

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

MAR 10 2015

S.C. Supreme Court

ORLANDO PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-001911

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

KAREN RATIGAN
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-DR-23-4963
4)
4 State of South Carolina) TRANSCRIPT OF RECORD
5 vs)
6 Orlando Parker)
7 -----)

8 Day 1 - June 23, 2011
9 Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

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

12 RYAN HOLLOWAY, Esquire
13 Assistant Solicitor
14 Attorney for the State

14 CHASE HARBIN, Esquire
15 Attorney for Defendant

15 RICHARD WARDER, Esquire
16 Attorney for Defendant Parker

17
18 Caroline Hiskell
19 Circuit Court Reporter

20
21 **RECEIVED**

22 MAR - 5 2012

23 Referred to Elliott ds

24 Answered _____

25

State versus Orlando Parker

I N D E X

WITNESSES	DR	CR	RED	REC
Blair Chi	87	105		
Michael Estes	112	120	121	
Mike Broce	123	130		
Christopher Reider	131	134		
James Armstrong	138	140		
Shantana Alexander				
Orlando Parker				

E X H I B I T S

IDENTIFICATIONS

State's Exhibit	ID	IN EVD
1 Drugs	100	141
2 Drugs	100	141
3 Photograph	102	102
4 Photograph	102	102
5 Photograph	102	102
6 Tow form	115	Not admitted
7 P&E form	119	Not admitted
8 Report	137	137

Defendant's Exhibit

1 Book bag	153	153

Court's Exhibit

1 Foreperson name	
2 Questions from jury	

State versus Orlando Parker

1

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P R O C E E D I N G S

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THE BAILIFF: All rise. The Honorable Edward
Miller presiding.

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THE COURT: Thank you. Be seated.

All right, y'all ready to go?

MR. HOLLOWAY: Yes, sir.

MR. HARBIN: Yes, sir. We have a another
matter we would like to take up with you. If we could, we
would like to take it up off the record.

THE COURT: Well, come up here.

(Discussion off the record).

All right. You get five strikes. Y'all
ready to go. Any specific voir dire you want me to ask?

MR. HOLLOWAY: Nothing from the State, Judge.

MR. HARBIN: No, Your Honor.

MR. WARDER: I'd like you to cover the
affiliations with law enforcement, friends and relatives
with law enforcement. It's a case involving drugs and I'd
like to know if anybody has strong feelings about that,
possession of drugs.

State versus Orlando Parker

1 THE COURT: All right. Let's get them up
2 here.8

3 MR. WARDER: Your Honor, with two or more
4 defendants, we would get more strikes wouldn't we? Ten.

5 THE COURT: Why would you get 10?

6 MR. WARDER: I think the statute provides for
7 multiple defendants.

8 MR. HOLLOWAY: No, I think the State gets 10
9 for two defendants. Mr. Marchant confirmed that in the
10 rules yesterday for me, but if you guys want to confirm
11 that, but I think it's 10 when there is multiple
12 defendants.

13 THE COURT: And what are you saying? They
14 get how many?

15 MR. HOLLOWAY: Five.

16 THE COURT: They get five and you get 10? I
17 don't think so.

18 MR. WARDER: I think he's saying we get five
19 for each.

20 MR. HOLLOWAY: Five each per defendant
21 because there's two defense teams.

22 MR. WARDER: Which would be my position.

23 THE COURT: Where in the law is that? I'll
24 let y'all have five a piece or ten a piece. I don't know
25 if we have enough jurors if we go with ten.

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1 MR. HOLLOWAY: In that case, we'll go with
2 five a piece.

3 THE COURT: Okay. Do y'all want to do that
4 or do y'all want ten?

5 MR. WARDER: I want ten.

6 THE COURT: Well, he gets ten too. We got 35
7 right?

8 THE CLERK: Yes.

9 THE COURT: Do they have any more down there?

10 THE CLERK: I'm checking right now.

11 MR. HOLLOWAY: Your Honor, there's a statute
12 that says Section 14-7-1110.

13 THE COURT: We got it. We're going to have
14 40 jurors in the panel.

15 (Jury panel enters the courtroom).

