

10 Q. Is that the man that had the pistol sticking out of his
11 pocket and fought you and you chased and so forth?

12 A. Yes, sir, it is.

13 Q. Is that a true and accurate picture of what he looked
14 like?

15 A. Yes, sir, it is.

16 Q. Did you get a pretty good look at him that night?

17 A. Yes, sir.

18 MR. SPRINGS: Your Honor, we do have offer into
19 evidence State's Exhibit 12.

20 THE COURT: Show it to counsel, please.

21 MR. MILLS: No objection.

22 THE COURT: Admitted without objection.

23 BY MR. SPRINGS:

24 Q. Thank you, lieutenant.

25 If you would, answer any questions that the defense

1 attorney has for you.

2 CROSS EXAMINATION BY MR. MILLS:

3 Q. Officer Ligon?

4 A. Yes, sir.

5 Q. You smelled green marijuana?

6 A. Yes, sir.

7 MR. MILLS: Your Honor, I would like to be able to
8 open this up, please.

9 MR. SPRINGS: May we approach?

10 THE COURT: You may.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 MR. SPRINGS: Are you going to go ahead and offer
14 that in?

15 MR. MILLS: Your Honor, we will offer this into
16 evidence. This is what the State claims came off of Jomar
17 Robinson.

18 MR. SPRINGS: This is in evidence as a defense
19 exhibit.

20 THE COURT: Let the record reflect that -- and
21 this is -- I understand that this is alleged to be marijuana
22 that was seized. And --

23 Well, now, wait a minute. What do you want to
24 mark? Do you want to mark the whole bag, or just that
25 little bag? What?

1 MR. MILLS: Whichever.

2 MR. SPRINGS: The whole bag, please, defense
3 exhibit whatever.

4 THE COURT: And this -- for the record, this is
5 alleged to be marijuana, and the defense is moving to admit
6 this into evidence without establishing any kind of chain of
7 custody, etcetera, and they are moving to admit it into
8 evidence, and the court is granting their motion to admit
9 it. The State is not opposed.

10 MR. SPRINGS: No objection.

11 (Drugs marked and admitted into evidence as
12 Defendant's Exhibit No. 1)

13 BY MR. MILLS:

14 Q. Now, I believe when you claimed that you got this pot
15 out of a jacket --

16 A. Marijuana.

17 Q. -- it's in a little baggy that was tied up tight,
18 right?

19 A. Yes, sir.

20 Q. Okay. And that's that same --

21 A. Actually I didn't recover the marijuana. Officer
22 Schettler did.

23 Q. Okay. This little baggy, right? In this little thing
24 right? Is that true?

25 A. Yes, sir.

1 Q. All right. And so -- and this is a plastic baggy,
2 right, it's in right now, correct?

3 A. Yes, sir.

4 Q. All right. And it was in his pocket, right? In Jomar
5 Robinson's pocket you claim, right?

6 A. I don't claim --

7 MR. SPRINGS: The term claim, that's
8 argumentative. That's the testimony.

9 BY MR. MILLS:

10 Q. Well, what you say?

11 A. I don't claim. My -- once again, sir, I did not locate
12 the marijuana in Mr. Robinson's jacket. I located a pistol.

13 Q. Sure. Can you smell --

14 A. I can smell the strong odor of marijuana.

15 Q. Can you smell it now?

16 A. No, sir.

17 Q. Really?

18 A. No, sir.

19 Q. How about now?

20 A. No, sir. What you have to do is you have to actually
21 probably let that odor sit in your pocket the way Mr.
22 Robinson did, which probably sat in his pocket, or even Mr.
23 Patton's packet for --

24 MR. MILLS: Your Honor, I'm not even asking a
25 question of this witness. He's just going off.

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1 THE COURT: He's answering. He's answering your
2 question, sir.

3 MR. MILLS: I asked him if he could smell it.

4 THE COURT: Yes, sir, and he said he could not
5 smell it like it was, but he --

6 MR. MILLS: Then he's talking about what Mr.
7 Jomar --

8 BY MR. MILLS:

9 Q. Okay, let me ask you that. How long you know it's been
10 in Jomar's pocket?

11 A. I don't know.

12 Q. So it's just a guess you are making right now, isn't
13 it?

14 A. Yes, sir.

15 Q. So you have no basis to make that statement, other than
16 just trying to convince them about something that you had no
17 idea about?

18 A. Actually I do, sir.

19 Q. How do you know how long it's been in there?

20 A. Actually when you train a drug dog -- we can go back.

21 This would be the same principle as training a dog, sir.

22 When you place out marijuana, or cocaine, or

23 methamphetamine, or any scent article thereof, you give that

24 article itself a grace period in order to -- for that scent

25 to get in the air, for that scent to soak in or absorb into

1 a rag, or anything of that nature.

2 Subsequently -- or essentially that's the same thing
3 that people who carry marijuana or drugs around in their
4 pocket. If they have them in there for some period of time,
5 it's going to be just like that scented article or marijuana
6 that you put out for a dog. It's going to sit there. It's
7 going to gain a scent. And eventually that scent is going
8 to -- it's going to be a very strong aroma.

9 Not only to further that, you have marijuana that's
10 probably been sitting in evidence for well over -- for
11 almost a year now. And as time goes on, not only does the
12 marijuana itself start to break down and deteriorate, but
13 that smell also lessens too.

14 Q. Even when it's in a sealed bag?

15 A. Yes, sir.

16 Q. In a sealed evidence bag?

17 A. Yes, sir.

18 Q. Now, you talked about the dogs and all that training
19 and all that they have. And if I smoked a joint and I got
20 out and I put my hand on my car, the dog could pick it up on
21 the handle, couldn't he?

22 A. Yes, sir, he could.

23 Q. If the smell got on my hands, right?

24 A. Yes, sir, he could.

25 Q. And you could -- now, a dog has like well over 250

1 times the olfactories, the smell capacity of a human, right?

2 A. Yes, sir, he does.

3 Q. And they are trained, right?

4 A. Yes, sir.

5 Q. And for a very specific purpose?

6 A. Yes, sir.

7 Q. You are not trained like that, are you?

8 A. Actually I'm trained as far as in drug identification
9 and also smells of drugs, yes, sir. I -- essentially I can
10 be trained. Not to where I go up and sniff a box and
11 scratch it, but, yes, sir, I'm trained.

12 Q. But there is no records showing the veracity as to how
13 many times you successfully hit on drugs, is there?

14 A. I guess that could go back to the arrests that I have
15 made, as far as smelling the strong odor of marijuana in
16 vehicles.

17 Q. There is no record, is there, sir?

18 A. No, sir.

19 Q. Is there any document anywhere that could show your
20 veracity and your ability to smell a bag of pot in
21 somebody's jacket from three feet away, when it's in a
22 plastic bag tied up?

23 A. Yes, sir, you asked me if there was any record. I
24 referred to that record being me stopping vehicles and
25 smelling a strong odor of marijuana coming from the cars and

1 also searching those vehicles and locating marijuana in that
2 car. So I guess -- I guess in your sense of saying record
3 or tests, I guess that could -- that could --

4 Q. I'm talking about training, the kind of things when you
5 get a dog certified. You are not certified to sniff out
6 marijuana, are you?

7 A. No, sir, I'm not.

8 Q. I didn't think so.

9 A. Okay.

10 Q. You talked about a report. In fact, you wrote out a
11 report in this case, didn't you? A summary?

12 A. A summary, yes, sir.

13 Q. You did.

14 And in that summary you are trained to write out the
15 important facts about a case, right?

16 A. Yes, sir.

17 Q. And you want to put the most significant facts in
18 there? You don't want to leave anything important out, do
19 you?

20 A. No, sir, you try not to.

21 Q. And you write it out, you read it over --

22 A. Yes.

23 Q. -- and then you type it up, is that correct, sir?

24 A. Actually I type it as I'm --

25 Q. Okay.

1 A. Yes, sir.

2 Q. You edit it as you go?

3 A. Yes, sir.

4 Q. Now, originally you wrote in your report that you heard
5 that information that one individual was going out to a car,
6 correct?

7 A. Yes, sir.

8 Q. And that individual that y'all identified was Laquaris
9 Patton, wasn't it?

10 A. Yes, sir.

11 Q. Okay. So this black jacket -- you didn't say anything
12 about black jacket anywhere in here, did you?

13 A. No, sir.

14 Q. Anywhere in your incident report, you didn't say
15 anything about a black jacket?

16 A. No, sir. No, sir, I don't recall. No, sir.

17 Q. Your report said you saw one individual going out to
18 the cars that was later identified as Laquaris Patton,
19 correct?

20 A. Yes.

21 Q. So there is no information about Jomar Robinson going
22 out to any car?

23 A. No, sir, there is not.

24 Q. Okay. Now, Mr. Springs indicated, I believe it was in
25 Exhibit 1 --

1 Could I ask you to come down, Officer Ligon?

2 A. Yes, sir.

3 Q. Thank you.

4 (Witness off the witness stand)

5 BY MR. MILLS:

6 Q. Now, I think you indicated that you were over -- you
7 came up and you confronted these individuals right here, is
8 that correct?

9 A. Yes, sir.

10 Q. And you talked about running. And you ran through
11 here. Is that where he took off through?

12 A. No, sir. He didn't run until after I had grabbed the
13 weapon and the fight ensued and we wound out here in the
14 yard.

15 Right in here is where I actually ripped the jacket
16 from him and he took off from me.

17 Q. So through that post, is that it?

18 A. Yes, sir, through the post here. The fight ensued and
19 then the jacket gets ripped off here.

20 Q. You can't really quite see it to well.

21 A. Bush.

22 Q. There is a big old bush there? Is that what it is?

23 A. No, actually it's not that big of a bush.

24 Q. It's a rose bush, isn't it?

25 A. I couldn't tell you.

1 Q. You couldn't?

2 A. No, sir, I couldn't tell you whether it was a bush or
3 not.

4 (Witness back on the witness stand)

5 A. I mean a rose bush, that is, sir.

6 BY MR. MILLS:

7 Q. Not a big old spinally rose bush? You don't know that?

8 A. No, sir, I don't.

9 Q. Okay. Do you dispute that?

10 A. No, sir. I wouldn't dispute it, no, sir.

11 Q. Now, you said somebody was observing cars going in and
12 out through binoculars in the woods, right?

13 A. Yes, sir.

14 Q. So they had a clear vision about what was going on and
15 could see?

16 A. Yes, sir, the location therefrom to probably the
17 doorway there, would may be thirty-five yards.

18 Q. And you had -- and this was a planned operation, wasn't
19 it?

20 A. Yes, sir.

21 Q. You got a lot of people out there?

22 A. Yes, sir.

23 Q. You had time to get the equipment that you needed to
24 get together?

25 A. Yes, sir.

Planned
operation

1 Q. Set up proper surveillance, right?

2 A. Yes, sir.

3 Q. And included in that you could have gotten a camera and
4 you could have videoed what you were watching, correct?

5 A. Yes and no, based on -- depending on the area and how
6 close the officer was in that area. Getting any back light
7 or anything like that off of a camcorder could pose a
8 potential threat or a harm to that officer in that area, in
9 that particular area.

10 Q. Some back light? What, it might reflect off the lens
11 or something?

12 A. No, sir. Like camcorders, you know how they got the
13 little eyepiece and they got the screen that flips up and
14 stuff, yes, sir.

15 Q. You can put a little towel over that?

16 A. You probably could.

17 Q. And then we could look at whatever you are saying you
18 saw. The jury could see it too, right?

19 A. Yes, sir, they could.

20 Q. But we can't. We just have to base it on what somebody
21 says they said, right?

22 A. Yes, sir.

23 Q. Now, I would like to talk a little bit about this
24 confrontation with Mr. Robinson that you described.

25 I'm sorry, if you could come down for me, please. I

1 would like to just see if I can understand.

2 (Witness off the witness stand)

3 BY MR. MILLS:

4 Q. You indicated that the -- well, take that back. I
5 jumped ahead of myself. I'm sorry.

6 (Witness back on the witness stand)

7 BY MR. MILLS:

8 Q. The way I heard you describe it, you and Officer
9 Schettler pulled up, correct?

10 A. Yes, sir.

11 Q. And did you come in there racing pulled up, or just
12 come in just like a normal --

13 A. Very normal, very low key, what you would consider low
14 key, just like as if we were parking to go inside of an
15 apartment.

16 Q. Just like you or any other resident coming in and out
17 of that parking lot, correct?

18 A. Yes, sir.

19 Q. What were you driving?

20 A. At that time I was driving a gray Chevy Trailblazer.

21 Q. Okay. And that would have darked-out windows
22 everywhere, right?

23 A. Yes, sir, it would.

24 Q. And so as you were walking -- coming in with this, just
25 casually get out of the car, is that right?

1 A. Yes, sir.

2 Q. No big urgency, correct?

3 A. No, sir.

4 Q. And you are identifying yourself as police officers.

5 You have got your badge up front, correct?

6 A. Yes, sir.

7 Q. And you have got this light shining in the area and all
8 that kind of stuff, right?

9 A. Yes, sir.

10 Q. Okay. So they could clearly see you coming?

11 A. Yes, sir.

12 Q. And they could clearly tell you you were police?

13 A. Yes, sir.

14 Q. All right. And if they wanted to leave at that point,
15 they could just leave?

16 A. Yes, sir.

17 Q. Now, you indicated that you had this smell of this
18 green marijuana that wasn't burning, but you were smelling
19 so strongly and that you wanted to search him, correct? You
20 wanted to search Mr. Robinson?

21 A. Yes, sir, I advised I was going to do a pat-down,
22 because that was -- I smelled the green odor of marijuana.
23 After receiving their identification from them, I could
24 still smell the green odor of marijuana, but I also noted
25 the weapon in Mr. Robinson's jacket. That was more

1 concerning to me at that point in time than the marijuana.

2 Q. Okay. Well, I know there were five other people --
3 there were four people out there, right?

4 A. Yes.

5 Q. I believe when we talked previously, you told me that
6 you could tell that that odor of marijuana was emanating
7 from either Mr. Patton or Mr. Robinson, but not the other
8 three?

9 A. Yes, sir. They were standing off to the side, Mr.
10 Patton, Mr. Robinson. If you pulled the picture back up,
11 they were more towards the door of 122, and pretty much the
12 other three somewhat I guess -- I guess if you want to say
13 they separated themselves from those two.

14 Q. Okay. Well, that's the porch size, right?

15 A. Yes, sir.

16 Q. Everybody is still on that porch, right?

17 A. Yes, sir, you can see there is two people sitting in
18 chairs there as it is and some kind of little car or
19 something on the porch there.

20 Q. But everybody is still on the porch right there?

21 A. Yes, sir. Yes, sir.

22 Q. You can distinguish, because your sense of smell is
23 good enough that you can distinguish where it's coming from
24 amongst those five people?

25 A. Yes, sir.

7-17-7
X
door
122
X
122
X
Chair or
to
porch

1 Q. Now, you walked up there. They had an opportunity to
2 see you, but, of course, Mr. Robinson is still letting this
3 gun just hang out open, right?

4 A. Yes, sir.

5 Q. He is not doing anything to conceal it, just letting it
6 hang out there. The police are coming up and it's not a
7 problem. And you indicated that when you attempted to
8 search him, he stepped back, and at that point he felt you
9 needed to go and secure that gun?

10 A. Yes, sir.

11 Q. Is that right?

12 A. Yes, sir.

13 Q. Up to that point you didn't feel the need to go ahead
14 and secure that gun to protect you and your officer?

15 A. First of all, like we spoke about earlier, action is
16 quicker than reaction. If I would have made it known, or
17 even at that time with that circumstance that I knew that
18 gun was there or hinted to that in anyway, shape or form, it
19 could have -- Mr. Robinson could have went for it right then
20 and there, when I wasn't actually in a position.

21 As I talked to Mr. Robinson, I slowly positioned myself
22 in a way to where I could get that gun, basically, because
23 at the time we was initially talking and I initially seen
24 the gun, I wasn't in an advantageous position to deal with
25 that and my action to that weapon might have not been as

1 quick as his reaction, but generally action is quicker than
2 reaction.

3 Q. Okay. So like when you are up close to him and he is
4 handing you his ID, you are not in the position to grab that
5 gun in his right hand -- I mean, right there when you are
6 taking that position, you are right there? While he's
7 distracted with the things, you couldn't get it quickly at
8 that point?

9 A. May I come down?

10 Q. Sure, please.

11 (Witness off the witness stand)

12 A. When I positioned myself with Mr. Robinson, I asked him
13 for his ID. We are about this far apart. This is the
14 normal -- this is the normal distance between me and you.
15 That way if he does something, if he comes at me, I have
16 somewhat time to react.

17 BY MR. MILLS:

18 Q. And you have seen the gun at this point?

19 A. No, sir, not at this point.

20 Q. Okay.

21 A. I get the -- I get the ID from him. I have got my
22 light and I'm looking at it. I'm scanning. I kind of step
23 over to the left. At that time I seen the gun in Mr.
24 Robinson's right pocket and then I start talking to him. As
25 I'm talking to him, I'm slowly easing towards Mr. Robinson,

At the time he asked for ID, he got the gun.

1 which at this time --

2 Q. Were you looking at him like you are doing me now?

3 A. No, sir, I'm watching the gun.

4 Q. So you are talking to him, but you were looking at the
5 gun?

6 A. Yes, sir, he thinks I'm looking at the ID, but I'm
7 watching the gun.

8 Q. But he thinks you -- he can't see your eyes looking at
9 the gun from where he is?

10 A. I don't know. I wasn't looking at his eyes. I
11 couldn't tell you.

12 Q. Well, I just thought you just told me "he thought I was
13 looking at the ID"?

14 A. I said I'm sure -- I'm sure he -- I can only assume
15 that he thought I was looking at the ID.

16 Q. Okay.

17 A. I apologize.

18 Q. Okay.

19 A. So I'm sitting here, I'm watching the gun, I'm looking
20 at the ID, I'm watching the gun, looking at the ID, at which
21 time I said, well -- I took the ID, I stuck the ID in my
22 back pocket. I said "gentlemen," I said "I'm going to do a
23 Terry frisk. I'm going to pat y'all down for your weapons,"
24 at which time he went to back up. When he started to back
25 up, that's when I was close enough to grab the gun.

1 Q. So you told him that you were going to search him so
2 you wouldn't tip him off?

3 A. No, sir. I was already close enough to where I could
4 grab the gun at that point in time.

5 Q. Okay.

6 A. If I would have been back here and said "well, I'm
7 going to pat y'all down for weapons," and if he would have
8 went to take that step back, that would have meant he would
9 have been that much further from me to try and reach out and
10 grab that gun, versus me being here to reach out and grab
11 the gun.

12 Q. Oh, I understand, but I thought what you were just
13 saying here in front of the jury a moment ago were right
14 here, you have taken the ID, you were watching the gun --

15 A. Yes, sir.

16 Q. -- and then you had the opportunity right there at that
17 point to get on him.

18 So why are you telling him you are going to search him
19 and alert him to the fact that you are now going for the
20 gun, instead of just going for the gun?

21 A. I don't know. I can't tell you.

22 Q. All right.

23 (Witness back on the witness stand)

24 BY MR. MILLS:

25 Q. Well -- sorry, I got you down too soon.

1 (Witness off the witness stand)

2 BY MR. MILLS:

3 Q. You said, regardless, though, you grabbed the gun,
4 correct?

5 A. Yes, sir.

6 Q. And it was in his right pocket?

7 A. Yes, sir.

8 Q. And you grabbed it with your right hand, is that
9 correct?

10 A. My left hand.

11 Q. Left hand, excuse me, I apologize.

12 He got his hand on top of yours?

13 A. Yes, sir.

14 Q. And then you said that you were concerned about your
15 weapon, you didn't want him to have a chance to grab that?

16 A. Yes, sir.

17 Q. So essentially you were in a tough position at this
18 point?

19 A. Oh, yes, sir.

20 Q. Okay. Because you have got a hand on his gun and you
21 are trying to protect your gun and he's free to just go
22 after you?

23 A. Yes, sir, he was.

24 Q. And that's what he does, right?

25 A. Yes, sir, he does.

1 Q. He starts whaling on you?

2 A. Yes, sir.

3 Q. He starts hitting you pretty bad?

4 A. He hit me in the chest. He's hitting me -- I mean, he
5 was just -- he was -- he was trying to get away at that
6 point, I believe.

7 Q. Okay. Now, was he fighting with you and hitting you,
8 like you said on direct, or was he trying to get away at
9 that time?

10 A. No, he was fighting me, but then when I grabbed his
11 jacket, at that point in time he was trying to get away.
12 When he took his hand -- when he took his hand off -- and it
13 happened all so quick. I mean, we can -- I guess we can sit
14 here and scuffle in this courtroom and you tell me --

15 Q. I prefer not to.

16 A. -- exactly once you -- once you -- once you realize
17 what's going on and taking place. I mean, it's a split
18 second, a split second reaction, and I couldn't -- I
19 couldn't begin to tell you --

20 Q. Sure, but you have got him there --

21 A. I got him here.

22 Q. -- and you are saying --

23 A. He starts --

24 Q. He's like --

25 A. When he takes that hand off that gun --

1 Q. And he's attacking you?

2 A. -- and he grabs, I grab him.

3 Q. Okay.

4 A. -- and we go. And at that point he realizes I think
5 it's time for him to go.

6 Q. Okay.

7 A. He comes out of the jacket. I rip his jacket off.

8 Q. He comes out of the jacket?

9 A. Yes.

10 Q. Okay.

11 A. But that's kind of -- like I said --

12 Q. It's not a form-fitting jacket?

13 A. It's not a form-fitting sports coat.

14 Q. Let's do this.

15 It's not quite a bomber jacket, but is this kind of
16 what we are talking about is these side pockets?

17 A. Yes.

18 Q. And this kind of thing?

19 A. Slick, yes, sir.

20 Q. And this kind --

21 Now, your headlights were on him, right?

22 A. Uh-huh.

23 Q. Okay. And you told me as you walked up it was a black
24 jacket?

25 A. Yes, sir.

1 Q. Is there any doubt in your mind about that?

2 A. No, sir, there's not any doubt in my mind about that.

3 Q. You are sure?

4 A. Yes, sir.

5 Q. Black jacket?

6 A. Yes, sir.

7 Q. No question?

8 A. No question.

9 Q. All right. And so he's got a pistol hanging -- just
10 hanging out?

11 A. Yes, sir.

12 Q. All right. And you go for that?

13 A. Right.

14 Q. And you got this one. He's hitting on you?

15 A. Right.

16 Q. And you grab it and you go. And he's hitting on you?

17 A. Right.

18 Q. Fair enough.

19 Please take your seat.

20 (Witness back on the witness stand)

21 BY MR. MILLS:

22 Q. What happened to your flashlight?

23 A. I dropped it.

24 Q. Oh, okay. When did you decide to drop it?

25 A. Sir?

1 Q. When did you decide to drop it?

2 A. When I --

3 Q. I haven't heard that.

4 A. When I went for the gun.

5 Q. Okay. Now, I think you told me that he went out --

6 I see that you have got a small scratch here. Is that
7 just something permanent that you have?

8 A. No, sir, that's rosacea. I have medicine I have to
9 take.

10 Q. But that's not from Mr. Robinson?

11 A. No, sir, it isn't.

12 Q. The only two scratches we are talking about are right
13 here, right?

14 A. Yes, sir.

15 Q. A little abrasion that goes through here?

16 A. Sir?

17 Q. Right through here, right?

18 A. Yes, sir.

19 Q. And you are telling us -- also when you ran him down,
20 you had a big struggle with him and you fought with him
21 then, too, right?