16 All right. Ladies and gentlemen, welcome up
17 to courtroom 4. I know I've seen some of you up here. I
18 hope y'all are having a good week. I want to tell you
19 that we are about to begin the trial in the case of the
20 State versus Orlando Parker, and that's Indictment No.
21 09-6279. This is an indictment for trafficking cocaine.
22 It alleges that Orlando Parker did in Greenville County on
23 or about March 12 of 2009 knowingly sell, manufacture,
24 deliver or bring into the State of South Carolina or did
25 knowingly provide financial assistance or otherwise aid,

State versus Orlando Parker

1 abet, attempt or conspire to sell, manufacture, deliver or
2 bring in the State or was knowingly in actual or
3 constructive possession of more than 400 grams of cocaine
4 in violation of statutes and laws of this State.

5 We are, also, at the same time, trying the
6 case of the State versus Shatana Lynn Alexander. This is
7 an indictment for trafficking cocaine. It's number is
8 2009-6587 and this indictment alleges that Shantana Lynn
9 Alexander did in Greenville County on or about the 12th
10 day of March of 2009 knowingly sell, manufacture, deliver
11 or bring into the State of South Carolina or did knowingly
12 provide financial assistance or otherwise aid, abet,
13 attempt or conspire to sell, manufacture, deliver or bring
14 into the State or was knowingly in actual or constructive
15 possession of more than 400 grams of cocaine in violation
16 of statutes and laws of this State.

17 Now, to these indictments these two
18 individuals have pled not guilty and as such that puts the
19 burden on the State of South Carolina who is the charging
20 body to prove beyond a reasonable doubt each and every
21 element of the offenses that are charged against these
22 individuals and these individuals are presumed to be
23 innocent unless and until the State can do just that.

24 I would like y'all to keep that in mind
25 throughout the course of these proceedings. I would also

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1 tell you that these two documents that I've just read to
2 you are simply what they appear to be pieces of paper.
3 And the fact that they have been issued should not lead
4 anyone to use them to create an inference or presumption
5 that these events occurred. These events they are just
6 documents which allow the case to wind its way through the
7 system to arrive here in the court for resolution.

8 Now, ladies and gentlemen, before we proceed
9 to qualify you all to serve in this particular case, I
10 would ask the attorneys to stand and identify themselves,
11 their offices and their clients.

12 MR. HOLLOWAY: Good morning, I'm Ryan
13 Holloway. I'm one of the prosecutors in this county.

14 THE COURT: Thank you very much.

15 MR. WARDER: I'm Richard Warder and it is my
16 pleasure today to represent Orlando Parker in this trial
17 today. Thank you.

18 MR. HARBIN: My name is Chase Harbin. I'm an
19 attorney here in Greenville and I represent Ms. Alexander
20 in this case today.

21 THE COURT: Thank you very much.

22 Is there any member of the jury panel who is
23 related by blood or marriage or who has a business
24 personal or social relationship with any of the attorneys
25 involved in this case or any of the members of the

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1 Thirteenth Circuit Solicitor's Office. If so, please
2 stand.

3 Yes, ma'am.

4 JUROR COMFORT: I recognize defense attorney
5 from my work place.

6 THE COURT: Which one?

7 JUROR COMFORT: Mr. Harbin.

8 THE COURT: You have a business relationship
9 with him? You work at Home Depot.

10 JUROR COMFORT: He's a customer that I see
11 frequently.

12 THE COURT: I recognize you to. Would the
13 fact that you know him from him visiting your place of
14 business, would that impair you ability to be fair and
15 impartial in this case?

16 JUROR COMFORT: No, it wouldn't impair it.

17 THE COURT: If you were picked to serve in
18 this case, could you listen to the evidence as it was
19 presented here in the courtroom and render a verdict based
20 solely on the law that I would give to you and the
21 evidence that's here?

22 JUROR COMFORT: Yes, sir.

23 THE COURT: Thank you, ma'am.

24 Yes, ma'am.

25 JUROR FRETWELL: Juror No. 268. My husband

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1 works for the Solicitor's Office and Ms. Kicklighter.