22 A. Yes, sir, I did.

23 Q. And you have got no bruising on your face, he's got no
24 bruising on his face, and you have got one scratch where he
25 ran by the rose bush, right?

1 A. No, sir.

2 Q. You have more than one scratch?

3 A. I have the scratches on my face, but I don't believe
4 they were ensued by no rose bush. We never got up in a rose
5 bush fighting.

6 Q. Right, but you chased him, as you just testified to
7 this jury, inside that post next to that big bush, which --

8 A. There was no chase. We went off the porch. We went
9 off. And when we went off --

10 Q. Fell off the porch to that little spot?

11 A. No, sir, we didn't fall off the porch. When we
12 struggled, we went off the porch.

13 Q. Okay.

14 A. Just pretty much how me and you cut across the room
15 there.

16 Q. A little distance?

17 A. It's pretty much -- that little dance we did, that's
18 pretty much the little dance that me and him did off the
19 porch, and basically he was in between me and -- if you say
20 that's a rose bush, he was in between me and that bush, so I
21 don't possibly see how I would have been cut by it.

22 Q. You can't possibly see how you got cut, scraped on the
23 right side of your face by bush branches as you go there and
24 struggling with him?

25 A. If that's the case, it would have been on the left

1 side, correct, sir?

2 Q. No.

3 Correct me if I'm wrong, this is where you are. That's
4 the way you are going.

5 A. This is --

6 Q. You are facing this way.

7 A. That's the wall. There is the bush behind you, right?

8 Q. Here is the wall.

9 A. And then we fight and we go off the porch.

10 Q. No, you just said you went through that post. Now you
11 are telling me a different direction.

12 A. The post and the wall is this way, sir. The wall is
13 here. The post is here.

14 Q. Right. The bush is here.

15 A. And we are here.

16 Q. How do you go through there?

17 A. The bush is here behind you --

18 Q. Uh-huh.

19 A. -- to your right. So if we go off the porch and we
20 wind up here --

21 Q. Uh-huh.

22 A. -- how would I hit the rose bush on the right?

23 Q. Well, they heard it the first time that you said it.
24 They can decide.

25 Now, I think Officer Schettler will talk --

1 The jacket was left there and y'all came back there and
2 you had no further searching of the jacket? You had nothing
3 to do with it at that point?

4 A. No, sir, I didn't.

5 Q. One moment, please, Officer Ligon.

6 A. Yes.

7 (Off the record)

8 (Back on the record)

9 MR. MILLS: Thank you, Officer Ligon.

10 MR. SPRINGS: Just one question.

11 THE COURT: One minute, sir.

12 REDIRECT EXAMINATION BY MR. SPRINGS:

13 Q. The defense attorney was asking you about the odor of
14 the marijuana and it being around the defendant Jomar
15 Robinson and Mr. Patton, but you didn't know which one had
16 it?

17 A. No, sir, I didn't.

18 Q. Now, as you go to chase Jomar Robinson, are you aware
19 of whether or not the four men that remained with Schettler,
20 if Patton stayed with him the whole time, or got away for
21 awhile?

22 A. Not until after --

23 MR. MILLS: Objection.

24 A. -- everything had taken place.

25 THE COURT: Wait a minute.

1 MR. MILLS: Objection, unless he's basing it on
2 his present sense impression at the time as opposed to
3 something that he learned subsequently.

4 THE COURT: Well, I think he can only testify as
5 to what he knows or observed. I don't think that he can
6 testify to what somebody else said.

7 MR. SPRINGS: We will take that up with Officer
8 Schettler in the morning.

9 BY MR. SPRINGS:

10 Q. Thank you.

11 MR. SPRINGS: Nothing further.

12 THE COURT: Nothing further?

13 MR. MILLS: No.

14 THE COURT: Thank you, sir. You may stand down.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, it's, by the courtroom clock, a couple minutes
18 after six. We are going to go ahead and recess for the
19 evening. We ran a little longer than normal, but we wanted
20 to finish with this particular witness. I think he had
21 somewhere else to be in the morning and we tried to finished
22 with him. We are going to go ahead and recess for the
23 evening.

24 I want to remind you on the overnight recess not
25 to discuss the case among yourselves or with anyone else,

1 including family or friends. If there should be any media
2 coverage of the trial -- and I'm going to include in that
3 the Internet. I keep, you know, having to remind myself.
4 I'm not much of an Internet person, but I have to remind
5 myself that a lot of people are, so please don't go on the
6 Internet to try to get any information about this case on
7 there as well.

8 Please have a pleasant night tonight. I'm going
9 to ask you to be back in the jury room ready to go in the
10 morning at 9:30. At 9:30. So please have a pleasant night
11 tonight and be back in the jury room at 9:30. Thank you.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Is there any matter we need to take up
15 out of the presence of the jury from either side?

16 MR. SPRINGS: I just wonder if our juror in the
17 red sweatshirt knows how to get hooked up with the sheriff's
18 department. I guess he will figure it out.

19 THE COURT: We told him downstairs, but hopefully
20 he will know to call in. We told him he to call in in
21 advance. We gave him the number to call, so hopefully he
22 will.

23 All right. Anything further?

24 MR. MILLS: Not from defense, Your Honor.

25 THE COURT: Okay. Then we will recess for the

1 evening and try to get started at 9:30. I'll be here before
2 that if something comes up that you need to talk to me. We
3 will try to get started with the trial at 9:30. Thank you.

4 MR. SPRINGS: Your Honor, may I prepare a bench
5 warrant for Jomar Robinson?

6 THE COURT: You may, yes, sir.

7 (Whereupon, proceedings were adjourned to February
8 10, 2009)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2008-GS-46-3141
6 JOMAR ANTAVIS ROBINSON,) 2008-GS-46-3142
7 DEFENDANT.) 2008-GS-46-3143
8) 2008-GS-46-3144
9) 2008-GS-46-3145
10) FEBRUARY 10, 2009
11) YORK, SOUTH CAROLINA

12 (VOLUME II)

13 B E F O R E:

14 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

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17 ATTORNEY FOR THE STATE

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13	S-11	DRUGS		261
14	S-12	PHOTOGRAPH		164
15	S-13	DRUG REPORT	258	
16	S-14	DRUG REPORT		259
17				
18	D-1	DRUGS		166
19				
20	CT-1	LETTER DATED 1/26/09	23	
21	CT-2	DEFENSE REQUESTED VOIR DIRE	200	
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23				
24				
25				

1 (PROCEEDINGS, FEBRUARY 20, 2009)

2 (Defense Requested Voir Dire Examination marked as
3 Court's Exhibit No. 2 for identification)

4 MR. SPRINGS: Your Honor, I would ask if there has
5 been any word from our defendant?

6 MR. MILLS: Not to me.

7 Did y'all find him?

8 MR. SPRINGS: No, they have not.

9 Your Honor, if I may, one quick -- I want to put
10 something on the record. Yesterday during the course of the
11 trial and in front of the jury Mr. Mills wanted to put some
12 marijuana, which has been marked as State's Exhibit 10 for
13 identification for the pretrial hearing, he wanted to go
14 ahead and open the bag and take the marijuana out of the
15 evidence bag and we had a conference at the bench in
16 private, at which -- and I don't want to put words in Mr.
17 Mills mouth, but he essentially said he thought it was good
18 trial strategy, essentially. I think he was -- he wanted to
19 pull out the marijuana because he thought it would reflect
20 on Lieutenant Ligon's veracity. But, anyway, we had a
21 conference at the bench, in which he insinuated it was part
22 of the trial strategy. He thought it was a wise move and he
23 went ahead and offered it into evidence. It's marked, got a
24 sticker on one side now that's says Defendant's Exhibit 1.
25 He did open the bag and did do some things with Lieutenant.

1 Ligon on it. On the other side of the bag is the original
2 State's Exhibit sticker. I would ask that our court
3 reporter at this time remove the State's Exhibit sticker so
4 the jury isn't confused about that.

5 THE MILLS: That's right.

6 (Whereupon State's Exhibit sticker No. 10 was
7 removed from the bag marked as Defendant's Exhibit No. 1)

8 THE COURT: Anything else, gentlemen, before we
9 get started?

10 MR. MILLS: Nothing from the defense, Your Honor.

11 MR. SPRINGS: Nothing from the State.

12 THE COURT: All right. Please bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Good morning, Mr. Foreman, ladies and
16 gentlemen of the jury. I hope had you a pleasant night last
17 night. We are ready to resume with the trial at this time.

18 Counsel, ready to proceed.

19 MR. SPRINGS: Thank you, Judge Alford.

20 We call Sergeant Rayford Ervin.

21 Step over to the Holy Bible, sergeant, and be
22 sworn.

23 SERGEANT RAYFORD ERVIN, JR., having been first
24 duly sworn, testified as follows:

25

1 DIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Sergeant, give us your name, sir.

3 A. Rayford Louis Ervin, Jr..

4 Q. And are you a police officer?

5 A. Yes, sir.

6 Q. Are you one of the older police officers?

7 A. Yes, sir.

8 Q. You have been doing this a while?

9 A. Yes, sir.

10 Q. What assignment do you have? What type of police work
11 do you do?

12 A. I'm employed by the York Police Department, but I'm
13 currently assigned to the York County Drug Enforcement Unit.

14 Q. The narcotics unit?

15 A. Yes, sir.

16 Q. How long have you been working narcotics?

17 A. Ten years in May.

18 Q. Were you involved in an investigation, a narcotics
19 investigation, that resulted in the arrest of Jomar Robinson
20 the night of March 20th, 2008?

21 A. Yes, sir.

22 Q. And that night were you doing some surveillance over at
23 the Hall Street Apartments area?

24 A. Yes, I was.

25 Q. Hall Street Apartments, why that night were you doing

1 surveillance over there? What caused you to be out there in
2 the first place doing surveillance?

3 A. We had received numerous complaints about individuals
4 in the parking lot and on the porches of the apartment
5 complex selling drugs and carrying weapons.

6 Q. What kind of weapons?

7 A. Pistols.

8 Q. Now, March 20th was a Thursday, a Thursday. In your
9 experience, your ten years of experience in narcotics, what
10 are the busiest two days of the week for drug activity?

11 MR. MILLS: Your Honor, I'm going to object,
12 unless -- this is some kind of expert testimony, and I would
13 also object to leading, giving him the date and the day of
14 the week, as opposed to asking him questions directly.

15 THE COURT: All right. Please avoid leading,
16 counsel. You may rephrase.

17 BY MR. SPRINGS:

18 Q. Sergeant, in ten years of experience in narcotics, have
19 you developed an understanding or an observation, a common
20 sense observation, that two particular days of the week
21 every week seem to have more drug dealing activity going on?

22 A. Yes, sir.

23 Q. What days of the week are they?

24 A. It's usually Thursdays and Fridays.

25 Q. So you were doing surveillance. Were you hidden?

Surveillance

1 A. Yes, sir.

2 Q. And were you using anything to help your sight to see
3 the Hall Street area?

4 A. Yes, sir, I was using a pair of binoculars. *Binoculars*

5 Q. All right. And about what time period were you out
6 hidden with your binoculars watching the Hall Street
7 Apartments?

8 A. I'm going to say around ten p.m.. *10:00pm*

9 Q. All right. And did something get your attention,
10 arouse your suspicion, something that you were seeing over
11 there?

12 A. Yes, there was vehicles pulling up. They would exit
13 the vehicle. Some of the individuals were, would walk
14 towards the apartments and an individual would come out and
15 either meet them out in the parking lot or meet them at
16 their vehicles, stay probably a short brief time, maybe a
17 minute or two, and then get in their vehicles and leave, and
18 that individual would walk back from where he was standing.

19 Q. And the individual going to meet the folks that drove
20 in in cars, was he for demand?

21 A. The best I could tell yes, sir.

22 Q. That individual that went to meet the people in the
23 car, was he by himself or was he part of a group?

24 A. There was some other individuals standing on a porch.
25 And once he would meet with the individuals, he would go

1 back to the porch.

2 Q. And how many cars did you come -- did the cars leave?

3 A. Yes, sir.

4 Q. So these cars would come in, the man would meet with
5 them for a very brief period of time and then they would
6 leave?

7 A. Yes, sir.

8 Q. And in your ten years of experience in narcotics, have
9 you seen that activity like that before?

10 A. Yes, sir.

11 MR. MILLS: Your Honor, asked and answered;
12 bolstering the witness; repeating his testimony as if it's a
13 question. I would ask him just --

14 THE COURT: Overruled. You may proceed, sir.

15 BY MR. SPRINGS:

16 Q. In your ten years of experience in narcotics, had you
17 with your own eyes seen activity like that?

18 A. Yes, sir.

19 Q. And in your ten years of experience in narcotics, what
20 did you, in your experience, see that kind of activity
21 relate to?

22 A. In my experience, that type of activity is consistent
23 with drug sales or narcotic sales.

24 Q. All right. Now, over what period of time -- how many
25 cars did you say came in?

SCAR
H-15-20 N-4

1 A. Approximately five.

2 Q. Over what period of time did the five cars come in?

3 A. I would say probably within a fifteen, twenty minute
4 time span.

5 Q. Let me show you what's been marked as State's Exhibit
6 3.

7 (Witness off the witness stand)

8 MR. SPRINGS: Could you dim the lights, Madam
9 Clerk?

10 BY MR. SPRINGS:

11 Q. Do you recognize that scene in State's Exhibit 3?

12 A. Yes, sir.

13 Q. Do you see the place where the man was with the group?

14 A. Yes, sir.

15 Q. Point out where he was with that group.

16 A. He was in this area right in here.

17 Q. Okay. And he was in a group of how many folks?

18 A. Approximately maybe five people.

19 Q. Okay. And as the cars came in, did they stop at
20 different places, or the same place?

21 A. The majority of the vehicles stopped right here. Maybe
22 one or so come on down, but the one that was stopped here
23 would get out their vehicles, walk down through. The
24 individual would walk off and meet with them in this area
25 right here and then leave.

1 Q. Okay. And you said that it appeared to be the same man
2 that walked out from the group each time?

3 A. Yes, sir.

4 Q. What was he wearing, do you recall?

5 A. It was a dark jacket and blue jeans.

6 Q. Go ahead and retake your seat, sir.

7 (Witness back on the witness stand)

8 BY MR. SPRINGS:

9 Q. Did you have a radio, a walkie-talkie?

10 A. Yes, sir.

11 Q. And when you -- were other narcotics officers out there
12 that night in the area?

13 A. Yes, sir.

14 Q. Were you telling them about what you were seeing?

15 A. Yes, sir.

16 Q. Did you tell Lieutenant Ligon and Officer Schettler
17 what you were seeing?

18 A. Yes, sir.

19 Q. Now, did you instruct some of your fellow officers to
20 stop any of those cars?

21 A. Yes, sir, I did.

22 Q. Which one?

23 A. The last car that come there was a red either Ford
24 Explorer or Expedition. He got out of the vehicle and met
25 with the individual then got back in there and I instructed

1 them what I had seen and they stopped him a short time later
2 down the road.

Stopped
one
car

3 Q. Okay. Do you know if anyone in that car got arrested
4 that night?

5 A. Yes, sir.

6 Q. Do you know what they got arrested for?

7 A. They got arrested for unlawful carrying of a pistol and
8 a possession of stolen pistol.

Arrested
Pistol

9 Q. And when he got arrested, did you go to the police
10 station?

11 A. Yes, sir.

12 Q. Did you tell Lieutenant Ligon and Officer Schettler the
13 description of the man going to the vehicles?

14 A. Yes, sir.

15 Q. And how did you describe him?

16 A. It was an individual wearing a black coat and blue
17 jeans.

18 Q. Thank you, sergeant. If you would answer any questions
19 the defense attorney has for you.

20 CROSS EXAMINATION BY MR. MILLS:

21 Q. You were asked if you were doing surveillance regarding
22 the arrest of Jomar Robinson and you said that you were, is
23 that correct?

24 A. Sir?

25 Q. That you were doing surveillance that night, were

1 involved in the arrest of Jomar Robinson, is that correct?

2 A. Yes, sir, I wasn't involved -- well, I was involved
3 with the arrest of Jomar Robinson, but I got there after
4 Officer Ligon and Schettler had been there awhile.

5 Q. Okay. So was everybody already back on the scene at
6 that point? Was Mr. Robinson back there?

7 A. I don't think he was, sir, not when I pulled up.

8 Q. How about Mr. Patton, do you remember him?

9 A. Yes, sir.

10 Q. All right. And I believe you told Officer Ligon and
11 Schettler that there was one individual who was wearing a
12 black coat, a flight jacket you described, going to the
13 cars, correct?

14 A. Correct.

15 Q. And you told them that that was later identified as Mr.
16 Patton, correct?

17 A. I didn't know who was going to the cars, sir.

18 Q. All right. Well, in the report that Officer Ligon --
19 have you read the summary that Officer Ligon did of this
20 incident?

21 A. Briefly.

22 Q. And if he said "Officer Ervin observed one of the
23 subjects who was later identified as Laquaris Patton meeting
24 with vehicles as they came into a parking lot," would you
25 dispute that?

1 A. I have no idea if it was Laquaris or whether it was
2 Jomar. I mean, it was dark. I was going by a street light.

3 Q. Okay. I'm just asking you if you disagreed with the
4 statement that he wrote in the official summary that it was
5 Laquaris Patton?

6 A. Laquaris Patton was arrested, yes, sir.

7 Q. For drugs, right?

8 A. Yes, sir.

9 Q. And you found those on him, right?

10 A. Yes, sir.

11 Q. You found those on his jacket, right?

12 A. Yes, sir.

13 Q. And that was a black jacket, wasn't it?

14 A. Yes, sir.

15 Q. And had orange inside, didn't it?

16 A. I believe it did.

17 Q. Thank you.

18 MR. SPRINGS: Nothing further?

19 MR. MILLS: No, I'm not finished. I'm sorry.

20 BY MR. MILLS:

21 Q. Now, apparently Thursday and Fridays are big nights,
22 right?

23 A. Yes, sir.

24 Q. Have you got any statistics to show that?

25 A. No, sir.

1 Q. All right. How about Saturday night, is that kind of
2 slow?

3 A. Saturday nights can be a hit and miss thing. We work
4 one Saturday a month and usually what we call out hunting
5 and pecking and we are looking for something to get into.

6 Q. You just hope you run across something?

7 A. Yes, sir.

8 Q. Now, did you take notes about these cars that you
9 observed coming in and out?

10 A. No, sir.

11 Q. Is there any record of it anywhere that the jury could
12 see to confirm -- that ties of cars that were coming in and
13 out of there?

14 A. No, sir.

15 Q. Now, this is a little apartment complex and there is a
16 lot of traffic in people hanging out on the porches, aren't
17 there?

18 A. Yes, sir.

19 Q. And all those people aren't dealing drugs, are they?

20 A. Not all of them.

21 Q. And people live there, correct?

22 A. Yes, sir.

23 Q. And people hang out on the porch and just visit pretty
24 regularly, don't they?

25 A. Yes, sir.

Don't
survive
else - 1
Monday
At
Friday
A-J
some
Saturday

No
record
of
the
car
4
CR.

1 Q. And so just the mere fact that somebody is out there is
2 not indicative that they are dealing anything, is it?

3 A. Repeat the question.

4 Q. Just because somebody is out there visiting with people
5 on the porch is not, in your mind, in your ten years
6 experience in law enforcement, evidence that they are
7 dealing drugs, just because they happen to be at the scene?

8 A. Not necessarily, no, sir.

9 Q. All right. How soon after this red Explorer -- were
10 you actually at the scene of that red Explorer?

11 A. Yes, sir, I was.

12 Q. Now, that person just pulled out, correct?

13 A. Yes, sir.

14 Q. And you all thought -- and you saw the hand to hand
15 transaction with Mr. Patton and that car?

16 A. I seen the hand to hand with an individual wearing a
17 black coat and blue jeans. I don't know if it was Mr.
18 Patton.

19 Q. Okay, I understand.

20 A. They done -- the individual that got out of the car had
21 his back to me. They were standing just like this right
22 here, and I was back like this right here.

23 Q. Okay.

24 A. Once that was done, he got in the car and left and I
25 called out the car and two officers stopped him down the --

1 stopped the individual down the road.

2 Q. Okay. And they stopped him, not because of what you
3 saw, but because of some minor traffic offense, right?

4 A. Yes, sir.

5 Q. And that's kind of the way y'all operate? You follow
6 the car and you wait until they fail to put on the turn
7 signal or some other technical violation and that gives you
8 the basis to stop them, correct?

9 A. Yes, sir.

10 Q. And then you want to try to get in and try to start
11 searching around to see what you can find, correct?

12 A. Well, we ask for consent. I mean, they can either say
13 "yes, sir, you can search the car," or "no, sir, you
14 cannot." If they deny consent, you tell them that they have
15 a nice day.

16 Q. All right. Unless you feel like you have another basis
17 to do it. So did these people consent?

18 A. Are you talking about the one that left there?

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. And how much time elapsed from the time that car went
22 until Ligon and Schettler showed up at the scene?