2 THE COURT: Would that impair your ability to
3 be fair and impartial in this case to both the State and
4 the defense? Be honest.

5 JUROR FRETWELL: I believe it would.

6 THE COURT: April, thank you very much.

7 All right, ladies and gentlemen, is there any
8 member of the jury panel who is related by blood or
9 marriage or who has a business personal or social
10 relationship with either Mr. Orlando Parker or
11 Ms. Shantana Lynn Alexander. If so, please stand.

12 (No response).

13 I'm going to read you a list of potential
14 witnesses in this case. I'm going to need to know the
15 same about these folks: Officer Chi Blair with the
16 Greenville Police Department, Officer Christopher Reider
17 with the Greenville Police Department, James Armstrong,
18 Officer Mike Estes with the Greenville Police Department,
19 Ron Brown, JF Hamilton, Deputy Mike Broce from Butts
20 County Georgia Sheriff's Office, Kara Bennick and D.
21 Thomason. Is there any member of the jury panel who is
22 related by blood or marriage or who has a business,
23 personal or social relationship with any of those
24 potential witness whose names I have just read. If so,
25 please stand.

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1 (No response).

2 Is there any member of the jury panel who has
3 any knowledge about the events that are alleged in the
4 indictment. If so, please stand.

5 (No response).

6 Is there any member of the jury panel who has
7 a family member who has ever been victim of or charged
8 with this type of an offense? If so, please stand.

9 Yes, sir, Mr. Dawkins. Your name and number
10 for the record, please.

11 JUROR DAWKINS: David Dawkins, 255, I have a
12 cousin deceased that was charged with the same crime.

13 THE COURT: While we got you up your uncle
14 is?

15 JUROR DAWKINS: Sonny Dawkins.

16 THE COURT: Chief of Warrants Sonny Dawkins.
17 Would the fact that you have a deceased cousin charged
18 with this type of offense and the fact that your uncle is
19 employed with the -- he's with the Greenville County
20 Sheriff's Department; is that right?

21 JUROR DAWKINS: Yes.

22 THE COURT: Chief of the Warrant's Division,
23 correct?

24 JUROR DAWKINS: Yes.

25 THE COURT: And he's been that for quite some

State versus Orlando Parker

1 time, hadn't he?

2 JUROR DAWKINS: Yes, sir.

3 THE COURT: Would that impair your ability to
4 be fair and impartial in this case?

5 JUROR DAWKINS: I do.

6 THE COURT: You don't think you could judge
7 the case based solely on the merits and be fair to both
8 the State and the defense.

9 JUROR DAWKINS: I could.

10 THE COURT: You think you could?

11 JUROR DAWKINS: Yes, sir.

12 THE COURT: So you could be fair and
13 impartial?

14 JUROR DAWKINS: Yes, sir.

15 THE COURT: And you could follow the law as I
16 would give it to you under your oath?

17 JUROR DAWKINS: Yes, sir.

18 THE COURT: Thank you very much, Mr. Dawkins.

19 Is there any other member of the jury panel
20 related by blood or marriage has a family member who is a
21 member of law enforcement. If so, please stand.

22 Yes, ma'am, your name and number, please.

23 JUROR HOOD: I am 109. My brother is a
24 deputy sheriff and officer in Spokane, Washington.

25 THE COURT: Would the fact that your brother

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1 is an officer impair your ability to be fair and impartial
2 in this case?

3 JUROR HOOD: No.

4 THE COURT: And could your judge the evidence
5 and present it here in the courtroom fairly and
6 impartially and follow the law as I would give it to you
7 under your oath?

8 JUROR HOOD: Yes.

9 THE COURT: Thank you, ma'am.

10 Is there any member of the jury panel who has
11 such a strong personal conviction against this type of
12 offense that they couldn't be fair and impartial in this
13 case. If so, please stand.

14 (No response).

15 Is there any member of the jury panel who is
16 aware of any bias or prejudice towards either the State or
17 defense. If so, please stand.