23 A. Talking about at the scene of the car stop?

24 Q. Did they come out to the car stop too?

25 A. Not to my knowledge, no, sir.

Don't follow
last for
the violation
P-11
H-11

1 Q. Until when they returned to the Hall Street, where were
2 they during this time?

3 A. To the best of my knowledge, they were still in the
4 area.

5 Q. Okay.

6 A. Hall Street.

7 Q. At some spot were they just kind of setting up a
8 perimeter, is that it?

9 A. Yes, sir.

10 Q. Now, you had a clear view where you were?

11 A. Yes, sir.

12 Q. And you could see things distinctly?

13 A. Pretty much, yes, sir.

14 Q. So you could look at license plates, if you wanted to
15 get them down, correct?

16 A. Yes, sir.

17 Q. And you could get descriptions of individuals, if you
18 wanted to, correct?

19 A. That's correct.

20 Q. All right. But you didn't take any notes on that?

21 A. No, sir.

22 Q. And this stuff doesn't go over dispatch or anything,
23 right?

24 A. No, sir.

25 Q. This is just walkie -- you have a secured channel

1 that --

2 A. Yes, we have got a secured channel that we work off of.

3 Q. And is that -- can you get copies of that anywhere? I
4 mean, is that recorded anywhere?

5 A. I don't think it is, no, sir.

6 Q. Now, the car they stopped, after you saw this
7 hand-to-hand transaction, didn't have any drugs in, did it?

8 A. No, sir.

9 MR. MILLS: One moment, please.

10 (Off the record)

11 (Back on the record)

12 BY MR. MILLS:

13 Q. Thank you, officer.

14 MR. SPRINGS: Just one question.

15 REDIRECT EXAMINATION BY MR. SPRINGS:

16 Q. Sergeant, do you have any way of knowing if the folks
17 in that car that were stopped ditched any drugs they had
18 before the car got stopped?

19 A. No, sir, I got there after fact. The car was already
20 stopped.

21 Q. All right. Thank you.

22 MR. SPRINGS: Nothing further.

23 THE COURT: Anything else, counsel?

24 MR. MILLS: No, I'm sorry.

25 THE COURT: Thank you, sir. You may stand down.

No
Drugs
in the
car.

1 MR. SPRINGS: Your Honor, may the sergeant be
2 excused?

3 MR. MILLS: Yeah, no objection.

4 THE COURT: Thank you for coming. You may be
5 excused, sir.

6 MR. SPRINGS: Sergeant, would you ask Officer
7 Schettler to come in, please.

8 Officer Schettler, step over to the Holy Bible and
9 the clerk will swear you.

10 OFFICER BRIAN SCHETTLER, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. SPRINGS:

13 Q. Officer, I'm going to ask you to speak up nice and
14 loud. This machine has a fan on it and it makes a little
15 noise and I want everyone to be able to hear you.

16 A. Yes, sir.

17 Q. What is your name, sir?

18 A. Brian Edward Schettler.

19 Q. Are you a police officer?

20 A. Yes, I am.

21 Q. How long have you been a police officer?

22 A. I have been with the York County sheriff's office for
23 five years.

24 Q. What did you do before that?

25 A. I was in the United States Coast Guard.

1 Q. All right. Did you work narcotics?

2 A. Yes, I'm currently assigned to the York County
3 Multi-Jurisdictional Drug Enforcement Unit.

4 Q. Were you involved in a narcotics investigation the
5 night of March 20th, 2008, that resulted in the arrest of
6 Jomar Robinson?

7 A. Yes, I was.

8 Q. And around 10:30 that night what officer were you with?

9 A. I was with Lieutenant Ligon.

10 Q. And did you and Lieutenant Ligon go somewhere on
11 this -- as part of this investigation?

12 A. Yes, we did. We went to Hall Street Apartments.

13 Q. All right. Do you remember a particular apartment
14 number?

15 A. I believe it was 122.

16 Q. Very good.

17 And were you riding in the same car?

18 A. Yes, Lieutenant Ligon was driving the vehicle. I was a
19 passenger in the vehicle.

20 Q. When you got to Hall Street Apartments, did you drive
21 up to the front of Apartment 122?

22 A. Yes, sir, we did.

23 Q. And how were you dressed, sir?

24 A. I was dressed in plainclothes. I clearly had my badge
25 displayed around my neck.

1 Q. Okay. And did you officers identify yourself to the
2 folks at 122?

3 A. Yes, we did. As we approached the patio or the porch
4 we identified ourselves as law enforcement officers.

5 Q. All right. And did you see some people out on that
6 porch?

7 A. Yes, I did. There was approximately five people out on
8 the porch.

9 Q. All right. And did you officers go right up to the
10 porch? 

11 A. Yes, we did. We walked straight to the porch.

12 Q. All right. And what was the lighting like out there,
13 sir?

14 A. There was a few street lights. I would say it's mildly
15 lit.

16 Q. All right. Before you and Ligon went over there, had
17 you gotten some information from Sergeant Ervin about some
18 things that he had seen?

19 A. Yes, we had been doing surveillance on that area most
20 of the evening. Sergeant Ervin advised that there had been
21 what appeared in his training and expertise that there was
22 drug transactions taking place from that porch.

23 Q. All right. Do you have a description of someone?

24 A. Yes, it was a black male wearing a black jacket.

25 Q. All right. So were you interested in talking to such a

1 person?

2 A. Oh, yes, very much so.

3 Q. All right. When you and Ligon got up to the porch, did
4 you see someone meeting that description?

5 A. Yes. Actually when we came up to the porch, there was
6 two individuals that were dressed alike.

7 Q. Black jackets?

8 A. Correct.

9 Q. Did you have any idea which one Ervin had seen?

10 A. I personally didn't know. I treated them both as being
11 the ones that we were looking at.

12 Q. Were the two fellows in black jackets asked to provide
13 something to the lieutenant?

14 A. Yes, Lieutenant Ligon asked both of them for their
15 identification or driver's license. Both of them willingly
16 presented it to them.

17 Q. Okay. Could you smell anything when you were up on
18 that porch?

19 A. Yes, there was an odor of green marijuana.

20 Q. Okay. Could you tell where it was coming from?

21 A. Not particularly. Mr. Thrower -- or excuse me, Mr.
22 Patton and Mr. Robinson were off to my left. There was
23 three other individuals off to my right. It seemed like the
24 marijuana was originating off to my left.

25 MR. SPRINGS: Could you dim lights, Madam Clerk?

1 BY MR. SPRINGS:

2 Q. Come on down, if you would, Officer Schettler.

3 (Witness off the witness stand)

4 BY MR. SPRINGS:

5 Q. This is State's Exhibit No. 3 that's displayed up on
6 the board. Do you recognize that scene?

7 A. Yes, I do.

8 Q. Does that show Apartment 122, Hall Street?

9 A. Yes, it does.

10 Q. Point out where the fellows were when you first drove
11 up, the five men. Was it all men, by the way?

12 A. Yes, it was.

13 Q. All right.

14 A. This was the apartment here. The two individuals were
15 over here and the three were over here.

16 Q. All right. The two men in black jackets?

17 A. Yes, Mr. Patton and Mr. Robinson were over on this
18 direction.

19 Q. All right. And when you went up there and started
20 talking to these folks, do you remember where Ligon was
21 standing?

22 A. Yes, Lieutenant Ligon was right here. I was right
23 here.

24 Q. Okay. And did these fellows, the two men in black
25 jackets, provide some identification to the lieutenant?

1 A. Yes, they did. They provided it willingly to him.

2 Q. All right. And at some point did the lieutenant
3 indicate that he was going to pat them down and search them
4 for weapons?

5 A. As the --

6 MR. MILLS: Your Honor, again, I ask him not to
7 lead the witness.

8 THE COURT: All right, please avoid leading,
9 counsel.

10 BY MR. SPRINGS:

11 Q. Let me rephrase that.

12 At some point were these men going to be patted down
13 for weapons?

14 A. As the --

15 MR. MILLS: Your Honor, I think that's a leading
16 question again.

17 THE COURT: Counsel, you can ask him what they did
18 and when they did it. All right.

19 MR. SPRINGS:

20 Q. After they provided the identification, what's the next
21 little thing that happened?

22 A. Sure. After their identification was provided, we
23 continued the investigation. We could -- officer -- or
24 Lieutenant Ligon could determine that the marijuana smell
25 was coming from the two individuals that were standing over

1 here. Also he noticed that there was a pistol, a weapon,
2 coming out of Mr. Robinson's --

3 MR. MILLS: Objection. I don't know how he can
4 testify as to what Mr. Ligon noticed. Mr. Ligon has already
5 testified to the jury. I don't think that he was in the
6 position.

7 THE COURT: I sustain the objection. Counsel,
8 he's testifying for Mr. Ligon. I think he can testify to
9 what he observed and what he saw and heard.

10 BY MR. SPRINGS:

11 Q. Just tell us what you saw with your own eyes. Take it
12 slow and easy. Slow motion, just like a playback, what
13 happened?

14 You were at the --

15 A. Lieutenant Ligon and I both smelled the green marijuana
16 coming from the two individuals.

17 Q. Yes, sir.

18 A. Lieutenant Ligon went ahead and advised the two
19 subjects that he could smell the marijuana. He was then
20 asking them if there was any weapons, going to pat them down
21 for weapons.

22 At that point, when he asked for that, Mr. Robinson
23 backed up towards the wall. As he backed up towards the
24 wall, I saw Lieutenant Ligon grab for his jacket and he
25 advised that "there was a gun. There was a gun. There was

Advised him He
C-11
rule 11 to
MT)
A. L. J
AT
ANY
LEADS
(N-1
L-1
L-1
S-1
S-1
153)

1 a gun."

2 At that point there a struggle ensued. As the struggle
3 ensued, I went ahead and drew my service weapon. I asked
4 the other four individuals to go ahead and get on the ground
5 for my safety and Lieutenant Ligon's safety. I don't know
6 if there was either weapons or what they possibly had on
7 their person.

8 Q. Let me stop you. When you and Ligon approached the
9 porch, were your guns holstered?

10 A. Yes, they were.

11 Q. And at the point where Ligon is yelling "guns, guns,"
12 was his weapon holstered?

13 A. As far as I know, yes, his weapon was holstered.

14 Q. And yours was holstered?

15 A. Yes, it was.

16 Q. Okay. You said a struggle ensued. Taking it slow and
17 easy blow by blow, then what happened?

18 A. At that point a struggle ensued. Out of my peripheral
19 I saw Lieutenant Ligon come off the porch and he was in this
20 area over here.

21 I went ahead and turned my attention to the three
22 individuals that were here, and Mr. Patton that was right
23 here, I went ahead and ordered them down on the ground. Mr.
24 Patton attempted to walk off. About the point where he was
25 right here is when I ordered him on the ground. Mr. Patton

1 went ahead and laid down on the ground. I went ahead and
2 kept them at gunpoint.

3 Officer Ligon -- or Lieutenant Ligon continued his
4 struggle behind me, and to the point where the jacket and
5 the gun was ripped off, and Lieutenant Ligon advised me that
6 the gun and jacket was on the ground and he was going to
7 pursue the subject as he fled.

8 Q. Okay. Did you see the jacket on the ground?

9 A. Yes, I did. I turned to see where it was so I knew for
10 myself where the weapon was.

11 Q. Was that jacket close to any person as it lay on the
12 ground?

13 A. No, sir, the jacket ended up right in this area here.
14 I had positioned myself between the jacket and the suspects
15 that were here.

16 Q. Okay. And once the jacket come off, what happened to
17 the lieutenant and Jomar Robinson, the defendant in this
18 case?

19 A. They had fled. They went in this direction here. I
20 saw them leave and that is the last I saw of them until they
21 came back.

22 Q. All right. Let's go back to you and the four men that
23 were on the ground. Mr. Patton, did Mr. Patton remain on
24 the ground?

25 A. No, he did not.

1 Q. What happened there? What happened?

2 A. Mr. Patton was right here. Eventually he got up and
3 started to walk off in this direction. I repeatedly advised
4 him to get back down on the ground and to the point where he
5 took off running.

6 Q. All right. You didn't shoot him?

7 A. No, I did not.

8 Q. He wasn't presenting a threat to you?

9 A. At that time, no, sir.

10 Q. Okay. Which way did he run?

11 A. He -- he ran off in this direction. There is another
12 building that sits over here. He ran off in that direction
13 behind the building.

14 Q. Okay. Did he go out of your sight?

15 A. Yes, he did.

16 Q. And how long -- had you searched him before he ran off?

17 A. No, I did not.

18 Q. Did he eventually return?

19 A. Yes, he did.

20 Q. How long would you say was he gone and out of your
21 sight?

22 A. It's tough to say. I would roughly say a couple of
23 minutes. Anywhere between two to five minutes.

24 Q. And in those two to five minutes, would you, yourself,
25 have any knowledge as to whether he ditched or threw down --

1 MR. MILLS: Your Honor, that's an objectionable
2 question. He's asking him to speculate about something he's
3 qualified that he wouldn't know about.

4 MR. SPRINGS: I'm asking him what he knows.

5 THE COURT: Well, sustain the objection, counsel.
6 That's just speculation as to what may have happened.

7 MR. SPRINGS: Very good.

8 BY MR. SPRINGS:

9 Q. Go ahead and retake your seat.

10 A. Yes, sir.

11 (Witness back on the witness stand)

12 BY MR. SPRINGS:

13 Q. When Mr. Patton came back, did you search him?

14 A. Yes, I did.

15 Q. And as a result of the search, did he get arrested?

16 A. Yes, he was.

17 Q. Now, at some point did you take possession of the
18 jacket?

19 A. Yes, I did.

20 Q. Had anybody gotten near that jacket between the time
21 that it fell off of Mr. Robinson until you took possession
22 of it?

23 A. No.

24 Q. Did you search the jacket?

25 A. Yes, I did search the jacket.

1 Q. What sort of the things did you find in the jacket?
2 Describe them.

3 A. I found a semiautomatic pistol. I found two plastic
4 baggies - one containing crack and one containing some crack
5 residue; and I found a bag of marijuana.

6 Q. Okay. I'm showing you what's been marked State's
7 Exhibit 9. Look in there and tell the jury if you recognize
8 what's in there.

9 A. Yes, sir, this would be the pistol that I removed from
10 the jacket.

11 Q. Okay. Was it loaded?

12 A. Yes, it was.

13 Q. Was there a round in the chamber?

14 A. Yes, there was.

15 Q. It was ready to shoot?

16 A. Yes, it was.

17 Q. And what caliber is that?

18 A. I believe it's a 9-millimeter. Yes, 9-millimeter Ruger
19 semiautomatic.

20 Q. Would you make sure there are no bullets in the clip?

21 A. It's empty.

22 Q. No bullets in the gun?

23 A. The gun is clear.

24 Q. And put the clip in the gun.

25 That's the pistol that you found in the jacket?

1 A. Yes, it is.

2 MR. SPRINGS: Your Honor, at this time we do offer
3 into evidence State's Exhibit 9.

4 MR. MILLS: Your Honor, subject to our earlier
5 position.

6 THE COURT: Well, admitted over earlier objection,
7 yes, sir.

8 MR. SPRINGS: And I would ask to publish State's
9 Exhibit 9 to the jury.

10 THE COURT: You may.

11 MR. SPRINGS: Thank you.

12 Would you instruct the jurors to pass this among
13 themselves and examine it as much as they like.

14 BY MR. SPRINGS:

15 Q. You said that I found two baggies?

16 A. That is correct.

17 Q. I'm showing you what's been marked as State's Exhibit
18 11 for identification. Examine that and tell the jury if
19 you have ever seen what's inside State's Exhibit 11 before.

20 A. Yes, that's what I removed from the jacket.

21 Q. What did it appear to be when you removed it?

22 A. There was one bag that had some loose crack in it, and
23 there was another bag with eleven individually wrapped crack
24 rocks.

25 Q. These, I assume, to be small bags?

1 A. Yeah, they -- basically what they do is they will take
2 a piece of crack and put it in the corner of a sandwich
3 baggy, will twist it up and tear off that sandwich baggy and
4 that's how it was packaged.

5 Q. So you had a eleven smaller bags within a smaller bag?

6 A. Correct.

7 Q. After you got what you thought was crack cocaine out of
8 the jacket, did you bag it up in an evidence bag?

9 A. Yes. What I did is I went ahead -- I put it in these
10 individual plastic baggies so nothing would spill out. I
11 went ahead and marked those. I also went ahead and put it
12 in this evidence bag. I filled it out properly. I sealed
13 it, initialed it and dated, and then I dropped it into the
14 evidence drop.

15 Q. Did you have it in your possession, your custody, your
16 control, the whole time from the time that you took it out
17 of Jomar Robinson's jacket until the time you put it into
18 the evidence locker?

19 A. Yes, I did.

20 Q. Now, did you do a preliminary weighing of it?

21 A. I did.

22 Q. When you did the preliminary weighing, was everything
23 still in the bags?

24 A. Correct.

25 Q. So you were weighing drugs and plastic?

1 A. Correct. It's an approximate weight.

2 What we will do is we will take the plastic bags as
3 it's intact, place it on the scale. It gives us a weight
4 and that's an approximate weight on an uncertified scale.
5 It just gives us a general idea of what it is.

6 Q. I understand.

7 I'm showing you what's been marked Defendant's Exhibit
8 No. 1, and I'll explain to you why it's been cut open in a
9 minute, but look at that and look inside and tell the jury
10 if you ever seen what's in there before.

11 A. I have. This is the marijuana that I removed from the
12 jacket.

13 Q. All right. From Jomar Robinson's jacket?

14 A. Correct.

15 Q. Now, did you bag that up in an evidence bag?

16 A. Yes, I did.

17 Q. Seal it all up?

18 A. Correct.

19 Q. Put some identifying writing on it?

20 A. Right, my initials are on the back here, with the date
21 when I sealed it.

22 Q. And where did you deposit that?

23 A. I also deposited this one at the evidence drop at the
24 Moss Justice Center.

25 Q. Was it in your possession, your custody, your control

1 from the time you took it out of the jacket until the time
2 you put it in the evidence locker?

3 A. Yes, it was.

4 Q. Just go ahead and lay it down right there.

5 A. Yes, sir.

6 Q. At some point did Lieutenant Ligon come back with Jomar
7 Robinson?

8 A. Yes, he did.

9 Q. Let's go back to Mr. Patton. You said that you
10 searched him?

11 A. Myself and Officer Ervin did.

12 Q. Did you find some drugs on him?

13 A. Yes, we did.

14 Q. Where on him were the drugs found?

15 A. If you can picture, it's a black like bomber jacket.
16 It's got pockets all over it. Up on the top sleeve pocket
17 is where he had it. It's a zipper pocket up on the sleeve
18 of his coat. That was the only thing that we found on him.
19 We didn't find a wallet, keys, money, ID, or anything. That
20 was the only thing that he came back with.

21 Q. Did you look around the area where he ran?

22 A. We did. We eventually traced back his steps behind a
23 building. We located -- I believe we located some money, a
24 wallet, and might have been keys, but basically it was his
25 personal belongings.

1 Q. And where -- were they on the ground, on to of a wall?
2 Where were they?

3 A. They were behind the building where he ran behind on
4 the ground, like he had thrown them down.

5 Q. All right. Thank you, officer. If you would answer
6 any questions that the defense attorney may have.

7 A. Yes, sir.

8 CROSS EXAMINATION BY MR. MILLS:

9 Q. And So you took those things into evidence?

10 A. Say again?

11 Q. You took those things that you found into evidence?

12 A. They were --

13 Q. His wallet and all this other stuff that you found that
14 you claim is Mr. Patton's, you took that into evidence,
15 right?

16 A. No, we went ahead -- they are his personal belongings.
17 We went ahead and returned them to him in his property at
18 the jail.

19 Q. Why wouldn't you keep it in evidence?

20 A. They are his personal belongings.

21 Q. Well, I would assume his ID was his personal belonging
22 too, right?

23 A. Which he keeps in the jail.

24 Q. Okay. Now, this jacket that he had on -- you said he
25 was gone for one to two minutes completely out of your

1 sight, correct? Mr. Patton I'm talking about now.

2 A. Mr. Patton?

3 Q. Yes.

4 A. Yes, sir.

5 Q. That would have been plenty of time for him to -- if
6 he's got drugs, to go in his jacket and get rid of them,
7 wouldn't it, if he wanted to?

8 A. I suppose he could.

9 Q. All right. But instead he just kind of comes walking
10 back -- after leaving you at gunpoint, comes walking back
11 with dope in his jacket?

12 A. The best way I can explain it is -- I know everybody
13 has been in a stressful situation, a car wreck, things like
14 that. When something like that happens, you don't always
15 think clearly. Obviously he had enough time to think that
16 he needed to empty his pockets. He could have possibly
17 forgot that he had that up in his coat pocket because it was
18 away from his normal pockets.

19 Q. Right. So he had enough time to reflect and decide to
20 pull out his personal effects that you returned, but not get
21 rid of any kind of contraband that he would get him in jail?

22 A. As I said, in a lot of stressful situations you don't
23 think about the fine details. That might have been one that
24 he forgot.

25 Q. Just a minor point, right? Just a little fine detail,

1 the drugs, that he ran away from?

2 A. Obviously it was, because he forgot about it.

3 Q. Okay. Now, this jacket seems pretty central to what
4 you are talking about. This black jacket, this one that --
5 I'm sorry. That's switched on you. Mr. Robinson's jacket,
6 right?

7 A. I'm --

8 Q. I mean, that's a central thing. You are talking about
9 a big struggle and all that, remember?

10 A. Yes, sir.

11 Q. With Schettler.

12 Now, you and I just talked yesterday when you were in
13 this various position, right?

14 A. Yes, sir.

15 Q. And I believe at that time you told me that when he
16 asked to start searching, you had your back to him, to Mr.
17 Robinson and Officer Ligon?

18 A. I don't recall that. I said that officer --

19 Q. I'm sorry. Go ahead.

20 A. Can I finish?

21 Q. Sure.

22 A. Lieutenant Ligon was off to my side. He was out of my
23 peripheral. Okay. I was facing here.

24 When he approached him and the struggle ensued and they
25 went off the side of the porch, then, yes, my back

1 eventually did get turned to him, because I was worried
2 about the four other suspects.

3 Q. And I was asking you aren't you concerned with the life
4 and death struggle going for the gun and I believe you told
5 me he can take care of himself. You weren't worried about
6 him, because you had been working with him so long, that
7 there was no concern of yours, right?

8 A. That's correct. Officer Ligon was dealing with the
9 subject over behind me. I had four other suspects. You are
10 trained through the police academy and when you are out on
11 the streets that you address the initial threat. There was
12 four other subjects in front of me. That's my initial
13 threat. Officer Ligon was dealing with his threat, which
14 was behind me.

15 Q. And you could have easily moved yourself to a position
16 where you could actually see those individuals and see
17 what's going on with Officer Ligon too, couldn't you?

18 A. I don't believe that would have been as tactfully as
19 sound as where I was.

20 Q. Okay. So you were content to let Officer Ligon, who
21 has one hand on this gun and one hand his holster just get
22 beat up, and you didn't really see that as a threat to him
23 or something that you would have to step in on, right?

24 A. Well, sir, I wouldn't put it that simply. If
25 Lieutenant Ligon needed my help, I'm sure that he would have

1 called and asked for my help. We are all trained the same
2 way, that when a struggle ensues, you protect your weapon
3 and you try to eliminate the threat, which was the weapon
4 that he had. Through that time at no point did Officer
5 Ligon say that he needed help, "come help me. I have lost
6 my weapon. He's got a gun. I've lost his gun." At no
7 point did he say that. Eventually he said that "the gun is
8 on the ground." And when the gun was on the ground and he
9 had took off running, that I knew that that threat was
10 eliminated and I still had the concern in front of me.

11 Q. Now, here is the gun. Can you show me what you just
12 did with Mr. E.B. -- with Mr. Springs about popping that
13 things out?

14 A. (Witness demonstrating).

15 Q. And how did you put you it back in?

16 A. (Witness demonstrating).

17 Q. All right. Pop it out again one more time for me.

18 A. (Witness demonstrating).

19 Q. Thank you.

20 Now, I saw as you did that you put your hands on here,
21 like this, right? Right?

22 A. Just right now?

23 Q. Yeah.

24 A. I placed my hands.

25 Q. Right, a big thumb print right there, right?

1 Did you send the gun off for fingerprints?

2 A. No.

3 Q. Why not?

4 A. It was in his jacket and his possession.

5 Q. And that's what you say, right?

6 A. That's what took place.

7 Q. And if he had taken this gun and had you got this
8 tested and it had his fingerprints on it, they wouldn't have
9 to rely on your testimony; they would his fingerprints on
10 the gun, right?

11 A. If that's what you are going to say, yes, sir.

12 Q. And on each of these little bullets too, right?

13 A. If they could obtain a fingerprint on there, I'm sure
14 they can.

15 Q. Did you smell anything?

16 A. When?

17 Q. Right now.

18 A. Right now?

19 Q. Yeah, did you smell anything?

20 A. What am I smelling for?

21 Q. I'm asking you if smell anything.

22 How about now? Do you smell anything?

23 A. I smell your cologne.

24 Q. Okay, I don't wear cologne, but maybe you were smelling
25 this.

1 A. That's in a sealed bag.

2 Q. It's kind of like the way it was when you got it out of
3 the jacket, wasn't it?

4 A. Actually it's different than a sandwich baggy --

5 Q. Uh-huh.

6 A. -- which it was originally in.

7 Q. Right. And this little baggy in here?

8 A. Correct.

9 Q. That was tied up with a little knot?

10 A. Correct.

11 Q. So it was sealed up, right?

12 A. So if you put a clove of garlic in there, would you be
13 able to smell it?

14 MR. MILLS: Your Honor, I don't think the rules
15 allow him to ask me questions.

16 A. I mean, I thought we were discussing the marijuana.

17 THE COURT: I think he's explaining his answer.
18 I'll allow him to explain his answer.

19 A. It's the same as if you put a clove of garlic in a
20 plastic bag. I'm sure everybody knows how garlic smells.
21 When you put a clove of garlic in a plastic bag, it smells
22 up the whole refrigerator or the whole cabinet.

23 The same thing as green. Green marijuana has a very
24 distinctive strong smell. And as time goes on, marijuana
25 deteriorates and it loses its smell. That's what's taken

Marijuana
deteriorate

1 place here.

2 BY MR. MILLS:

3 Q. Okay. So if we have had that jacket would much a lot
4 of smell in it, the one that was kept in, right, but it was
5 all that pot in there and it would perforate into the
6 jacket?

7 A. That night, yes, sir.

8 Q. It would have been -- you know, hey, where is that
9 jacket?

10 A. Is it a trick question? I don't know.

11 Q. Yeah, where is the jacket?

12 No. Well, if that's the theme here. It's his jacket.
13 You got it up off the ground. You got all the stuff in it.
14 Where is the jacket?

15 A. I can't recall for sure, but I believe it was returned
16 in his property.

17 Q. You didn't take it into evidence?

18 A. It's his jacket.

19 Q. Well, presumably it was his gun.

20 A. It was.

21 Q. Are you saying that there is something that prevents
22 from you taking that into evidence because it's his jacket?

23 A. It's his jacket. We recovered the illegal contraband
24 out of his jacket and returned his jacket to him. It's his
25 personal property.

1 Q. How do they know it's his jacket?

2 A. Because I'm here telling you it was on him that night
3 and we removed it from him.

4 Q. Well, you also said there was one on Laquaris Patton
5 just like that.

6 A. Which he was wearing when he came back.

7 Q. Right.

8 And, you know, you have heard three letters, DNA,
9 right? You have heard that have, haven't you?

10 A. Uh-huh.

11 Q. And so if you had that jacket that was supposedly Jomar
12 Robinson's, you could have that tested for DNA?

13 A. Once again, sir, we are beating a dead horse. It was
14 his jacket on his person. There was no reason to test it.
15 I mean, it's the same thing that as if I was to take your
16 jacket off you now. I know that jacket came from you. I
17 physically saw it. I physically took it off of you. I know
18 that it's your jacket.

19 Q. Right. And you would have done it right in front of
20 this jury and they could have seen that.

21 A. The jury wasn't there that night.

22 Q. Yeah, and neither was I, and you didn't take any
23 videos, you didn't put a video in your car and tape
24 anything, right, so there is nothing to see.

25 A. We don't have video cameras in our cars. It's not a

1 normal patrol vehicle.

2 Q. Right.

3 So we have no jacket, we have no fingerprints, we have
4 no DNA, do we, at all on Mr. Robinson --

5 A. No, sir. We have got --

6 Q. -- linking them to these things at all?

7 A. We have got the crack and the marijuana and the gun was
8 removed off the jacket that was on his person.

9 Q. Which you say was on his person?

10 A. Yes, I was there that night.

11 Q. Now, I believe Mr. Patton pled guilty to possession
12 with intent to distribute crack cocaine, didn't he?

13 A. I believe so. I know he pled guilty.

14 Q. And he was wearing a black jacket that night, correct?

15 A. Yes.

16 Q. And that was the individual that Officer Ervin said he
17 saw go into the cars and meeting with people, right?

18 A. Officer Ervin said there was a black male wearing a
19 black jacket go into the cars.

20 Q. You have read the summary report, right, by Officer
21 Ligon?

22 A. Yes, sir.

23 Q. And you have read the part where he said "Ervin
24 observed one of the subjects, who was later identified as
25 Laquaris Patton, meeting with the vehicles as they came into

1 the parking lot."

2 A. Yes, as he said, one of the subjects.

3 Q. Right.

4 And there is no other mention of Jomar Robinson going
5 to any car and having any interaction, is there?

6 A. I don't have it in front of me. I don't know exactly
7 what it says.

8 Q. Okay. The first paragraph here they were talking about
9 the observations.

10 A. Okay.

11 Yes. In this sentence it says "Officer Ervin observed
12 one of the subjects," one of the subjects, "who was later
13 identified as Laquaris Patton meeting with vehicles as they
14 came into the parking lot."

15 Q. Okay. It doesn't say anything about a black jacket
16 either, does it?

17 A. (Witness reviewing document).

18 No, sir, it does not.

19 Q. All right. Now, I think you had a concern for Mr.
20 Robinson's personal property and that he got his jacket back
21 and you didn't want to take that, right?

22 A. Yes, sir.

23 Q. Because it might get stolen.

24 But I noticed that y'all took a lot of pictures that
25 night of evidence. A picture of a gun?

1 A. Uh-huh.

2 Q. Right.

3 Took a picture of the dope?

4 A. Uh-huh.

5 Q. Why didn't you take a picture of the jacket?

6 A. As I said before, the jacket was on Mr. Robinson. We
7 removed it off Mr. Robinson personally. We removed the
8 contraband from him and his jacket. We went ahead and
9 returned the jacket to him, took pictures for our evidence.

10 Q. You have heard of crime scenes, right? The phrase a
11 crime scene?

12 A. I'm familiar with it, yes, sir.

13 Q. Okay. And you can preserve evidence as it lies,
14 correct, and not disturb it, if there has been a crime
15 scene, correct?

16 A. Well, if it was a crime scene, then, yes.

17 There is different types of crime scenes. This wasn't
18 a murder. We didn't have blood everywhere. We didn't have
19 bodies laying anywhere. This was a simple struggle that
20 ensued over some drugs and a gun. We recovered all the
21 things that was there. There was no need to go ahead and
22 preserve a crime scene, call out the forensics unit, or
23 anything like that.

24 Q. You mean no need to bother with fingerprints or
25 something like that, right?

1 A. No, sir, it came directly from his person. I knew
2 whose gun it was.

3 Q. No reason to bother with taking a picture of this
4 jacket that you saw on the ground where it laid with the gun
5 in it, right?

6 A. No, sir. Like I said, I knew where the jacket had come
7 from. It come from his person. I knew it was on the
8 ground. No one had touched it, except for myself who
9 recovered it. There was no reason to go ahead and
10 photograph that.

11 Q. Except if you wanted to preserve it for somebody to
12 look at later on who wouldn't necessarily have to take your
13 word on it, you could actually show them where it was,
14 right?

15 A. For lack of better terms, a picture I'm sure would have
16 been great.

17 Q. Worth a thousand words, isn't it?

18 A. Well, you have got three officers that came up here and
19 testified. I'm sure that's just as good as a picture.

20 Q. Thank you, Officer Schettler.

21 A. Thank you.

22 REDIRECT EXAMINATION BY MR. SPRINGS:

23 Q. Just one question.

24 Let me ask you the bottom line question. Did you go
25 out there that night in good faith?

1 A. Yes, I did, sir.

2 Q. Did you tell the truth here today?

3 A. Yes, I have.

4 MR. MILLS: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MR. SPRINGS:

7 Q. Do you have any grudge against Jomar Robinson?

8 A. To be honest with you, I didn't even know Jomar
9 Robinson before this night.

10 Q. Thank you.

11 MR. SPRINGS: That's all.

12 THE COURT: Anything further?

13 MR. MILLS: One moment.

14 (Off the record)

15 (Back on the record)

16 MR. MILLS: Nothing, Your Honor.

17 THE COURT: Thank you, sir. You may stand down.

18 MR. SPRINGS: May the officer be excused?

19 THE COURT: No objection?

20 MR. MILLS: No objection.

21 THE COURT: Thank you for coming, sir. You may be
22 excused at this time.

23 MR. SPRINGS: Mr. Burris, would you ask the lady
24 by the name of Barbie Traylor to come in? Barbie Traylor.

25 Ms. Traylor, step over here to the Bible and

1 THE COURT: Counsel, ready to proceed.

2 MR. SPRINGS: Yes, we call Ms. Dee Anne Johnson.

3 Ms. Johnson, come over here and the clerk will
4 swear you in.

5 DEE ANNE JOHNSON, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. SPRINGS:

8 Q. Ma'am, I'm going to ask you to speak towards the
9 microphone, which will take your voice over to the audience.
10 We want to hear you, and tell these folks your name, please?

11 A. Dee Anne Johnson.

12 Q. Ms. Johnson, have you ever done some work for the York
13 County sheriff's office?

14 A. Yes, sir, I have.

15 Q. What kind of work have you done for them?

16 A. I was responsible for doing controlled substance
17 analysis in the absence of the full-time chemist on
18 maternity life.

19 Q. Are you what's called a chemist?

20 A. Yes, sir.

21 Q. And what sort of training and education and experience
22 do you have that would entitle you to call yourself a
23 chemist?

24 A. I have a Bachelor of Science Degree in Criminal Justice
25 from 1989, from the University of South Carolina.

1 In 1993, I obtained a Bachelor of Science in chemistry
2 from the University of South Carolina, in Columbia.

3 I have completed their one-week seminar for forensic
4 chemists sponsored by the Drug Enforcement Administration.
5 And while working at the Columbia Police Department, I
6 developed and operated the drug analysis laboratory for that
7 local police department.

8 Once leaving there, I went to work at the
9 Charlotte-Mecklenburg Police Department in 2004, and left
10 there in 2008.

11 Q. All right. So your work for the York County sheriff's
12 office, as part of that work, did you test and identify
13 illegal drugs and controlled substances?

14 A. Yes, sir, that's correct.

15 Q. And have you ever been qualified and found to be an
16 expert in a court like this, an expert in testing and
17 identifying illegal drugs and controlled substances?

18 A. Yes, I have.

19 Q. You have before?

20 A. Yes.

21 MR. SPRINGS: Your Honor, we do offer Ms. Johnson
22 as an expert in testing and identifying illegal drugs and
23 controlled substances.

24 MR. MILLS: No objection.

25 THE COURT: All right. Without objection, she's

1 so qualified.

2 Counsel, let me give an explanatory instruction to
3 the jury, as I usually do.

4 Mr. Foreman, ladies and gentlemen of the jury, I
5 charge you that although lay witnesses are limited to
6 testifying about facts within their knowledge and not
7 allowed to give opinions, certain witnesses, who by
8 training, education, or experience are considered as experts
9 in a particular field, may give opinions in that field,
10 based upon the facts of a matter and their conclusions. And
11 these opinions constitute evidence to be considered by you,
12 in connection with all of the other evidence and testimony
13 in the case, and it is for you, the jury, to give it such
14 weight as you, in your experience, and discretion may
15 determine. By this I mean that you must weigh such evidence
16 and accept or reject it in the same manner as you treat all
17 other evidence in the case.

18 The value of expert testimony does not depend upon
19 the skill and knowledge professed by experts, but upon the
20 skill and knowledge they actually possess. Expert testimony
21 is given for the purpose of enlightening you and not for the
22 purpose of controlling your judgment.

23 Please proceed, sir.

24 MR. SPRINGS: Thank you, Your Honor.

25 BY MR. SPRINGS:

1 Q. Ms. Johnson, when you did your work for the York County
2 sheriff's office, where was the laboratory located?

3 A. On the grounds here at the York County sheriff's
4 office, in the crime lab.

5 Q. Over at the evidence room?

6 A. That's correct.

7 Q. I'm showing you what's been marked State's Exhibit 11
8 for identification. Please look at this and tell the jury
9 if what's in that bag has ever come into your possession and
10 you have done some business with it?

11 A. Yes, I have.

12 Q. Where did you take it into your possession?

13 A. I received this evidence on April 17th of 2008, from
14 evidence technician Barbie Traylor at the York County
15 sheriff's office evidence room.

16 Q. Very good.

17 When you received it, was it in a sealed-up bag that
18 looked like it hadn't been tampered with?

19 A. Yes, sir, it was.

20 Q. And did you take it into your possession?

21 A. Yes, I did.

22 Q. Okay. At some point did you open that bag and analyze
23 the stuff that was in there?

24 A. Yes, I did.

25 Q. And you tested it?

Sealed Bag

1 A. That's correct.

2 Q. Did you weigh it?

3 A. Yes, sir.

4 Q. All right. And after you tested the stuff in that bag
5 and weighed it, did you write up a report?

6 A. Yes, sir, I did.

7 Q. All right. When you first got it, how was the stuff
8 packaged, do you recall?

9 A. I'll refer to my work sheet.

10 Q. Very good.

11 A. This particular piece of evidence was labeled as item

12 2. However, I itemized because the two items of evidence
13 inside had a different appearance and were packaged
14 differently.

15 Q. Yes, ma'am.

16 A. And the --

17 Q. I guess what I'm asking you is -- how many bags were in
18 there? Do you recall?

19 MR. MILLS: Your Honor, object to him leading the
20 witness.

21 MR. SPRINGS: I don't know how asking how many
22 bags were in there suggests the answer.

23 THE COURT: Well, I agree. I'll overrule. You
24 may answer.

25 BY MR. SPRINGS:

1 Q. Do you recall how many separate bags were in there?

2 A. Item number 2 contained one bag and item number 2.1,
3 that I have labeled, contained eleven tied plastic bags.

4 Q. All right. And you said that you did test it and weigh
5 it?

6 A. Yes, sir.

7 Q. And you prepared a report?

8 A. Yes, sir.

9 Q. May I see your report, please?

10 (Drug Report marked as State's Exhibit No. 13 for
11 identification)

12 MR. MILLS: Can we take a matter up with the
13 court?

14 THE COURT: Yes, sir.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 BY MR. SPRINGS:

18 Q. One second, Ms. Johnson.

19 A. Sure.

20 (Off the record)

21 (Back on the record)

22 BY MR. SPRINGS:

23 Q. Ms. Johnson, I had -- the original report got kind of
24 dog-eared and wrinkled I had to type up a nice pretty new
25 one, but we want to go back use the original and I'm going

1 to ask our court reporter to mark that.

2 (Drug Report marked as State's Exhibit No. 14 for
3 identification)

4 MR. SPRINGS: Thank you for your patience.

5 BY MR. SPRINGS:

6 Q. Thank you for your patience in that.

7 A. Sure.

8 Q. Now, we've put State's Exhibit 14 sticker on it. Is
9 that an accurate copy of the report that you did?

10 A. Yes, it is.

11 Q. And let's go ahead and offer that into evidence.

12 MR. SPRINGS: Your Honor, we offer State's Exhibit
13 14 into evidence at this time.

14 THE COURT: Show it to counsel.

15 MR. MILLS: No objection, Your Honor.

16 THE COURT: Admitted without objection.

17 BY MR. SPRINGS:

18 Q. Before I ask you the results of your report, I'm going
19 to ask you -- going back to the actual stuff, State's
20 Exhibit 11, after you did your testing, did you package it
21 back up, bag it back up?

22 A. Yes, sir, I did.

23 Q. And sealed it back up?

24 A. That's correct.

25 Q. Okay. And take a look at State's Exhibit 11. Does

Seal it
Back up

1 that look like the way it was when you sealed it back up?

2 No one has messed with it or tampered with it since?

3 A. That's correct. I have a seal date and my initials
4 across the seal.

5 Q. Okay. All right. Let's talk about one more.

6 This is Defense Exhibit 11 (sic). It was opened
7 yesterday by the defense attorney, so don't let that shock
8 you, but I'm going to ask you to look into Defense Exhibit 1
9 and tell the jury if you have ever done business with what's
10 in there before?

11 A. Yes, I have.

12 Q. Where did you receive it?

13 A. I received this evidence on the same date as State's
14 Exhibit 11, on April the 17th of 2008, from Barbie Traylor
15 out of the York County sheriff's office evidence room.

16 Q. And was the bag sealed up and intact and not tampered
17 with when you got it?

18 A. Yes, it was.

19 Q. And did you do at some point open it up and test the
20 stuff inside?

21 A. Yes, sir.

22 Q. And is the result of that test also on your report
23 here, which is now the paper marked State's Exhibit 14?

24 A. It is.

25 Q. Okay. Now, these bags -- you received an evidence bag

Sealed

1 back last year, is that right?

2 A. Yes, sir.

3 Q. And then after you tested the stuff, did you take that
4 original evidence bag and everything and put it inside
5 another evidence bag?

6 A. I did.

7 Q. So this is a bag in a bag?

8 A. That's correct.

9 Q. Okay. All right.

10 MR. SPRINGS: Your Honor, at this time we do offer
11 into evidence -- Defense Exhibit 1 is already in.

12 We are going to offer State's Exhibit 11 into
13 evidence and the report, State's Exhibit 14.

14 THE COURT: I believe the report came in. It
15 already came in, didn't it?

16 MR. MILLS: Yes.

17 THE COURT: That was the report. You didn't
18 object to it.

19 MR. SPRINGS: That's right.

20 THE COURT: That's on the record.

21 And how about 11?

22 MR. MILLS: Just subject to my prior motion.

23 THE COURT: Subject to that, it's admitted.

24 MR. SPRINGS: All right.

25 BY MR. SPRINGS:

1 Q. Now, I'm going to ask you to take a look at your report
2 there. You got a lot of papers. Just put them you so we
3 don't get confused. Very good.

4 All right. This stuff, State's Exhibit 11, what did
5 you find it to be? What is that stuff that's in there?

6 A. State's Exhibit 11, the item that I have labeled item
7 2, is cocaine base or crack found in the amount of .84
8 grams.

9 Q. And is there more than .84? Is there a second amount
10 in that bag?

11 A. There is.

12 Q. How much does that weigh?

13 A. Item 2.1 is cocaine base found in the amount of 2.97
14 grams.

15 Q. So I'm not going to do math in public, but I am going
16 to say if we added the .84 and the 2.97 grams, we would have
17 the total weight of the crack cocaine in here?

18 A. That's correct.

19 Q. I wouldn't dare do that without a calculator. Okay.

20 Now, this is already in evidence, but what is stuff in
21 there? What's that green stuff?

22 A. Defendant's Exhibit 1, which is item number 3, was
23 found to be marijuana in the amount of 3.20 grams. 

24 Q. Okay. Thank you very much.

25 And if you would, please answer any questions that the

1 defense attorney has for you. Thank you.

2 A. Thank you.

3 CROSS EXAMINATION BY MR. MILLS:

4 Q. Ms. Johnson?

5 A. Yes, sir.

6 Q. Do you have your notes?

7 A. Yes, sir, I do.

8 Q. May I see those please?

9 A. There you are.

10 Q. Do you have any other notes about this incident?

11 A. Notes that were given to me with the case. Those are
12 actually my notes.

13 Q. Okay. These are your notes?

14 A. Yes, sir.

15 Q. Okay. And you were initially given that nice clean
16 copy you talked about, that was a revised report?

17 A. The initial?

18 Q. No, the one that Mr. Springs was just commenting on?
19 When he came up and started your conversation, talked about
20 this one instead of that dog-eared one, as opposed to that
21 one?

22 A. Right.

23 Q. And that one was a revised report, right?

24 A. An amended report.

25 Q. An amended report?

1 A. That's correct.

2 Q. But this is the original report?

3 A. That's correct.

4 Q. All right. And the original report it had cocaine that
5 you were told was from Mr. Patton, right?

6 A. There is a second suspect, yes.

7 Q. Okay. So all you know is what you were told who
8 associates with what, but you don't know where they actually
9 came from, correct?

10 A. That's correct.

11 Q. So you don't know if that all came from Mr. Patton?
12 You can't say that, can you?

13 A. I cannot.

14 Q. Now, we talked about examining these things. Did you
15 do anything like -- was there anything unusual about this
16 testing?

17 A. No, sir.

18 Q. Anything special about any of the contraband?

19 A. No, sir.

20 Q. Anything distinct?

21 A. No, sir.

22 MR. MILLS: One moment.

23 (Off the record)

24 (Back on the record)

25 BY MR. MILLS:

1 Q. You don't do fingerprints?

2 A. No, sir.

3 Q. There is somebody who does -- a separate person who
4 does that, a separate expert?

5 A. There are separate crime scene individuals who handle
6 the fingerprints.

7 Q. Thank you.

8 A. Yes, sir.

9 MR. SPRINGS: May I ask one more clarify
10 questioning?

11 THE COURT: Sure.

12 REDIRECT EXAMINATION BY MR. SPRINGS:

13 Q. The weights of the drugs, is that just the drug? You
14 don't weigh the plastic baggies as well, do you?

15 A. No, sir.

16 Q. That's just the drugs?

17 A. Yes, sir.

18 Q. All right.

19 MR. SPRINGS: That's all I have.

20 THE COURT: All right. Thank you, ma'am. You may
21 stand down.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Do you want to have this witness
24 excused?