18 (No response).

19 Is there any member of the jury panel who is
20 a member of or contributor to a group who's primary
21 concern with the promotion of law enforcement or victim's
22 right such as MAD, SAD or CAVE? If so, please stand.

23 Yes, ma'am, tell me your name and number.

24 JUROR CARR: Janie Carr, No. 22. Contributed
25 to MAD years ago.

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1 THE COURT: We've asked you that previously
2 and your answer was you could be fair and impartial in
3 this case.

4 JUROR CARR: Yes, sir.

5 THE COURT: Is there any juror knows of any
6 reason what so ever why they should not serve in this case
7 with particular emphasis upon your ability to be fair and
8 impartial to both the State and the defense and to judge
9 this case based on the merits presented and the evidence
10 and the law as I would give it to you? If you can't do
11 that, please stand.

12 (No response).

13 All right. Let me see the lawyers up here
14 real quickly, please.

15 (Off-the-record conference).

16 THE CLERK: When I call your name, please
17 stand in place and wait for further instructions.

18 Juror 20, Annie Carnahan.

19 What says the State?

20 MR. WARDER: Please excuse the juror.

21 THE CLERK: Wait. The defense has asked you
22 to be excused so just have a seat please.

23 Juror 114, Towanna Howard.

24 What says the State?

25 MR. HOLLOWAY: Please seat the juror.

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1 THE CLERK: What says the defendants?

2 MR. WARDER: Please swear the juror.

3 THE CLERK: Ma'am, please bring your things
4 and have a seat in the jury box.

5 Juror 124, Gregory Jones.

6 What says the State?

7 MR. HOLLOWAY: Please seat the juror.

8 THE CLERK: What says the defendants?

9 MR. WARDER: Please excuse the juror from the
10 trial of this matter.

11 THE CLERK: You may be seated. You have been
12 excused from this case.

13 Juror 95, Allison Harden.

14 What says the State?

15 MR. HOLLOWAY: Please seat this juror.

16 THE CLERK: What says the defendants?

17 MR. WARDER: Please swear the juror.

18 THE CLERK: Ms. Harden, please come have a
19 seat in the jury box.

20 Juror 116, Christopher Hughes.

21 What says the State?

22 MR. HOLLOWAY: Please seat this juror.

23 THE CLERK: What says the defendants?

24 MR. WARDER: Please swear the juror.

25 THE CLERK: Mr. Hughes, please have a seat in

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1 the jury box.

2 Juror 23, Jammy Carson.

3 What says the State?

4 MR. HOLLOWAY: Please excuse this juror from
5 this trial.

6 THE CLERK: Please be seated. You have been
7 excused from this case.

8 Juror 198, Danny Sandvos.

9 What says the State?

10 MR. HOLLOWAY: Please seat this juror.

11 THE CLERK: What says the defendants?

12 MR. WARDER: Please swear the juror.

13 THE CLERK: Sir, please come have a seat in
14 the jury box.

15 Juror 227, Veronique Thomason.

16 What says the State?

17 MR. HOLLOWAY: Please seat this juror.

18 THE CLERK: What says the defendants?

19 MR. WARDER: Please swear the juror.

20 THE CLERK: Ma'am, please have a seat in the
21 jury box.

22 Juror 215, Robert Smith.

23 What says the State?

24 MR. HOLLOWAY: Please seat this juror.

25 THE CLERK: What says the defendant?

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1 MR. WARDER: Please swear the juror.

2 THE CLERK: Sir, please have a seat in the
3 jury box.

4 Juror 76, John Gamble.

5 What says the State?

6 MR. HOLLOWAY: Please seat this juror.

7 THE CLERK: What says the defendant?

8 MR. WARDER: Please swear the juror.

9 THE CLERK: Sir, please have a seat in the
10 jury box.

11 Juror 255, David Dawkins.

12 What says the State?

13 MR. HOLLOWAY: Please seat this juror.

14 THE CLERK: What says the defendant?

15 MR. WARDER: Please seat the juror.

16 THE CLERK: Mr. Dawkins, please have a seat
17 in the jury box.

18 Juror 13, Dolly Brown.

19 What says the State?

20 MR. HOLLOWAY: Please seat this juror.

21 THE CLERK: What says the defendant?

22 MR. WARDER: Please swear the juror.

23 THE CLERK: Ma'am, please come have a seat in
24 the jury box.

25 Juror 41, Calvin Dean.

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1 What says the State?