25 Any objection?

1 MR. MILLS: No objection.

2 THE COURT: Thank you for coming, ma'am. You may
3 be excused.

4 THE WITNESS: Thank you, Your Honor.

5 MR. SPRINGS: Commander Brown, if you would step
6 up and be sworn by the clerk.

7 MR. MILLS: Your Honor, we have something we need
8 to approach about.

9 THE COURT: Yes, sir.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion).

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, there is a matter I need to take up with counsel
14 out of your presence very briefly. It would not be a full
15 break. Just very briefly. Please retire to the jury room.
16 We will have you right back in. Thank you.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: We might as well go ahead and place
20 him under oath just briefly.

21 COMMANDER MARVIN BROWN, having been first duly
22 sworn, testified as follows:

23 THE COURT: I think you can answer from right
24 there. This is going to be very brief, as long as you speak
25 loud enough for the court reporter to hear you.

1 The question has come up -- the witnesses in this
2 case are sequestered. The question is -- a question has
3 been raised as to whether you were in the courtroom while
4 any of the State's witnesses have testified.

5 THE WITNESS: No, sir.

6 THE COURT: Have you been?

7 THE WITNESS: I have not.

8 THE COURT: Okay. I note that you were in the
9 courtroom. You were sitting in the back before we got
10 started and once when the jury was out, you came up and
11 spoke to Mr. Springs --

12 THE WITNESS: Uh-huh.

13 THE COURT: -- and Somebody else. As a matter of
14 fact, you know, I kind of pointed out to everybody the jury
15 was coming back in, so they needed to end the conversation.
16 I didn't say it that way, but I just let everybody know the
17 jury is coming back in, and you left from there then.

18 My question is, under -- you are under oath. Were
19 you in the courtroom for any witness' testimony for the
20 State while they were actually testifying?

21 THE WITNESS: No, sir, I was not.

22 THE COURT: All right. Do you want to ask any
23 questions about that?

24 MR. MORTON: No, sir, Your Honor.

25 MR. MILLS: I would just ask the court to inquire

1 whether he's had any contact with any of the witnesses.

2 THE COURT: Have you discussed the case with any
3 of the persons who have testified on behalf of the State in
4 this case, since the -- at any time while they were --
5 before or after they testified?

6 THE WITNESS: No, I came late this morning.

7 THE COURT: Okay. Any other questions?

8 MR. MILLS: No, sir.

9 THE COURT: All right. And I would say from the
10 court's observation, I know Mr. Brown has been in the
11 courtroom early on, but not today and not mostly yesterday.
12 He was in here -- the jury was out at the time that I saw
13 him in here. There were no questions asked of any
14 witnesses. He was discussing something with Mr. Springs and
15 somebody else.

16 All right. I think are you satisfied with that?

17 MR. MILLS: Yes, Your Honor.

18 THE COURT: Counsel?

19 MR. MORTON: Yes, sir.

20 THE COURT: All right. Just have a seat. We will
21 call you right back up and we will bring the jury back. You
22 have to be sworn again. I was just doing it for the
23 purposes of this hearing.

24 All right. Please bring them in.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Counsel, please proceed.

3 MR. SPRINGS: Yes. We call Marvin Brown.

4 COMMANDER MARVIN BROWN, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. SPRINGS:

7 Q. Please tell the jury your name.

8 A. My name is Marvin Brown.

9 Q. What do you do for a living?

10 A. I'm the commander of the Drug Enforcement Unit.

11 Q. Are you a police officer?

12 A. I am. I'm a certified police officer.

13 Q. How long have you been a police officer?

14 A. Thirty-three years.

15 Q. And how long have you worked in narcotics?

16 A. About thirty years.

17 Q. Thirty years?

18 A. About thirty.

19 Q. Okay. And you run the narcotics unit now?

20 A. Yes. I ran the Rock Hill Police Department narcotics
21 unit for ten years. I have been with the county now for
22 twelve, and I have run the Drug Enforcement Unit just a
23 little over ten years.

24 Q. Okay. That Drug Enforcement Unit, where do the
25 officers come from, the narcs on it?

1 A. Eight different police agencies here in York County.
2 Every law enforcement agency in York County has come
3 together to form the Drug Enforcement Unit, so it's eight
4 different agencies on this drug unit, is what we call it,
5 the drug unit.

6 Q. Similar to a task force?

7 A. Similar to a task force, yes.

8 Q. Now, in your thirty years in law enforcement -- and how
9 many in narcotics?

10 A. My first search warrant was in 1977.

11 We didn't form the official narcotics unit at the Rock
12 Hill police department until '87, but I was working
13 narcotics through the late seventies and eighties, so I have
14 been working drug enforcement for thirty years.

15 Q. All right. In all those years have you come to be
16 acquainted with the drug crack cocaine?

17 A. I have, but the first time we saw crack was in the
18 mid-nineties.

19 Q. And have you actually been involved on actual crack
20 cocaine sales and distribution cases?

21 A. Yes. Actually I made the first crack arrest here in
22 York County. And the Drug Enforcement Unit makes about
23 between 100, 150 cases a month, and I have been involved in
24 most of those, so hundreds of crack cases, if not thousands.

25 Q. All right. Would you say that you have learned through

1 those years and all those cases how crack cocaine is sold
2 here in York County?

3 A. Yes, I have. And also I have been to quite a few --
4 quite a bit of training.

5 Q. Let me ask you real quick a side question. How does a
6 crack addict get that stuff in his body? How does he take
7 the drug?

8 MR. MILLS: Objection, Your Honor.

9 MR. SPRINGS: I would like to know the basis for
10 this objection..

11 THE COURT: Counsel, approach just a minute.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 THE COURT: The objection is overruled. You may
15 proceed, counsel.

16 BY MR. SPRINGS:

17 Q. Thank you, sir.

18 How does a crack addict typically, in your experience,
19 in York County, get the drug into his body?

20 A. Crack is a smokeable form of cocaine, so it's smoked
21 through either a pipe. A drink can be made up to be a
22 pipe. It's a smokeable form of cocaine.

23 Q. Okay. All right.

24 And in your years have you learned and become
25 knowledgeable about the street price, the going rate for

1 crack cocaine, what it cost?

2 A. Yes, I have.

3 Q. Have you learned in your years of experience how it is
4 packaged and sold?

5 A. Yes.

6 Q. Have you learned in your years of experience the habits
7 of the typical addict versus the habits of a dealer?

8 A. Yes, I have.

9 Q. Have you ever been qualified in a state court of record
10 like this as an expert?

11 MR. MILLS: Objection. Relevance, Your Honor. At
12 this point that's a little premature.

13 THE COURT: Overruled. You are a little
14 premature, I think, counsel. Let him finish his question.
15 Then I may respond to you.

16 Go ahead.

17 BY MR. SPRINGS:

18 Q. Commander, have you ever been qualified as an expert in
19 a state court of record like this in how crack cocaine is
20 packaged, sold, the going price, the typical intoxicating
21 dose? Have you ever qualified as an expert in the drug
22 dealing of crack cocaine?

23 A. I have.

24 Q. In state court?

25 A. Yes, sir.

1 Q. Approximately how many times?

2 A. More than six, less than twelve.

3 Q. All right. Have you ever been qualified in the United
4 States District Court, the Federal Court, at the same type
5 expert?

6 A. Yes, twice.

7 MR. SPRINGS: Your Honor, we offer Commander
8 Marvin Brown as an expert in how crack cocaine is packaged,
9 sold, the going price, the typical intoxicating dose, and
10 the difference in habits between the typical addict, the
11 user, and the typical drug dealer.

12 MR. MILLS: Your Honor, may we approach again?

13 THE COURT: Yes, sir.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, again, there's a matter I need to take up with
18 counsel out of your presence. It will be very brief,
19 probably about five minutes or so. Please retire to the
20 jury room and have you right back in.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: All right. Go ahead, counsel.

24 VOIR DIRE EXAMINATION BY MR. MILLS:

25 Q. Major Brown?

1 A. Commander.

2 Q. Commander Brown.

3 Mr. Brown, have you ever done any writings or
4 publishings on this area of expertise?

5 A. I did an article in a national magazine for United
6 States Attorney's Office that was published in all fifty
7 states in reference to the Drug Enforcement Unit, how we put
8 it together, but not specifically about crack cocaine
9 itself.

10 Q. Not about the packaging and sale of crack cocaine or
11 anything of that nature, is that correct?

12 A. No, I do have -- I teach three blocks of search and
13 seizure, asset forfeiture, basic narcotics, and once a year
14 I normally -- I'm a guest instructor at a commander's school
15 for the United States Attorney's Office also about drug
16 enforcement units and the drug trends and that kind of
17 thing. And I have been to several other schools, but I
18 haven't done any publishings in reference to the street
19 level crack cocaine.

20 Q. Okay. So what is your expertise in the ability to
21 do -- have you actually been involved in the actual
22 transactions yourself?

23 A. I have, but that's been awhile. It's twenty-five of us
24 on the unit. Now, the younger guys do the actual
25 transactions, but I have been the supervisor over narcotics

1 for over twenty years, and actually the first crack cocaine
2 case we made was three guys from New York, so I was on -- I
3 was involved from the very beginning when crack cocaine
4 first came in, and I have watched it evolve as to how it's
5 packaged and sold throughout the years, especially here in
6 York County. We make hundreds of crack cases.

7 Q. Is it all done the same way?

8 A. Oh, no, it's different ways.

9 Q. So it can be -- there is a variance between -- there is
10 a generalization, but there is always exceptions? Is
11 that -- I mean, I'm trying to get handle on what you are
12 going to testify to. Is that --

13 A. There is exceptions to way it's packaged. It's just
14 certain amounts that it's normally sold in. There is
15 certain dosage units, which is usually considered
16 intoxicating unit. How much it takes -- like how many --
17 what size is normally an intoxicating unit for a person who
18 uses crack. The cost of crack, you know, the -- I guess
19 compared to the liquor or beer, you know, how much you --

20 Q. Okay.

21 A. I don't think you are going to get into liquor and beer
22 but --

23 Q. So you are just talking about sale to different size
24 and that's enough to get a buzz off it and that's distribute
25 that at that level?

1 A. I'm assuming that's what -- that's what I have
2 testified to -- it's more of a street level. I deal with
3 street level, mid level, and upper level drug dealers, but I
4 think today we are talking more of a street level dealer.

5 Q. Just customer to a street level, right?

6 A. I think so.

7 Q. All right.

8 MR. MILLS: Thank you, Your Honor.

9 One moment, please.

10 (Off the record)

11 (Back on the record)

12 MR. MILLS: I would like to go ahead and object
13 for the record. I under the situation. Under 702 I don't
14 believe that he's qualified.

15 THE COURT: Well, reading from 702 of the Rules of
16 Evidence, the South Carolina Rules of Evidence, it says "if
17 scientific, technical, or other professionalized knowledge
18 will assist the trier of fact to understand the evidence or
19 to determine a fact in issue, a witness qualified as an
20 expert by knowledge, skill, experience, training, or
21 education may testify thereto in the form of an opinion or
22 otherwise."

23 And so as I understand the cases in South
24 Carolina, a person has special knowledge and skill and would
25 help the jury understand the issues before them, and they

1 have special knowledge and skill that would be helpful to
2 them in that regard, that they can testify concerning that.

3 I -- in this -- let me say in this particular
4 case, I think he can testify, whether he's qualified as
5 expert or not, once a foundation is laid as to how he comes
6 to that knowledge. He testified generally about that
7 knowledge.

8 And, of course, he can't testify as to what
9 somebody intended to do in this particular case, obviously,
10 as an expert. He can only testify as to what his knowledge
11 and understanding is based on what he has seen in the past.

12 And I certainly find the information he gives, as
13 long as the foundation is laid as to how he has knowledge, I
14 think he could testify that to the jury whether he is
15 qualified as expert or not. I think he can testify
16 concerning that, if the proper foundation is laid as to how
17 he came about his knowledge, but the court would find under
18 South Carolina Rules of Evidence 702, I think he's qualified
19 as an expert. He's been qualified in other state courts
20 before. He's been qualified in federal courts with regard
21 to that knowledge, and I think whether he's qualified as an
22 expert or not, I think he can testify as to his experience
23 and knowledge and what he understands. It wouldn't have
24 anything to do with the issues in this particular case. He
25 can't testify as to any opinions with regard to this

1 particular case, but he could testify generally about what
2 he knows.

3 MR. MILLS: And the only additional sustaining
4 ground I would make is that we have had three other officers
5 testify to this, and I think this testimony would be
6 cumulative.

7 THE COURT: Oh, no, no, no, they haven't -- they
8 haven't testified concerning that.

9 MR. MILLS: I'm talking about --

10 THE COURT: As I understand what he's testimony is
11 going to be is about the typical dose of -- intoxicating
12 dose, what it sells for, how it's normally packaged for
13 sale, and that sort of thing by a dealer. None of that has
14 been testified by the officers. They testified as to what
15 they found, but nobody has told the jury what that means.

16 MR. MILLS: Well, my recollection -- of course,
17 I'll defer to the court on the record, is Mr. Springs asked
18 each of those individuals is that the way it's distributed,
19 is that the way it's packaged for sale on the street.

20 THE COURT: Well, there was -- one officer was
21 asked about that, I believe. I believe it was Officer
22 Schettler was asked about that and he -- I don't even know
23 if he was asked about that, but in response to either your
24 questions or Mr. Springs questions, one or the other, he
25 said typically that's how it's done, put in a corner of a

1 sandwich bag and torn off and put -- and then put in a
2 plastic bag and sold out of there, but it's tear out of a
3 corner --

4 MR. MILLS: Right.

5 THE COURT: -- of a baggy and wrapped into that
6 and it's sold like that. That's all the testimony that I
7 recall. I don't remember any testimony about what a dose
8 of -- intoxicating dosage would be and what it would cost or
9 what amount constitutes an intoxicating dosage. I don't
10 remember any testimony concerning that.

11 MR. MILLS: I don't recall any testimony either.
12 The other ones I did. I think both Ligon and Schettler and
13 Ervin testified, but I agree with the court.

14 THE COURT: Well, if I'm mistaken about that, I'm
15 mistaken about what they testified, but the record will show
16 it. But, in any event, I'm quite sure that nobody testified
17 concerning values and how -- what amount of intoxicating
18 dosage, what it sells for, and that -- those sources.
19 Nobody has testified to any of that.

20 MR. MILLS: Right. Thank you, Your Honor.

21 MR. MORTON: Your Honor, I didn't -- Mr. Springs
22 informs us that this is his last witness, probably. We
23 would have a directed verdict motion and send the jury back
24 out again? I didn't know if there was any way you could
25 preserve that and let us make -- whatever you want to do. I

1 just want to bring it to the court's attention.

2 THE COURT: All right. Well, you know, I think in
3 order for me to consider a directed verdict motion, I would
4 need whatever testimony -- I certainly should consider
5 whatever testimony that this witness would give --

6 MR. MORTON: All right.

7 THE COURT: -- in deciding whether they've
8 established their case or not, particularly I guess with
9 regard to intent to distribute. I guess that's where their
10 testimony is going, evidence on this issue, because they
11 have the burden of proof on the intent to distribute it, and
12 so that's why I'm allowing his testimony, but -- so -- and I
13 guess we will need to have that information. So I
14 appreciate that, trying to keep the jury from sending in and
15 out, but we may just have to do that. We make just take a
16 short break. Y'all can probably use that time anyway.

17 MR. MORTON: Thank you, Your Honor.

18 THE COURT: So what I would suggest -- and you are
19 offering him as an expert witness. I'm going to allow him
20 to testify as an expert witness, but we will do that on the
21 record. You can object to it, if you want to, whatever.

22 Please bring the jury in, please.

23 MR. MILLS: Your Honor, do I might just object
24 just now for the jury now, or do I need to do that in front
25 of the jury?

1 THE COURT: No, I think you could be.

2 MR. MILLS: Pardon me?

3 THE COURT: No, it be noted now. I don't think
4 you need to do in front of the jury.

5 MR. MILLS: Thank you, Your Honor.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Counsel, approach just a second,
9 please.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 MR. SPRINGS: Your Honor, pursuant to our earlier
13 foundation of this officer's years of experience in
14 narcotics and with crack cocaine, his training and so forth,
15 we do -- we are going to ask questions under Rules of
16 Evidence 701.

17 THE COURT: Yes, sir.

18 CONT'D DIRECT EXAMINATION BY MR. SPRINGS:

19 Q. Now, commander, have you learned what the typical
20 intoxicating dose, a typical hit that the crack addict on
21 the street is looking for to get his fix?

22 A. Yes, sir.

23 Q. What's the typical intoxicating dose?

24 A. It's a tenth of a gram, what we call a 20. Normally it
25 cost \$20 and it's a small rock. It looks like a peanut, a

Qualify
As
A
cop
expert

1 small piece of peanut brittle. It's a tenth of a gram.

2 Q. Okay. \$20?

3 A. It's a \$20 rock or called a 20. On the street it's
4 called a 20.

5 Q. Okay. And if the addict buys two hits, two doses, or
6 three, does he get a price break, typically in your
7 experience?

8 A. Yes, the more you buy, the cheaper it gets. A tenth of
9 a gram is \$20; and .3 grams would be \$40; and another half,
10 .35, would be \$50. It gets cheaper as it goes up.

11 Q. Okay. Now, in your experience, does the typical street
12 corner addict, when you find that poor soul and arrest him,
13 does he have multiple, as many as eleven separate bags of
14 crack cocaine?

15 MR. MILLS: Object to leading, Your Honor. We're
16 talking about fact specific now about this case.

17 THE COURT: All right. Yeah, avoid the leading,
18 counsel, please.

19 BY MR. SPRINGS:

20 Q. Tell us your experience with multiple baggies and a
21 typical user, as opposed to somebody selling it in a
22 business, if you would?

23 A. Crack is a highly addictive substance. On crack
24 abusers, you wouldn't find multiple bags in a crack abuser's
25 pocket. When you have -- crack is broken down for sale in

1 corner baggies. You get an eighth of an ounce or a half an
2 ounce and you break it down and put in these little corner
3 baggies. Usually they are packaged about the same to sell
4 for \$50 apiece, or whatever, but a crack abuser normally
5 would not walk around with a dozen bags in his pocket broken
6 down for sale. I mean, that's what they are is broken down
7 for sale in individual baggies. You wouldn't buy it that
8 way, because you pay far too much for it. A crack abuser
9 would buy -- the more you buy, the cheaper it gets, so you
10 wouldn't buy ten or twelve bags. You would buy a bigger
11 piece, like buying a pint of milk as opposed to buying a
12 gallon.

13 Q. I understand.

14 And in your experience, is it typical or would it be
15 unusual to find the addict, the buyer, going around armed
16 with a pistol? Would that be typical or unusual?

17 A. That would be unusual. What you would find on a crack
18 abuser normally would be several lighters and a crack pipe,
19 because it takes lighters to use it, but not a gun. Rarely
20 do we find crack abusers walking around with guns on them.

21 Q. And have you ever found pistols on dealers, people in
22 the business?

23 A. Yes, that's quite common. The drugs unit itself has
24 recovered seven hundred and some weapons.

25 Q. And what, in your experience, would the dealer be using

1 a gun for? Why would he carry a gun?

2 MR. MILLS: Objection. It calls for speculation.

3 MR. SPRINGS: In your experience.

4 THE COURT: I'm going to -- I think it's certainly
5 speculation there. I'm going to sustain the objection.

6 BY MR. SPRINGS:

7 Q. Commander, in your experience -- I'll strike that.

8 I'll strike that, and I'm finished. Thank you very much,
9 sir.

10 CROSS EXAMINATION BY MR. MILLS:

11 Q. Commander Brown, you don't know anything about this
12 specific case, do you?

13 A. No.

14 Q. All right. So you are not offering testimony about
15 what the source of the cocaine in evidence, who had it or
16 where it came from?

17 A. No, sir, not about this case.

18 Q. Okay. So you are just talking about other people and
19 other times in your experience, correct?

20 A. Dealers versus users, yes.

21 Q. And that's a generalization, not as a hard and fast
22 rule, right?

23 A. It's not hard and fast, but it's --

24 Q. Pretty consistent?

25 A. Yes, it is, eleven bags, twelve bags in your pocket.

1 Q. Okay. But, once again, you don't know where these came
2 from and you don't know anything about the specifics of this
3 case?

4 A. I don't.

5 Q. Okay. Thank you, sir.

6 MR. SPRINGS: That's all we have..

7 May the officer please be excused?

8 MR. MILLS: Yes, of course.

9 THE COURT: Thank you for coming, sir. You may be
10 excused.

11 MR. SPRINGS: Yes, sir.

12 Your Honor, that's our case. We rests.

13 THE COURT: Counsel, approach just a minute for
14 scheduling purposes now.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 THE COURT: Counsel, I tell you what we will do is
18 we will consider all motions timely made when made, if you
19 are ready to proceed on.

20 MR. MILLS: Your Honor, we are protected for the
21 record?

22 THE COURT: Yes, timely made when made. We will
23 take it up later, so we can move on with the case.

24 All right. Are you ready to proceed then?

25 MR. MORTON: Yes, sir, Your Honor.

1 We would call Mr. Odarius Williams to the stand.

2 ODARIUS WILLIAMS, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. MORTON:

5 Q. Mr. Williams, please say your name for the court.

6 A. Odarius Antwan Williams.

7 Q. And how do you spell Odarius?

8 A. O-D-A-R-I-U-S.

9 Q. Okay. My name is Jim Morton and I'm helping Mr. Mills.
10 You and I met for the first time this morning, correct?

11 A. Yes, sir.

12 Q. Okay. And Odarius, let me ask you a little bit about
13 yourself. Where are you from?

14 A. I'm from York, South Carolina.

15 Q. And where do you live?

16 A. I live like -- I live in York, South Carolina.

17 Q. Were you born and raised here?

18 A. Yes, sir.

19 Q. Do you go to school here?

20 A. Yes, sir.

21 Q. And where do you go to school?

22 A. York Comprehensive High.

23 Q. York High School?

24 A. Yes, sir.

25 Q. Speak up just little bit. You want to make sure the

1 last juror over here understands what you are saying, okay?

2 A. All right.

3 Q. Okay. I'm going to stand back here so you can talk to
4 us, okay?

5 Where do you go to school?

6 A. York Comprehensive High.

7 Q. And what year are you there?

8 A. What year?

9 Q. Yes, sir.

10 A. What year did I start going?

11 Q. No, what, you a sophomore, junior, senior?

12 A. Oh, I'm a senior.

13 Q. You are a senior there?

14 A. Yes, sir.

15 Q. Is this your last semester there?

16 A. Yes, sir.

17 Q. Are you going to graduate?

18 A. Yes, sir.

19 Q. Okay. Are you doing okay in school?

20 A. Yes, sir.

21 Q. What's your grade point average?

22 A. My GPA is a 2.78, I believe.

23 Q. Okay. And what do you plan to do when you get out of
24 school?

25 A. I plan on going to Winthrop to follow my career in

1 broadcast journalism.

2 Q. In broadcast journalism?

3 A. Yes.

4 Q. That's what you want to do?

5 A. Yes, sir.

6 Q. And do you know Jomar Robinson?

7 A. Yes, sir, as a friend.

8 Q. Okay. How good a friend?

9 A. I know his girlfriend like real good, so --

10 Q. Okay.

11 A. -- that made us able to be friends.

12 Q. Okay. Do y'all hang out together?

13 A. No, sir.

14 Q. Okay. Do you know Officer Schettler?

15 A. No, sir.

16 Q. Do you know Officer Ervin?

17 A. No, sir.

18 Q. Do you know Officer Ligon, who was also out there that
19 night?

20 A. No, sir.

21 Q. Do you have any grudges against them?

22 A. No, sir.

23 Q. On the night of March 20th of 2008, you were present
24 when Jomar Robinson and Mr. Patton were arrested over on
25 Hall Street, correct?

1 A. Yes, sir.

2 MR. SPRINGS: Your Honor, I'm going to object to
3 the leading.

4 THE COURT: Please avoid the leading, counsel.

5 MR. MORTON: I'm just trying to get to the subject
6 matter. I apologize, Your Honor.

7 BY MR. MORTON:

8 Q. Tell me where you were on the night of March 20th,
9 2008.

10 A. I had just came down and -- me and a couple of my
11 buddies, we had just came down there just to hang out.

12 Q. And hang out and do what?

13 A. Just hang out. That's my old neighborhood. That's
14 where I used to stay at, so I just came back to see
15 everybody.

16 Q. So you used to live in that area?

17 A. In the area, yes, sir.

18 Q. Do you remember when the police came there that night?

19 A. Yes, sir.

20 Q. Okay. How long had you been there?

21 A. Maybe five, ten minutes.

22 Q. Okay. And during that five or ten minutes that you
23 were there, did you see any car traffic come into Hall
24 Street?

25 A. No, sir.

1 Q. You didn't see any?

2 A. None.

3 Q. Did you see anybody -- any of the cars -- did you see
4 any cars stop in front of the 122 Hall Street where you
5 were?

6 A. No, sir.

7 Q. Did you see any of the five people who were there
8 approach a car?

9 A. No, sir.

10 Q. Are you sure about that?

11 A. Positive.

12 Q. Okay. Did you see anybody selling dope?

13 A. No, sir.

14 Q. Okay. Are you sure about that?

15 A. I'm positive.

16 Q. Okay. You saw officers pull up?

17 A. Yes, sir.

18 Q. Tell us -- tell the jury what happened, how that
19 occurred.

20 A. All right. We was just standing on the porch maybe
21 five minutes and then the police, they just -- those two
22 officers, they came in one car and they hopped out. And as
23 soon as they hopped out, they said that they smelled green
24 marijuana.

25 Q. Now, you say as soon as they hopped out. Tell us again

1 how they pulled up. Did they pull up slowly, or --

2 A. No, they pulled up real fast. It was like "voo" and
3 then they stopped and it was like "we smell green
4 marijuana."

5 Q. They got out of the car?

6 A. And they said they smelled green marijuana.

7 Q. About how far from their car were they when they said
8 they smelled green marijuana?

9 A. Maybe at least -- at least ten feet away.

10 Q. Okay. Did they wait until they got this close --

11 A. No, sir.

12 Q. -- to y'all?

13 A. No, sir.

14 Q. Are you sure about that?

15 A. They said that they smelled green marijuana.

16 Q. As soon as they got out of the car?

17 A. Yes, sir.

18 Q. Are you sure about that?

19 A. Positive.

20 Q. And --

21 MR. SPRINGS: I going to object to the repeating
22 "are you sure about that?" It bolsters the testimony. It's
23 improper.

24 THE COURT: Yes.

25 BY MR. MORTON:

1 Q. After -- and I'll retract in a minute.
2 They arrested two individuals that night, right?
3 A. Yes, sir.
4 Q. Were you one of the ones they arrested?
5 A. No, sir.
6 Q. And who did they arrest?
7 A. They arrested Jomar and Mr. Patton.
8 Q. Did you observe that night Mr. Patton or Mr. Robinson
9 with any kind of drugs?
10 A. No, sir.
11 Q. Okay. Now, after they were arrested -- again, I'll
12 retry it. Did other officers come to the scene?
13 A. Yes, sir, like after they had us on the ground and
14 everything, it was maybe at least five or six cars and it
15 was a bunch of police officers running down there, flooded
16 down there.
17 Q. They flooded out of there. Marked police car units?
18 A. Yes.
19 Q. Unmarked?
20 A. It was some marked, but some unmarked.
21 Q. So they flooded where y'all were?
22 A. Yes, sir.
23 Q. Okay. And were they taking pictures?
24 A. I'm not sure if they were taking pictures. They had me
25 on the ground.

1 Q. Okay. And did they talk to you?

2 A. No, sir. They searched me three times.

3 Q. They searched you three times?

4 A. Yes.

5 Q. Well, you were a witness to this incident, right?

6 A. Yes, sir.

7 Q. And I assume they took a statement from you?

8 A. No.

9 Q. They didn't ask you for any kind of statement?

10 A. No, sir.

11 Q. In other words, the police did not give you a form and
12 ask you for your statement about the events that happened
13 that night?

14 A. No, sir.

15 Q. Do you know whether they did that to any of the other
16 three who were not arrested?

17 A. No, sir.

18 Q. They didn't do that?

19 A. No, sir.

20 Q. Okay. Now, Mr. Patton, when the police got there, I
21 understand -- what did -- what happened when the police got
22 there, as far as Mr. Patton is concerned? Did they search
23 him?

24 A. They searched him whenever he came back.

25 Q. What did he do when they got there?

1 A. He ran.

2 Q. Okay. And what did Mr. Robinson do? When the police
3 came up, they got out of their car, they said they smelled
4 green marijuana. Then what did the police say?

5 A. They told -- they was like "I'm going to search you,"
6 and he was like "no, you don't have a reason to search me."

7 Q. Okay.

8 A. And they tried to search him and he ran.

9 Q. Okay. And did you see them take a gun from him?

10 A. No, sir.

11 Q. Did you see him -- what was he wearing?

12 A. He had on a pair of Timberlands. He had on some black
13 pants and a white T-shirt.

14 Q. Did you see him with a jacket on?

15 A. No, sir.

16 Q. Did you see a gun?

17 A. No, sir.

18 Q. Are you sure about that?

19 A. Yes, sir.

20 MR. SPRINGS: I'm going to object to the --

21 THE COURT: Please quit asking him "are you sure
22 about that," counsel.

23 BY MR. MORTON:

24 Q. So Mr. Robinson ran after they tried to search him,
25 right?

1 A. Yes, sir.

2 Q. And Mr. Patton ran?

3 A. Yes, sir.

4 Q. And how long do you think Mr. Patton was gone before he
5 came back?

6 A. It had to be probably two or three minutes.

7 Q. Okay. So he was gone for two or three minutes.

8 Did anybody chase Mr. Patton? Did any of the police
9 chase him?

10 A. No, sir.

11 Q. Was he gone from the scene for two or three minutes?

12 A. Yes, sir.

13 Q. And then he came back?

14 A. Yes, sir.

15 Q. And was he searched then?

16 A. Yes, sir.

17 Q. And how many times did they search him?

18 A. Three times.

19 Q. Okay. After they searched him the first time, what did
20 they find?

21 A. Nothing.

22 Q. After they searched him the second time, what did they
23 find?

24 A. Nothing.

25 Q. So he was gone -- here are the police. He runs. He's

- 1 gone out of sight for two or three minutes?
- 2 A. Yes, sir.
- 3 Q. Then he comes back, right?
- 4 A. Yes, sir.
- 5 Q. And after they searched him the third time, what
- 6 happens?
- 7 A. They said that they found dope on him.
- 8 Q. Did you see that dope?
- 9 A. I seen -- I didn't see any dope.
- 10 Q. Did you see them arrest Mr. Patton?
- 11 A. Yes, sir.
- 12 Q. Did you see them arrest Mr. Robinson?
- 13 A. Yes, sir.
- 14 Q. Did you see -- did they show you any drugs that they
- 15 took from Mr. Robinson?
- 16 A. No, sir.
- 17 Q. Did they show you a gun that they took from Mr.
- 18 Robinson?
- 19 A. No, sir.
- 20 Q. How long were you out there, Mr. Williams, after the
- 21 police came?
- 22 A. Maybe five more minutes.
- 23 Q. Okay. Did they ask you to come down to the police
- 24 station and give a statement?
- 25 A. No, sir.

1 Q. Would you have done that?

2 A. No, sir.

3 Q. You would not have gone down there and done that?

4 A. No, sir.

5 Q. Why not?

6 A. Because I don't -- I didn't want to be involved in all
7 of this.

8 Q. Okay. Did they ask you there that night on the scene
9 to talk to them about what had happened?

10 A. No, sir.

11 Q. They did not?

12 A. No, sir.

13 Q. Why not?

14 A. I'm not sure.

15 Q. Were you there?

16 A. Yes, sir.

17 Q. Were you on the ground?

18 A. Yes, sir.

19 Q. Mr. Williams, when Mr. -- when the police officers came
20 up to the scene, you said that they indicated that they had
21 smelled marijuana?

22 A. Yes, sir.

23 Q. Okay. And that they came up and they wanted to search?

24 A. Yes, sir.

25 Q. Mr. -- search you?

- 1 A. They searched all of us.
- 2 Q. They did?
- 3 A. But they -- when they first came, they wanted to search
- 4 Jomar.
- 5 Q. Okay. And when Jomar -- when they wanted to do that,
- 6 what did Mr. -- what did Mr. Robinson do?
- 7 A. He told them that he couldn't search him. They didn't
- 8 have a reason to search him.
- 9 Q. And then what happened?
- 10 A. He tried to grabbed for him. He grabbed his shirt and
- 11 he ran.
- 12 Q. Okay. And one of officers grabbed his shirt?
- 13 A. Yes.
- 14 Q. Was -- again, did he grab his jacket?
- 15 A. No, sir. No, there was no jacket.
- 16 Q. There was no jacket?
- 17 A. No, sir.
- 18 Q. And when the officer grabbed his shirt, then Jomar did
- 19 what?
- 20 A. He ran.
- 21 Q. Okay.
- 22 A. He got away from them, and they -- maybe five minutes
- 23 later he brought Jomar back around.
- 24 Q. Did Jomar -- did you see Jomar hit the officer?
- 25 A. No, sir.

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you in a position to see that?

sir.

you see the officer grab Jomar thus so and Jomar
o hit the officer in the face?

ir.

6 Q. Or in the chest?

7 A. No, sir.

8 Q. Did that happen?

9 A. No, sir.

10 Q. Please answer any questions that Mr. Springs may have.

11 CROSS EXAMINATION BY MR. SPRINGS:

12 Q. Hi, Mr. Williams.

13 I do have some questions for you. If anything I ask
14 you, if you don't understand, just tell me. I'm not trying
15 to trick you. We just got to find out what you know about
16 this. So again --

17 A. Okay.

18 Q. -- if anything I ask is confusing, just say "I don't
19 understand what you are asking me."

20 A. Okay.

21 Q. And I'll ask a different question.

22 Now, this was a -- this was March 20th of last year, a
23 Thursday night. Do you remember it being a school night?

24 A. I wasn't sure that it was a school night. I didn't
25 really remember it being a school night, but apparently it

1 was.

2 Q. Well, you got a very, very detailed memory on it, so
3 much you don't remember if you were out there at 10:30 on a
4 Thursday, school night?

5 A. I remember I was out there, but I don't remember it
6 being a school night. It may have been.

7 Q. Now, you said that you are more friends with the
8 defendant Jomar Robinson's girlfriend, is that right?

9 A. Yes, sir.

10 Q. Would you say you are close friends with her?

11 A. Yes, sir.

12 Q. What is her name?

13 A. April Hayes.

14 Q. April what?

15 A. April. I don't know her last name. April.

16 Q. But you are close friends?

17 A. Yes, sir.

18 Q. Now, how old are you? Well, how old were you back
19 March last year?

20 A. Sixteen.

21 Q. Are you seventeen now?

22 A. Yes, sir.

23 Q. And do you know Jomar Robinson is twenty-six,
24 twenty-seven?

25 A. Yeah, something. I guess so.

1 Q. But you were on the porch with him that night, you were
2 on the porch?

3 A. Yes.

4 Q. You were in the group?

5 A. Yes, sir.

6 Q. Hanging out on a Thursday night?

7 A. Yes, sir.

8 Q. Now, was April there?

9 A. No, sir.

10 Q. Where does she live?

11 A. She stays like in the back of the apartments, I mean
12 further down.

13 Q. Does she live at the Hall Street Apartments?

14 A. Yes, sir.

15 Q. Did you ever live at the Hall Street Apartments?

16 A. No, sir, I stayed in the trailer park, the Meadowbrook
17 Trailer Park before.

18 Q. So you had gotten there -- I was taking notes and I
19 don't write very fast. You had been there, what you say,
20 about ten minutes before the police arrived?

21 A. Yes, sir.

22 Q. So you wouldn't know what was going on twenty or thirty
23 minutes before?

24 A. No, sir.

25 Q. Because you weren't there?

1 A. No, sir.

2 Q. Now, the officers, when they got out of their car,
3 there was no question they were police officers? They had
4 badges and they said they were police officers, did they
5 not?

6 A. Yes, sir.

7 Q. And in those ten minutes while you were on the porch
8 before the police rolled up, what did you fellows talk
9 about?

10 A. Nothing. We was just sitting around. I hadn't seen
11 them in a while, because I had moved and I just came back
12 and I was just telling them what's up.

13 Q. So we had the defendant in this case, Jomar Robinson,
14 he was there?

15 A. Yes, sir.

16 Q. And Mr. Patton was there?

17 A. Yes, sir.

18 Q. And there was you.

19 And what's the next fellow's name?

20 A. Jerome Neely and Travis Walton.

21 Q. Travis Walton?

22 A. Yes, sir.

23 Q. And do you know where Jerome Neely lives?

24 A. I don't know his address, but --

25 Q. Does he live at Hall Street Apartments?

1 A. No, he stays in the trailer park, the Meadowbrook
2 Trailer Park.

3 Q. Travis Walton, do you know where he lives?

4 A. He stays in the valley.

5 Q. In the valley section of York?

6 A. Yes.

7 Q. Which is some -- which is several miles from Hall
8 Street Apartments?

9 A. Yes.

10 Q. And did you know that the defendant, Jomar Robinson, he
11 lived on Washington Street, some other place. Did you know
12 he --

13 A. No, I didn't know that.

14 Q. Now, this was 10:30 at night on March the 20th. What
15 was the temperature like?

16 A. It was fairly warm.

17 Q. What were you wearing?

18 A. I had on -- I believe I had on some Timberlands myself
19 and a red T-shirt and blue jeans.

20 Q. Did you go to school the next day after this happened?

21 A. I -- I'm guessing I did, because you said it was on a
22 school night, so, yes, sir. I don't miss school.

23 Q. Did you tell your friends at school about what had
24 happened; that you were standing there when two guys got
25 arrested?

1 A. No, sir. I told my parents.

2 Q. Did you tell anybody at school?

3 A. No, sir. It's not something that you just talk about.

4 Q. Okay. Now, how did you end up here today? Who came to
5 you to talk to you ask you to come today?

6 A. Me and -- I talked to Mr. -- I can't remember his name.

7 Q. The man that was asking you questions just now?

8 A. No, this man right here, the black guy. I can't
9 remember his name. He had called me and --

10 Well, no, at first a woman called me and then he
11 contacted me.

12 Q. And what did they want you to do?

13 A. They wanted me to testify for Jomar.

14 Q. And how long ago was that conversation with the
15 attorney?

16 A. Maybe a couple months back. I'm not sure how long, but
17 maybe four months back, something like that.

18 Q. Okay. And how many times did you go over what you were
19 going to say here today?

20 A. We -- he just asked me if I would testify. At first I
21 didn't -- I wasn't really going to do it, but then they told
22 me that they really need me, so I said that I would. We
23 didn't really go over it, though.

24 Q. You didn't have any idea what you were going to say?

25 A. Yeah, we went over it a little bit, but not that much,

1 but like maybe twice.

2 Q. I don't mean to be picking at you, but didn't you go
3 over everything that you said today?

4 A. Yes, sir.

5 Q. Now, how well did you know Laquaris Patton?

6 A. I have known him maybe ten years.

7 Q. Let me ask you about this. You said the police
8 searched Laquaris Patton three times?

9 A. Yes, sir.

10 Q. Now, when was the first time that they searched him?

11 A. The first time -- they did it like consecutively.

12 Q. Okay. Well, let's talk through it.

13 You had been on the porch with these fellows for about
14 ten minutes --

15 A. Yes.

16 Q. -- and the police came up?

17 A. Yes, sir.

18 Q. And the police got out and came up and said "we smell
19 marijuana"?

20 A. Yes, sir.

21 Q. They asked Jomar Robinson and Laquaris Patton for ID?
22 Do you remember that?

23 A. Yes, sir.

24 Q. And then there was a tussle between one of the officers
25 and Jomar Robinson. Do you remember that?

1 A. It wasn't really a tussle. It was more like he just
2 grabbed his shirt and Jomar ran.

3 Q. Okay. Fine.

4 And they ran?

5 A. Yes.

6 Q. That left one officer there with you?

7 A. Yes, sir.

8 Q. What did that officer say to you?

9 A. He told us to get on the ground.

10 Q. Did you get on the ground?

11 A. Yes, sir.

12 Q. Did everybody get on the ground?

13 A. Yeah, the remaining of us - me, Travis, and Jerome - we
14 all got on the ground.

15 Q. Okay. And Mr. Patton took off?

16 A. Yes, sir.

17 Q. And came back a couple minutes later?

18 A. Yes, sir.

19 Q. Now, when he got back, did he get searched?

20 A. Yes, sir.

21 Q. When he got back, did you get searched?

22 A. Yes, sir, I got searched three times, whenever all the
23 police had came. It was most of the police squad that had
24 came and most police that came and I got searched three
25 times.

1 Q. Did the same officer search you three times?

2 A. No, sir.

3 Q. So you got searched by three different officers?

4 A. Yes, sir.

5 Q. What were they doing, patting you?

6 A. Yes, sir, checking.

7 Q. And then they let you go?

8 A. Yes, sir.

9 Q. And they let Jerome Neely and Travis Walton go?

10 A. Yes, sir.

11 Q. You didn't have anything to do with it?

12 A. No, sir.

13 Q. They didn't hit you or beat you, did they?

14 A. No, sir.

15 Q. Were they polite to you?

16 A. Yes, sir.

17 Q. And now when this officer said he was going to search

18 Jomar Robinson and Laquaris Patton, that's when Jomar takes

19 off?

20 A. Yes, sir.

21 Q. Is that what you said.

22 And he was wearing a T-shirt that night?

23 A. Yes, sir.

24 Q. March 20th?

25 A. Yes, sir.

1 Q. What was Laquaris Patton wearing?

2 A. I believe he had on a white T-shirt as well, and I
3 think -- I'm not really sure what he had on. I think he had
4 on some pants and a pair of tennis shoes.

5 Q. Did he have on a black jacket?

6 A. I think he did have a jacket on.

7 Q. Are you more certain he had a black jacket on or more
8 certain he had a white T-shirt on?

9 A. I think he had on a white T-shirt and a jacket on.

10 Q. Okay. Okay.

11 How about Jerome Neely, what was he wearing?

12 A. Jerome, he had on like a thin hoodie like this, but --
13 and he had on maybe a black T-shirt.

14 Q. And Travis Walton, what was he wearing?

15 A. Travis had on like a little sweat suit.

16 Q. Okay. You got a great memory. What did you have for
17 dinner that night?

18 A. That night, probably oodles of noodles. Oodles of
19 noodles.

20 Q. Oodles of noodles on March 20th.

21 What did you have the next night, March 21st?

22 A. I'm not sure about that.

23 Q. Why do you remember the March 20th night that you had
24 oodles of noodles?

25 A. This was the first night that I have ever been

1 searched, ever been involved with the police like -- big
2 like that.

3 Q. You are not saying that you have never been arrested?

4 A. No, sir.

5 MR. MORTON: Your Honor, may we approach the
6 bench?

7 THE COURT: Yes, sir.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, I have a matter I need to take up with counsel out
12 of your presence at this time. Please retire to the jury
13 room. It will be brief.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Yes, sir.

17 MR. MORTON: Your Honor, Mr. Springs asking this
18 witness whether he had ever been arrested before was an
19 improper question. It leads to probably improper
20 implications to the jury. I think that there needs to be
21 some type of retraction or some type of curative
22 instruction. This man does not have an impeachable record.
23 He indicated to Mr. Springs, when Mr. Springs asked him --
24 or he indicated he had never been searched before, and then
25 Mr. Springs I think asked the question "have you ever been

1 arrested before?"

2 THE COURT: He said "you are not saying you
3 haven't been arrested before?"

4 MR. MORTON: Sir?

5 THE COURT: He said "you are not saying you
6 haven't been arrested before," you just haven't been
7 searched before. He didn't say searched, but he said "you
8 are not saying you have never been arrested before."

9 MR. MORTON: Which is asking -- which is the same
10 as asking the question to the jury "have you ever been
11 arrested before?" The implication is the same. And so the
12 implication to the jury is the same and it's an improper
13 question, that I think there needs to be some type of
14 curative instruction for the jury --

15 THE COURT: What --

16 MR. MORTON: -- to disregard it.

17 Disorderly conduct.

18 THE COURT: I don't mind instructing them to
19 disregard that question and answer, if that's what you want
20 me to do, give it no consideration. I will be glad to do
21 that, if that's what you want me to do.

22 Counsel, I would say, though, it be very unusual
23 for somebody to be arrested for public disorderly conduct
24 and not be searched, which follows along with his question.
25 And so, you know, I don't know. I mean, he might have

1 opened the door to that by saying he's never been searched
2 before, and -- he said he remembered what he had to eat that
3 night, but he has never been searched before, gave that
4 impression. But follows then -- you know, follow up he may
5 have opened that door to that, "you are not saying you have
6 not been arrested." And so -- I mean, it's possible he
7 wasn't searched when he was arrested, but I think that would
8 be very unusual.

9 MR. SPRINGS: He -- he got arrested for the
10 disorderly conduct, though, after this, and so I would -- I
11 didn't remember the date, so I think a curative instruction
12 would be appropriate, even though the way I phrased the
13 question I don't think sent some big message to the jury.

14 The disorderly conduct was after this night, which
15 I did not remember, so I think a curative instruction is
16 called for.

17 THE COURT: All right. I will give them a
18 curative instruction to disregard the question and answer
19 and give it no consideration whatsoever.

20 MR. MORTON: Your Honor, I'll ask him. I'll ask
21 him what he's been arrested for. I think that's just as
22 good a way to handle it, if the court will allow me.

23 THE COURT: Would you rather do it that way?

24 MR. MORTON: Yes, sir.

25 THE COURT: That really might be the better thing

1 to do, because the solicitor asked him before you could
2 object to it and he answered, okay, that he had been. And
3 it might be if it was just disorderly conduct, then it might
4 be better to bring that out to the jury, rather than simply
5 giving them a curative instruction, but I'll do it either
6 way.

7 MR. MORTON: I'm going to ask him. I think that's
8 the best way to handle it.

9 THE COURT: I mean, obviously disorderly conduct
10 goes to the credibility issue, so I'll leave it up to you.

11 MR. MORTON: I'll ask him what he's been arrested
12 for and when. Thank you, Your Honor.

13 THE COURT: Okay.

14 Please bring the jury back.

15 Counsel, approach just a minute while the jury is
16 coming in.

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. Counsel, ready to proceed.
22 Are you finished with this witness?

23 MR. SPRINGS: I'm finished.

24 Thank you, Mr. Williams. You have a good day.

25 MR. MORTON: Just a couple of followup questions.

1 REDIRECT EXAMINATION BY MR. MORTON:

2 Q. Mr. Williams, Mr. Springs asked you if you had -- you
3 indicated that you had -- it's the first time that you had
4 ever been searched?

5 A. Yes, sir.

6 Q. Had you ever been searched before?

7 A. Yes, sir, I have been searched recently. It was like
8 the beginning of this school year.

9 Q. Okay. And you were, in fact, arrested for disorderly
10 conduct?

11 A. Yes, sir. For arguing.

12 Q. I'm sorry?

13 A. It was an argument.

14 Q. An argument at school?

15 A. Yes, sir.

16 Q. And so that's what that came from?

17 A. Yes, sir.

18 Q. And that was after this?

19 A. Yes, sir.

20 Q. Anything else?

21 A. No, sir.

22 Q. Okay. And he also asked you about what you ate that
23 night and you indicated that you had oodles of noodles. Do
24 you eat that a lot?

25 A. Yes, sir.

1 Q. Okay.

2 A. That's my favorite food.

3 Q. I'm sorry?

4 A. That's my favorite food.

5 Q. Okay. When the officers came up, just real quickly in
6 response to what Mr. Springs said, and they was -- who did
7 they go to first?

8 A. Jomar.

9 Q. Okay. And they grabbed -- did they -- did they grab
10 Jomar?

11 A. At first they just -- it was like they just talked to
12 him and they was --

13 MR. SPRINGS: Objection. This has been covered.

14 THE COURT: Counsel, this is not new matter that
15 they brought up on cross, I don't think. It's something
16 that you have already been over on direct.

17 BY MR. MORTON:

18 Q. Let me ask this. You indicated, I think, in the
19 response to the questions by Mr. Springs that when Mr.
20 Robinson, he ran off?

21 A. Yes.

22 Q. Let me show you this. This is marked State's Exhibit
23 1. Do you recognize that?

24 A. Yes, sir.

25 Q. Okay. And is that a photograph of 122 Hall Street?

1 A. Yes, sir.

2 Q. Okay. And on the porch right here, do you know where
3 this is?

4 A. Yes, sir.

5 Q. What is that?

6 A. That's where we were standing.

7 Q. Right.

8 And is that a bush there?

9 A. Yes, sir.

10 Q. Do you know what kind of bush that is?

11 MR. SPRINGS: I'm going to object. This is new
12 material. I didn't go into it.

13 THE COURT: I sustain the objection, counsel.

14 BY MR. MORTON:

15 Q. You indicated that Mr. Robinson's girlfriend lived
16 there?

17 A. She didn't live in that apartment.

18 Q. But did she live in --

19 A. Yes, sir.

20 Q. -- those apartments?

21 A. Yes, sir.

22 Q. That apartment complex?

23 A. Yes, sir.

24 MR. MORTON: That's all I have.

25 MR. SPRINGS: Nothing further. Thank you.

1 THE COURT: Thank you, sir. You may stand down,
2 sir.

3 MR. MILLS: Your Honor, the defense rests.

4 THE COURT: Anything in reply, solicitor?

5 MR. SPRINGS: No, sir.

6 THE COURT: Mr. Foreman, ladies and gentlemen of
7 the jury, this concludes all the taking of testimony and
8 evidence in the case. We have yet remaining final arguments
9 from counsel and my instruction to you with regard to the
10 law which applies to the issues in this case.

11 We are at, by the courtroom clock, about 12:30, so
12 we are going to go ahead and recess for lunch at this time
13 and we will resume after lunch.

14 I'm going to ask you to be back in the jury room
15 at 1:50. At 1:50. That's ten minutes to two. And the
16 reason I'm taking a little longer than normal is the matters
17 I need to take up with counsel that's going to take a little
18 while, not to long, but no used in your sitting back here
19 while I'm doing that. You can take that extra time for
20 lunch. So that will give you about an hour and fifteen or
21 twenty minutes for lunch.

22 So, please, again, I'll remind you not to discuss
23 the case among yourselves or with anyone else during the
24 recess from court. Enjoy your lunch. Please be back in the
25 jury room at ten minutes to two.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: All right, counsel, as I told you
4 earlier that motions would be considered timely made when
5 made, so let's go back to the time that the State rested
6 their case.

7 Any motions that you wish to make which would be
8 effective as of that time?

9 MR. MILLS: Yes, Your Honor.

10 Taking in the light most favorable to the State as
11 to the evidence presented, I would ask the court to grant a
12 directed verdict in Mr. Robinson's favor. I think the
13 testimony was the officers approached the scene without a
14 sufficient basis to effectuate a seizure; that they seized
15 Mr. Robinson forcibly and without reasonable suspicion or
16 probable cause; and, therefore, any -- I would renew my
17 motion to suppress those items, save the marijuana, as being
18 the fruit of the poisonous tree.

19 I would also move --

20 THE COURT: Save the marijuana? You mean with the
21 exception of the marijuana?

22 MR. MILLS: With the exception, I'm sorry.

23 THE COURT: Yes, sir.

24 MR. MILLS: All right. I would also move for a
25 directed verdict on all the charges, that there is

1 insufficient evidence for the court to conclude that Mr.
2 Robinson possessed the drugs with intent to distribute and
3 at most it would be mere possession.

4 Second, I would move to dismiss the gun, the
5 unlawfulness of the gun. It's not a proper foundation led
6 to show that he was in illegal possession of it.

7 I would move to dismiss the proximity charge for
8 insufficient evidence establishing the proximity to a park
9 or school.

10 THE COURT: All right. Anything else?

11 MR. MILLS: No, I think that covers it.

12 THE COURT: Do you wish to be heard on that
13 motion?

14 MR. SPRINGS: No, sir.

15 THE COURT: In looking at a motion for directed
16 verdict, the court is required to look at the evidence in
17 the light most favorable to the party against whom the
18 motion is being made.

19 In this case, looking at the evidence most
20 favorable to the State, I find there is substantial evidence
21 from which the jury could infer that the State had proven
22 the elements of each of these offenses beyond a reasonable
23 doubt.

24 Going back to your statement, of course, as I
25 stated earlier on the record in pretrial motions, the police

1 officers -- to go back over that briefly. The police
2 officers were getting -- according to their testimony, were
3 getting calls from people in the area, residents in the
4 area, who were complaining that there were drug deals taking
5 place in the parking lot of this particular apartment
6 building and that there were men out there with drugs,
7 conducting drugs -- selling drugs there.

8 They initiated an investigation in that particular
9 area and had an officer in the woods or on a wooded lot
10 across from there, observing with binoculars, and he
11 observed what, in his experience -- he had a number of years
12 experience in narcotics investigations, drug investigations,
13 that he observed what appeared to him to be drug
14 transactions taking place. Several cars came up in a fairly
15 short period of time. Somebody goes out to the car or a
16 person could drive up and go up to the porch and stay a very
17 briefly time and go back and leave. And so based on that,
18 the court finds he had a reasonable suspicion to believe
19 that there was drug transactions going on.

20

21 Then the officers go up to the apartment, which I
22 think they had the right to, to investigate what they
23 believed, had reasonable suspicion to believe, that drug
24 activity or crime was being committed there, based on the
25 observations of the other officers. They go up there and
ask for, according to their testimony, for identification.

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1 Persons voluntarily presented their identification.

2 Insofar as -- they did say when they got up close
3 to them, they said they smelled green marijuana; that is,
4 un-smoked marijuana. Now, whether they did it or he didn't,
5 I think that's a question for the jury to determine whether
6 they did or didn't. They said they did. And obviously they
7 worked in narcotics for years, all of them that testified,
8 and they would be familiar with the smell of green
9 marijuana.

10 Now, there are a number of things that -- of
11 course, it's a matter of argument for the jury. The court
12 is not concerned with evidence, whether there is any
13 evidence -- whether it's the amount of evidence, whether
14 there is any substantial evidence. And their testimony --
15 of course, it's -- you know, the jury could believe or infer
16 that drugs could have been in somebody's jacket packet for
17 awhile or they could have been drugs in and out of that
18 jacket pocket for awhile as to either of these two
19 defendants, and they thought the smell of marijuana was
20 coming from. I don't know. I don't have any way of knowing
21 it. You know, one -- both of them really ran off before
22 they were searched or anything. And so -- and, in
23 particular, Mr. -- the other co-defendant in this case --

24 MR. MILLS: Patton, Your Honor.

25 THE COURT: Patton ran off and was out of view of

1 the officer and that, and, of course, came back and they
2 testified they found something in the little pocket of his
3 that jacket he had on.

4 So, I mean, you know, whether there was drugs or
5 not, that's a question for the jury about that, but officers
6 testified -- each of them testified that they smelled the
7 green marijuana, and they obviously have a lot more
8 knowledge about that than the average person, what marijuana
9 smells like, or green marijuana smells like.

10 They also testified, though, while they looked at
11 the identification, he also spied the handle of a gun
12 hanging out of Mr. Robinson's pocket in a jacket he had on,
13 and he spotted that, and he was watching that while he was
14 checking the identification. Mr. Robinson didn't live at
15 that address. He lived, according to that driver's license
16 and address, on Washington Street, I believe, which is not
17 even on that same street. And so they observed that and
18 also said he observed the handle of a pistol in his pocket.

19 At that point obviously the reasonable suspicion,
20 one could certainly establish that as a probable cause,
21 based upon them having a weapon, without any explanation of
22 why he was out there, outside of this apartment building
23 where he didn't live with a gun in his pocket, as to whether
24 there was illegal of carrying a pistol. Also the smell of
25 the marijuana. And at that point they -- the police

1 officers had a right to be there. No question about that.
2 They had a right to investigate what was going on in that
3 parking lot and that. And so, obviously, Mr. Robinson could
4 have refused to cooperate and left before they saw that
5 weapon on him. And, of course, they could have investigated
6 the smell of green marijuana, if, in fact they smelled
7 marijuana and had reasonable suspicion to believe that drugs
8 were there. Going with the prior information they had had,
9 that actions were on which appeared to be drug transactions.
10 So each heightened. Each of it made a little more suspicion
11 a little greater, a reasonable suspicion a little greater to
12 the point of the seeing the weapon.

13 Now, the courts have held in numerous cases
14 recently, the Supreme Court, the Fourth Circuit,
15 particularly the Supreme Court, has found the connection or
16 a nexus between guns and drugs. And obviously the police
17 officer acts for their safety pat-down, and that sort of
18 thing. And then at that time Mr. Robinson refused to
19 cooperate and took off, i.e., the resisting arrest.

20 So I find there is substantial evidence in
21 support. And, of course, the cocaine was found in his --
22 according to the police officers, the jacket they pulled off
23 of him -- Officer Ligon pulled off of him, and it was there
24 and uninterrupted. Nobody had access to it and they found a
25 total of -- they found 3.02 grams of marijuana. They found

1 3.81 grams of crack cocaine. This is over the inference
2 level. If the person has more than one gram of crack
3 cocaine on him, the jury could infer from the amounts
4 involved that they intended to distribute it.

5 Furthermore, they found ten individually wrapped
6 bags, the testimony is that typically sold for sale, and
7 it's rare that a person who simply has it for their own use
8 would have it in that many -- that much crack and in that
9 form, packaged for sale in little baggies, rather than
10 bigger piece than that, if they bought a bunch of it for
11 their own use, to take advantage of the price of it.

12 So, I mean, then that comes down to a question for
13 the jury as to what he intended to do with it, if he
14 intended to sell it. If you have presumption level for
15 being over a gram; you have the way it was packaged,
16 etcetera; and the way it was found.

17 So there is substantial evidence to support from
18 which the jury could infer the State had proven the elements
19 of each of these five offenses beyond a reasonable doubt.
20 So for that reason I deny your motion for directed verdict.

21 Why did I go into this much detail? The courts
22 have asked us to give our reasoning on the record, and I do
23 that, and so --

24 Anything else?

25 MR. MILLS: Well, no. I guess I would just renew

1 my motion at the end of the defendant's case on the same
2 grounds there, taking into light Mr. Williams testimony
3 about the officers coming out, claiming that they just
4 smelled marijuana, immediately seizing the individuals.
5 And, again, renew my motion along the same lines as -- I
6 don't know if I need to repeat them for the record, but I
7 will be happy to.

8 THE COURT: No, I understand.

9 Well, of course, the only difference would be his
10 testimony. And, again, it's a question for the jury who
11 they are going to believe in the case.

12 The court, again, does not weigh the evidence or
13 determine the credibility of the witnesses. Those are
14 matters for the jury. And so, again, the court finds there
15 is substantial evidence from which the jury could infer the
16 State had proven the elements of the offense. The weight of
17 the evidence and credibility of the witnesses is a matter
18 for the jury, so I will deny your motion again for the
19 record on that.

20 MR. MILLS: Thank you.

21 THE COURT: Anything else.

22 MR. MILLS: I don't think so.

23 THE COURT: All right. Then why don't we do this.
24 Why don't you meet me briefly for about five minutes back in
25 chambers. Let me run through the proposed charge, what I

243

WITNESSES

U / Ligon

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ARREST WARRANT NUMBER

65355

ACTION OF GRAND JURY

RUE BILI

Patricia S. Moore
Person of Grand Jury

8/21/08

VERDICT

Guilty

Person of Petit Jury

te: 02-10-09

DOCKET NO. 2008-GS-46-

03141

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

POSSESSION OF COCAINE BASE (CRACK)
WITH INTENT TO DISTRIBUTE WITHIN
PROXIMITY OF A PUBLIC PARK OR
PLAYGROUND

SC Code: § 44-53-445

CDR Code: 108

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)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

**POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE
WITHIN PROXIMITY OF A PUBLIC PARK OR PLAYGROUND**

That on or about March 20, 2008, in York County, South Carolina, the Defendant, Jomar Antavis Robinson, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a quantity of cocaine base, otherwise known as crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, within a one-half mile radius of the grounds of York Recreational Complex, a public park located in the County of York, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

5
24

WITNESSES

DEU / Ligon

adm

ARREST WARRANT NUMBER

J-165357

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Moore
Foreperson of Grand Jury
8/21/08

VERDICT

Guilty

Gene A. Smith
Foreperson of Petit Jury
Date: ~~02-08~~ 02-10-09

DOCKET NO. 2008-GS-46- 03142

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

**POSSESSION OF COCAINE BASE (CRACK)
WITH INTENT TO DISTRIBUTE**

SC Code: 44-53-375
CDR Code: 3039

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 YORK)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE

That on or about March 20, 2008, in York County, South Carolina, the Defendant, Jomar Antavis Robinson, did possess with intent to distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

24

WITNESSES

DEU // Ligon

adm

ARREST WARRANT NUMBER

J-165358

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Moore

Foreperson of Grand Jury

Date: 8/21/08

VERDICT

Guilty of lesser offence
Subsection A

Eric R. Hunt

Foreperson of Petit Jury

Date: 07-10-09

DOCKET NO. 2008-GS-46- 03143

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

RESISTING ARREST

SC Code: 16-9-320(b)

CDR Code: 256

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 YORK)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

RESISTING ARREST

The Defendant, Jomar Antavis Robinson, did in York County, South Carolina, on or about March 20, 2008, knowingly and wilfully assault, beat, or wound Officer Ligon, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer Ligon, is a law enforcement officer, in violation of Section 16-9-320(b), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

249

WITNESSES

DEU / Ligon

adm

ARREST WARRANT NUMBER

J-165359

ACTION OF GRAND JURY

TRUE BILL

Patricia S. moss

Foreperson of Grand Jury

Date: 8/21/08

VERDICT

Guilty

Geri W. W. W.

Foreperson of Petit Jury

Date: 07-10-04

DOCKET NO. 2008-GS-46-

03144

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

CARRYING A PISTOL UNLAWFULLY

SC Code: 16-23-20

CDR Code: 044

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)

INDICTMENT

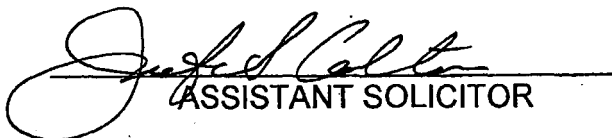
COUNTY OF YORK)

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

CARRYING A PISTOL UNLAWFULLY

The Defendant, Jomar Antavis Robinson, in York County, South Carolina, on or about March 20, 2008, unlawfully carry about his person a firearm, described as follows: a 9mm Ruger pistol, all in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

25

WITNESSES

U / Ligon

ARREST WARRANT NUMBER

5360

ACTION OF GRAND JURY

UE BILL

Patricia S. Moore

person of Grand Jury

8/2/08

VERDICT

Guilty

Geri P. H. H.

person of Petit Jury

02-10-09

DOCKET NO. 2008-GS-46-

03145

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

THE STATE

vs.

JOMAR ANTAVIS ROBINSON

Indictment for

POSSESSION OF MARIJUANA

SC Code: § 44-53-370

CDR Code: 182

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 YORK)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008 the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

That on or about March 20, 2008, in York County, South Carolina, the Defendant, Jomar Antavis Robinson, did knowingly or intentionally possess a quantity of marijuana, controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not being the Defendant's first offense, and such possession not having been authorized by law, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

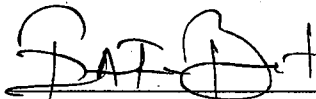
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

August 12th, 2010



Elizabeth A. Franklin-Best
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOMAR ANTAVIS ROBINSON,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court judge err in denying appellant's motion to suppress the drugs because the police officers violated appellant's right to be free from unreasonable searches and seizures when they, without a warrant and in the absence of exigent circumstances, entered the porch area of the apartment complex?

II. Did the trial court judge err in allowing the state to qualify the Commander of the Drug Enforcement Unit as an expert in "how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the difference in habits between the typical addict, the user, and the typical drug dealer" since he is not qualified as an expert under SCRE, Rule 702?

STATEMENT OF THE CASE

Jomar Antavis Robinson was indicted by the York County grand jury of possession of crack cocaine, 3rd offense, an associated proximity charge, unlawful carrying of a pistol, possession of marijuana, 3rd offense, and resisting arrest. He was tried before the Honorable Lee S. Alford and a jury on February 9-10th, 2009. He was represented by J. Christopher Mills and James Morton, Esquires. He was convicted, and sentenced to life imprisonment pursuant to S.C. Code Ann. §17-25-45.

This appeal timely follows.

ARGUMENT

I. The trial court judge erred in denying appellant's motion to suppress the drugs because the police officers violated appellant's right to be free from unreasonable searches and seizures when they, without a warrant and in the absence of exigent circumstances, entered the porch area of the apartment complex.

Relevant Facts

On March 20, 2006, an officer with the York County Multi-jurisdictional Task Force, Sergeant Rayford Ervin, Jr., was hiding out in the woods with binoculars, surveilling a public housing project. It was a Thursday night, and officers testified that they had received "anonymous complaints" about drug dealing and "people carrying guns" in the area. ROA 128, ll. 3-5. An officer testified that they received a complaint on that particular night, although he could not offer any specific information about it:

Q: Now, in the—first of all, you tell me that you had numerous complaints?

A: Yes, sir.

Q: Are those documented anywhere?

A: Yes, sir, they were.

Q: Where are they documented?

A: We have a—we have in-tell (sic) sheets that come in and we also have citizen complaints that come in through via the telephone, and we also have arrest cases that have also been made in that area, some that I have actually made myself in that area for drug possessions and things of that nature. Even some trafficking cases have been made there directly in that parking lot at that very spot.

Q: Okay. Let me ask you this. You said you had a call that night?

A: Actually we had a complaint and we were sitting up watching it, yes, sir.

Q: Who was the complaint from?

A: We have anonymous tips that come in.

Q: So do you not know the source of the complaint?

A: No, sir, I do not.

ROA 18, ll. 10-24.

During this particular night of surveillance, Ervin testified that he observed five cars approach the parking lot and which were met by one of five young men standing on a porch. Ervin believed this conduct was consistent with drug dealing, and he called for back up. ROA 129, l. 9- 131, l.4. Law enforcement did not take any notes documenting this significant traffic which led them to believe that drug dealing was afoot on that particular night. ROA 136, ll. 8-14. The lack of documentary evidence in this case was consistent with these officers' view of the need: "Well, you have got three officers that came up here and testified. I'm sure that's just as good as a picture." ROA 169, ll. 18-19. Counsel asked Ervin:

Q: Now, this is a little apartment complex and there is a lot of traffic in people hanging out on the porches, aren't there?

A: Yes, sir.

Q: And all those people aren't dealing drugs, are they?

A: Not all of them.

ROA 136, ll. 15-20.

It was part of this police set-up that officers would follow cars leaving the public housing project, and then pull them for minor traffic violations so they could search the cars.

Q: Would he call in license plates, or anything like that? How would he know to tell somebody to follow for a traffic stop?

A: Basically he would give a description on the vehicle, and we sat up in that area somewhat tight to where we can have pretty much most avenues covered in that area. He will give out the description of the vehicle and the officers would then pick that vehicle up as it left the area. He would be able to tell us if it took a left or a right turn on Charlotte Avenue from Hall Street, or if it went up to 49, or what we call North Congress and make a left or right from North Congress.

Q: So the purpose of that is to try and stop the vehicle, correct?

A: Yes, sir, it is.

Q: Because you want to search for drugs, or whatever else is there, correct?

A: If they make a traffic violation, yes sir.

Q: I understand. That's doesn't—your motivation is to search for the drugs, but you are looking for an excuse if they have a traffic violation, correct? If they violate the law, or cross the line, or something—

A: Yes, sir, if they violate the law.

Q: You are allowed to—

A: Yes, sir.

Q: So it's not really a traffic stop, like a normal traffic stop? You are going there with a specific purpose, aren't you?

A: Yes, sir.

Q: And you are going to want to get in the search of the car, correct?

A: Yes, sir.

ROA 25, l. 22-27, l. 3.

On this night, a car was pulled and searched, and no drugs were found. ROA 140, ll.6-8. A stolen pistol, however, was found, and its owner arrested. ROA 132, l. 16- p. 133,

l. 8; ROA 21, ll. 14-21. Despite the absence of drugs found in the searched vehicle, the officers approached the porch area to engage in a "consensual encounter" with the five young men. Critically, the officers entered onto the porch area and then asked the men for their identifications. On this porch were 5 young men, and two chairs. Appellant, and others, gave law enforcement their ID's.

Lieutenant Mike Ligon testified that "as soon as coming up on the porch and encountering these five individuals" they could smell a "strong odor of green marijuana." ROA 10, ll. 10-17 (emphasis added). He also testified that, "[a]s we actually got to them" is when they could smell the 3.2 grams of marijuana, sealed in a plastic bag, and located in appellant's jacket pocket. ROA 30, ll. 19-21; ROA 31, l. 21- 32, l. 8 (emphasis added). Of the five people located on the porch, Ligon testified that he could tell that either appellant, or another male, had the marijuana. ROA 33, ll.2-11.

In explaining why they so readily identified themselves as police officers as they approached the young men, Ligon testified they did so out of a concern that otherwise they would be physically attacked by the black men:

Q: And by pulling out your badge, you are essentially giving a show of authority to let them know that you are the police and you want to—you are going to detain them to talk to them, correct?

A: No, sir, it's to—basically for safety issues. If we—you know, if we don't identify yourselves (sic) as the police and then somebody wants to come back and—just say an instance with Mr. Robinson.

Q: Uh-huh.

A: You know, you have two white male subjects entering an area that's predominantly black.

Q: Yes sir.

A: If they don't identify themselves as police officers, you know, things could potentially get bad in those areas.

ROA 27, l. 18- p. 28, l. 6.

As the officers approached the men—onto the porch-- they had their badges around their necks, and their flashlights. They kept their guns in plain view. ROA 71, l. 18- p. 72, l. 14.

As the officers were standing on the porch, and while checking the young men's identifications, Ligon testified that he observed the butt of a pistol hanging out of appellant's right jacket pocket. ROA 76, ll. 4-9. At that point, Ligon testified that he informed the men that he was going to conduct a Terry¹ frisk. ROA 77, ll. 4-5. When asked why he did not simply reach for the gun, the officer testified that he did not know:

Q: -- and then you had the opportunity right there at that point to get on him.

So why are you telling him you are going to search him and alert him to the fact that you are now going for the gun, instead of just going for the gun?

A: I don't know. I can't tell you.

ROA 106, ll. 16-22.

According to Ligon, at that point, appellant began to back away from him, which scared him, and so he then grabbed for appellant's weapon. ROA 77, ll. 4-16. A tussle ensued, and Ligon managed to remove appellant's jacket. Appellant then took off running. Shortly thereafter, he was caught, and handcuffed. The drugs were found in appellant's jacket pocket and he was subsequently charged with these crimes. ROA 15, l. 7- p. 16, l. 7.

¹ Terry v. Ohio, 392 U.S. 1 (1968).

Appellant argued a motion to suppress before trial started. ROA 6- 59. The court denied the motion:

And so the court denies your motion. I think they had—each step of the process created reasonable suspicion or more reasonable suspicion, up and including the time that they smelled the marijuana there and saw the gun hanging out of his pocket, so the court would deny your motion to suppress.

ROA 55, I. 24- p. 56, I. 4.

And so based on all of that information, taking the totality of the circumstances, the officer's knowledge about the area, what had been reasonably observed, that there were anonymous tips, the police officers investigation and observing the area, that, furthered by their coming that drug activity, drug transactions were going on in the parking lot, based on an officer's knowledge of what drug transactions look like in those situations, indicative of a drug transaction, they are going there simply to determine the identification of people who were there, then that's heightened by the fact that they smelled the green marijuana, and heightened by the fact that they saw a weapon hanging out of the defendant's pocket.

ROA 57, II. 8-20.

And, again, looking at the totality of circumstances and deciding that the police officer, or police officers, the court finds there was reasonable suspicion to investigate, and that was heightened into probable cause, based on the fact of smelling marijuana and believing that there was a crime under foot or had been committed or was being committed in their presence. Further observation of the weapon hanging out—the pistol hanging out of his pocket, they had a right to frisk at that point the defendant. And his subsequent actions in response to that frisk brought about the arrest of what happened, insofar as the facts of this case.

So, again, the court will deny the motion to suppress.

ROA 59, II. 3-14.

The judge was also concerned that this was a public housing project:

THE COURT: Let me ask you this. In looking at State's Exhibit 1 and for purposes of this hearing that appears to be a public housing project, is that correct?

MR. SPRINGS: It is, yes, sir.

THE COURT: And so the parking lot we talking about really is a public parking lot, is that correct? I mean, it goes with the public housing, correct?

MR. SPRINGS: It does. It does. I pondered whether going into the question of how private—private property—

THE COURT: Well, that's not the key issue, but I'm just—the point I'm trying to make is that that appears to be a public housing project, right?

MR. SPRINGS: It is.

THE COURT: And, you know, certain people are allowed to live there, obviously, and meet certain criteria, and that sort of thing, as I understand it. But, in any event, the parking lot has a number of people. There are several apartments there, correct?

MR. SPRINGS: Yes, sir.

THE COURT: So there is—the parking lot out there really, there's people coming and going, but people live there and that. And so it's not like a house that you got right here and then you have got a little bit of yard, that's your house and that's your yard. Here you have got several apartments in one building, and there is more there, but all of these people have access to this parking lot, is that correct?

MR. SPRINGS: Yes, sir. Yes, sir.
ROA 48, l. 5-49, l. 8.

Counsel renewed the objection at the time the drugs were admitted. ROA 179-180.

The trial court erred because appellant had a reasonable expectation of privacy on the porch, and the officers entered that area without a warrant and in the absence of any exigent circumstances. The porch was located appurtenant to the apartment area, and is a place where individuals engage in domestic activities. See United States v. Dunn, 480 U.S. 294 (1987); Oliver v. United States, 466 U.S. 170 (1984); Rogers v. Pendleton, 249 F.3d 279 (4th Cir. 2001); State v. Herring, ____ S.E.2d ____, 2009 WL 4893656 (December 21,

2009) (Kittredge, J. and Pleicones, J. concurring); U.S.C.A. 4, 14. The officers needed a warrant to enter onto the porch. In the absence of the warrant or the existence of exigent circumstances, the search was unreasonable. The fruits of that search should have been suppressed. Wong Sun v. United States, 371 U.S. 471 (1963). Additionally, citizens who live in housing projects do not have a lesser expectation of privacy than those who do not. U.S.C.A. 4, 14. Appellant respectfully asks this Court to reverse his convictions.

II. The trial court judge erred in allowing the state to qualify the Commander of the Drug Enforcement Unit as an expert in "how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the difference in habits between the typical addict, the user, and the typical drug dealer" since he is not qualified as an expert under SCRE, Rule 702.

Commander Marvin Brown is in charge of the narcotics unit for York County. Over objection, he was allowed to testify as an expert in "how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the difference in habits between the typical addict, the user, and the typical drug dealer." ROA 191, ll. 7-11. Counsel argued that he was not qualified under SCRE, Rule 702. ROA 194, ll. 12-13.

Rule 702 states:

Testimony by experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.

The state then elicited testimony that multiple bags are consistent with drug dealing, ROA 200, l. 20- 201, l. 12; and that pistols are commonly found on drug dealers. ROA 200, ll. 14-24.

The judge erred in qualifying Brown as an expert because he is not qualified as an expert under the statute. The statute is not intended to allow police officers, who are charged with the responsibility of removing criminals from the streets, to testify that they are doing their job correctly. Whether appellant was a dealer or not was a question for the jury, but here this “expert” was allowed to usurp that role by testifying that his colleagues correctly charged appellant with drug dealing. The testimony was improper:

“[I]t is a little too convenient that the Government has found an individual who is expert on precisely those facts that the Government must prove to secure a guilty verdict—even more so when that expert happens to be one of the Government’s own investigators . . . When the Government skips the intermediate steps and proceeds directly from internal expertise to trial, and when those officer experts come to court and simply disgorge their factual knowledge to the jury, the experts are no longer aiding the jury in its factfinding; they are instructing the jury on the existence of facts needed to satisfy the elements of the charged offense.”

United States v. Mejia, 545 F.3d 179, 191 (2nd Cir. 2008).

Appellant respectfully asks this Court to reverse his conviction and remand his case for trial.

CONCLUSION

With respect to issue I, appellant respectfully asks this Court to reverse his convictions. With respect to issue II, appellant respectfully asks this Court to reverse his convictions and remand his case for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAFB', is written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

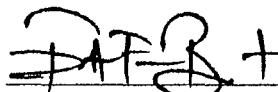
ATTORNEY FOR APPELLANT.

This 1st day of September, 2010.

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."

September 1st, 2010

A handwritten signature in black ink, appearing to read 'E.A. Franklin-Best', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

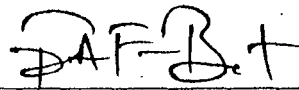
V.

JOMAR ANTAVIS ROBINSON,

APPELLANT

CERTIFICATE OF SERVICE

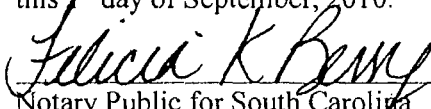
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of September, 2010.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 1st day of September, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOMAR ANTAVIS ROBINSON,

APPELLANT

FINAL BRIEF OF RESPONDENT

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<u>State v. Torrence</u> , 305 S.C. 45, 406 S.E.2d 315 (1991)	8

Other Authorities:

3 W. LaFave, Search and Seizure § 9.2, pp. 36-37 (1978)	7

STATEMENT OF ISSUES ON APPEAL

I.

The defendant says that the police entered the porch area of an apartment complex without a warrant and in the absence of exigent circumstances in violation of the defendant's right to be free from unreasonable searches and seizures. The defendant then asks whether the court erred denying his motion to suppress the drugs. (Appellant's Statement of Issues on Appeal I).

II.

The defendant says the Commander of the Drug Enforcement Unit is not qualified as an expert under SCR, Rule 702. The defendant then asks whether the court erred "in allowing the state to qualify [the officer] as an expert in 'how crack cocaine is packaged, sold, the going price, the typical intoxicating dose, and the difference in habits between the typical addict, the user, and the typical drug dealer.'" (Appellant's Statement of Issues on Appeal II).

STATEMENT OF THE CASE

The York County Grand Jury charged the defendant with possession of cocaine base with intent to distribute in proximity (2008-GS-46-3141), possession of cocaine base with intent to distribute (2008-GS-46-3142), resisting arrest (2008-GS-46-3143), carrying a pistol unlawfully (2008-GS-46-3144), and possession of marijuana (2008-GS-46-3145). The defendant was represented by counsel at his trial in absence February 9-11, 2009 before the Honorable Lee S. Alford, Judge, and a jury. The jury found the defendant guilty and the court sealed the sentences. The defendant and his counsel came before the court for sentencing on March 12, 2009, and the court imposed sentences including life imprisonment without parole. The defendant timely served opposing counsel a notice of appeal.

ARGUMENT

I.

The police acted reasonably in first observing and then investigating apparent drug activity.

Summary of Testimony

In camera testimony: Officer Ligon said that another officer (Schettler) and he went to the Hall Street Apartments about 10:30 PM in response to complaints about people carrying guns on the premises and drugs being sold. A surveillance officer (Ervin) was watching the area and reported apparent drug transactions in the parking lot. To wit, a black male in baggy pants and a big black jacket was among a group of five persons standing on the porch at a particular address at those apartments. He would leave the porch, go briefly to the window of vehicles pulling into the parking lot, and return to the porch. (ROA. pp. 7-8). Officer Ligon investigated and found the scene as described by the officer watching the area but noted that two of the men were wearing black jackets. When Officers Ligon and Schettler were “coming up on the porch . . . right at the edge of the porch where [the five men] are standing....[.]” Ligon noted the strong odor of green marijuana coming from either the defendant or another man and asked for identification. These two men had stepped away from the group and wore similar jackets. Looking at their identifications, Officer Ligon saw a pistol protruding from the defendant’s jacket pocket. He told the men that he wanted to do a pat-down. The defendant tried to back away. A struggle for the pistol and fight followed, and the two men went off the porch. Officer Ligon kept control of the pistol and stripped off the defendant’s jacket. The jacket fell to the ground with the pistol still inside, and the defendant fled. (ROA. pp.9-

15; 30-33). Officer Schettler recovered State's 9, 10, and 11 from the jacket - the gun, and what appeared to be marijuana, and crack cocaine. (ROA. pp. 38-40).

Trial testimony: Officer Ligon and another officer went to the Hall Street Apartments ["a little apartment complex and ... a lot of traffic in people hanging out on the porches"] about 10:30 PM in response to complaints about people carrying guns and drugs being sold. Another officer (Ervin) watching the area through binoculars had observed apparent drug sales to vehicles - a black male in blue jeans and a black jacket would come out from among a group of five persons in the area of a particular porch at the apartments and meet vehicles. Officer Ligon investigated and found the scene as described. About five people were out on the porch. But two of the men wore black jackets, and three other men separated themselves from the two. Officers Ligon and Schettler approached, identified themselves, and noted the strong odor of green marijuana coming from the defendant or the other man. Ligon asked both men for identification, and they complied. While looking at the identifications, Ligon saw a pistol hanging out of the defendant's jacket pocket. (ROA. pp. 66-76; 98; 102; 104; 129-132; 136, lines 15-18; 143-144). He told the men that he wanted to do a pat-down. The defendant tried to back away. Officer Ligon grabbed the weapon, and the defendant got his hand on top of the officer's hand. A struggle for the pistol and fight followed. Officer Ligon kept control of the pistol and ripped off the defendant's jacket. Officer Ligon told the defendant he was under arrest. The jacket went to the ground, and the defendant fled. (ROA. pp. 77-80; 97). Officer Schettler searched the jacket and found the pistol, one bag containing loose crack and one bag with eleven individually wrapped crack rocks (State's Exhibit 11), and marijuana (Defendant's Exhibit 1). The defendant objected only to the

pistol [State's Exhibit 9], pursuant to his earlier position. (ROA. p. 151, line 20 - p. 156, line 3). State's Exhibit 14, the chemist's drug report of State's Exhibit 11, was admitted with defendant's express want of any objection. The defendant objected to States Exhibit 11, the drugs themselves, pursuant to his earlier objection. (ROA. pp. 174 - 179). The chemist testified from her report that she found State's Exhibit 11 to contain .84 grams and 2.97 grams of cocaine base or crack cocaine, and Defendant's Exhibit 1 was 3.2 grams marijuana. (ROA. p. 180).

A defense witness, and friend of the defendant, was standing in the group hanging out on the porch when the police arrived. The police announced smelling the green marijuana immediately when getting out of their vehicle - at least ten feet away from the porch. (ROA. pp. 207-209; 219).

Defendant's Objections to Seized Evidence

Before trial the defendant wanted to suppress the police seizing him. (ROA. p. 6). The defendant said the police lacked a search warrant or exigent circumstances or observation of a crime to enter onto private property. Also Officer Ligon showed his badge and thereby "actually seized the individuals at that moment," and had placed himself illegally when he saw the gun. Also Ligon's claim of smelling marijuana was not credible. (ROA. pp. 44-45). Also the police did not walk up to just talk; rather, they went with the intent to seize and seized the persons without reasonable suspicion - after that they had the encounter and struggle. (ROA. pp. 47-48).

The defendant recognized the necessity for a contemporaneous trial objection. (ROA. pp. 64-65).

The defense introduced the marijuana found in the jacket (ROA. pp. 89-90; 125-126, line 5) and questioned the officer about his ability to have smelled it. (ROA. pp. 91-95).

There was no objection at trial to an officer's [Schettler's] trial testimony about searching the defendant's jacket and finding one bag of loose crack and one bag with eleven individually wrapped crack rocks (State's Exhibit 11). (ROA. p. 151, line 20 - p. 156, line 3). Further, at trial State's Exhibit 14 - the chemist's drug report about State's Exhibit 11 - was admitted with the defendant's express want of any objection. The defendant objected to States Exhibit 11, the drugs themselves, pursuant to his earlier objection. (ROA pp. 174 - 179). The chemist testified from her report that she found State's Exhibit 11 to contain .84 grams and 2.97 grams of cocaine base or crack cocaine, and Defendant's Exhibit 1 was 3.2 grams marijuana. (ROA. p. 180).

After the close of the state's case the defendant wanted to suppress "items" (apart from the marijuana) since the officers seized the defendant without reasonable suspicion. (ROA. pp. 234-242).

On appeal the defendant says that the police entered the porch area of an apartment complex without a warrant and in the absence of exigent circumstances in violation of the defendant's right to be free from unreasonable searches and seizures. The defendant then asks whether the court erred denying his motion to suppress the drugs. (Appellant's Statement of Issues on Appeal I).

Trial Court Rulings

In limine the court denied the motion to suppress. The police were investigating apparent drug activity, and a surveillance officer had seen a man approaching vehicles in

a manner indicating possible drug activity. An officer saw two men who met the description of a man observed approaching cars. The court found there was reasonable suspicion for the officers to approach the outside, unenclosed area and asked for identification. When the defendant offered identification [showing a different address on another street], the officer smelled green marijuana - providing additional ground for reasonable suspicion - and saw the pistol hanging out of the defendant's pocket. There was then probable cause to believe that the defendant illegally possessed the weapon, and the officers had a right to search. The court denied the motion to suppress. (ROA. p. 49, line 24 - p. 55).

After the close of the state's case, the court declined to suppress and found that the investigation was based upon the officers having reasonable suspicion, going to the porch, smelling marijuana, asking for identification, and seeing the handle of the gun in the defendant's jacket. The safety pat-down resulted in the defendant's refusing to cooperate, fleeing, and the police finding the contraband. (ROA. p. 234-242).

Discussion

At trial the substance of the defendant's grounds for suppression of the seized evidence was that the police lacked any reason to approach and to investigate a group standing on a porch. The police had a reason to approach and to investigate - an officer had observed a person within the group apparently selling drugs. In the course of that investigation the police could reasonably ask questions and request identification. 3 W. LaFave, Search and Seizure § 9.2, pp. 36-37 (1978)(interrogation is the most common investigative technique utilized in a *Terry* type stop and may include both a request for identification and inquiry addressing suspicious conduct of person detained). The

II.

The defendant does not show that his assignment of error raised on appeal to the qualification of a witness was raised and ruled upon in the trial court, and it should not be considered on appeal.

In camera Officer Brown testified to his thirty years working in drug enforcement and his involvement in hundreds, if not thousands, of crack cases. He knew how crack was sold in York County - the street price and packaging. He had been involved in actual transactions. He knew from experience about the habits of the addict and the dealer. He knew the quantity in which crack was normally sold and the unit usually considered intoxicating. He had been previously qualified as an expert witness in the dealing of crack cocaine in both state and federal court. He thought that the present case involved a street level dealer - although he (witness) also had experience with other levels. The defendant objected "for the record" on the ground of not believing the prospective witness was qualified under "702." The court found that after laying an adequate foundation, in light of the witness' experience based knowledge, the witness could testify but could not include issues or opinions regarding the present case. (ROA. pp. 187-196, line 2). The court noted that the witness' testimony could be relevant on intent to distribute, and the witness could testify, over objection, as an expert. (ROA. pp. 198-199).

The officer testified that the typical purchase for a consumer was a small rock that looked like a peanut and cost twenty dollars. It [weighed] a tenth of a gram, and on the street it was called a "twenty." There was a cost advantage to buying larger quantities. One would not expect to find multiple bags in possession of a crack abuser. Crack was

offered for sale in baggies, but an abuser would buy a bigger piece rather than ten or twelve bags. A buyer would not typically be armed. Abusers normally carried lighters and a crack pipe. Dealers, people in the business, commonly carried pistols. The drug unit had recovered over seven hundred weapons. On cross examination the officer acknowledged that he was not talking about the source of the cocaine in the present case - rather, about the characteristics of a dealer as opposed to a user. And he acknowledged he was talking about a generalization, and there was no hard and fast rule. (ROA: pp. 199-202).

In light of the officer's knowledge from practical experience, the court exercised sound discretion in qualifying the officer as an expert witness in the distribution of illicit drugs. The qualification of a witness as an expert is vested in the trial court's sound exercise of discretion and should not be disturbed on appeal when there has been no abuse of discretion. The sound exercise of discretion is demonstrated in the present case by the court's observation that the testimony could reasonably assist the jury in its determination of the accused's intent in respect to the contraband that the state said it found in the jacket. State v. Goode, 305 S.C. 176, 406 S.E.2d 391 (Ct. App. 1991). See State v. Elmore, 368 S.C. 230, 628 S.E.2d 271 (Ct. App. 2006)(identifying cases with officers' testimony about typical conduct of drug dealers to establish possession with intent to distribute: user of cocaine would not typically possess seven rocks of cocaine; defendant's wrapping of cocaine was typical for a dealer; dealer not typically found with scales or individual baggies in his possession; single rock of crack cocaine is typically sold for twenty dollars).

Moreover, the substance of the defendant's complaint is that the witness was a police officer and should not have been allowed to testify that the police were doing their job correctly. (IBOA p. 13). The defendant does not show where that specific point was raised to the trial judge and a ruling secured. It should not be considered by the appellate court. State v. Conyers, 236 S.C. 263, 266, 487 S.E.2d 181 (1997)(explaining an issue must be raised and ruled upon in the trial court in order to be preserved for appellate review) Moreover, the officer testified based upon his general experience and candidly acknowledged the want of a hard and fast rule. Obviously, he did not testify that the police had done their job correctly, and he did not testify to any ultimate factual finding in the present case.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 20, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
Honorable Lee S. Alford Circuit Court Judge

THE STATE,

Respondent,

vs.

JOMAR ANTAVIS ROBINSON,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., 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 his attorney of record, Elizabeth A. Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 20th day of August, 2010.


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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule
211(b), SCACR.

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