2 MR. HOLLOWAY: Please seat this juror.

3 THE CLERK: What says the defendants?

4 MR. WARDER: Please excuse the juror from the
5 trial of this matter.

6 THE CLERK: All right, sir.

7 Juror 22, Janis Carr.

8 What says the State?

9 MR. HOLLOWAY: Please seat this juror.

10 THE CLERK: What says the defendants?

11 MR. WARDER: Please excuse the juror from the
12 trial of this matter.

13 THE CLERK: Ms. Carr, you may be seated. You
14 have been excused from this case.

15 Juror 208, Mark Sitter.

16 What says the State?

17 MR. HOLLOWAY: Please seat this juror.

18 THE CLERK: What says the defendants?

19 MR. WARDER: Please excuse the juror from the
20 trial of this case.

21 THE CLERK: You may be seated. You have been
22 excused from this case.

23 Juror 122, Gary Jones.

24 What says the State?

25 MR. HOLLOWAY: Please seat this juror.

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1 THE CLERK: What says the defendants?

2 MR. WARDER: Please swear the juror.

3 THE CLERK: Mr. Jones, please come have a
4 seat in the jury box.

5 Juror 35, Candice Curran

6 What says the State?

7 MR. HOLLOWAY: Please seat this juror.

8 THE CLERK: What says the defendants?

9 MR. WARDER: Please swear the juror.

10 THE CLERK: Ms. Currin, please come have a
11 seat in the jury box.

12 Jury 85, John Gabriel.

13 What says the State?

14 MR. HOLLOWAY: Please excuse this juror.

15 THE CLERK: Sir, you may be seated. You have
16 been excused from this case.

17 Juror 46, Licia Dickerson.

18 What says the State?

19 MR. HOLLOWAY: Please seat the juror.

20 THE CLERK: What says the defendants?

21 MR. WARDER: Please strike this juror.

22 THE CLERK: Please have a seat. You have
23 been excused from this case.

24 Juror 42, Sallisha Denby-Jones.

25 What says the State?

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1 MR. HOLLOWAY: Please seat this juror.

2 THE CLERK: What says the defendants?

3 MR. WARDER: Please seat the juror.

4 THE CLERK: Ma'am, please come have a seat in
5 the jury box.

6 THE COURT: All right, we'll get an
7 alternate. One and two on the alternate.

8 THE CLERK: Juror 58, Andrew Edwards.

9 What says the State?

10 MR. HOLLOWAY: Please excuse this juror.

11 THE CLERK: You may be seated, you have been
12 excused from this case.

13 Juror 32, Michele Comfort.

14 What says the State?

15 MR. HOLLOWAY: Please seat this juror.

16 THE CLERK: What says the defendants?

17 MR. WARDER: Please swear the juror.

18 THE CLERK: Ma'am, please come have a seat in
19 the jury box.

20 THE COURT: All right, any exception or
21 objection to the jury impaneled from the State?

22 MR. HOLLOWAY: The State has no objections.

23 THE COURT: From the defense?

24 MR. WARDER: No, Your Honor.

25 THE COURT: Ladies and gentlemen, sorry you

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1 all didn't get a chance to serve in this case. I hope you
2 get an opportunity in the future and I wish I could send
3 you home now but I can't. I have to ask you to return
4 downstairs to the jury assembly room. Thank you very
5 much.

6 (Jury panel exits the courtroom).

7 Let me speak to the lawyers up here again for
8 one second.

9 (Off-the-record conference).

10 Ladies and gentlemen, thank you again for
11 serving. Thank you again for being here and everything
12 I've told you up to this point about the importance of
13 your service, I want to reiterate, underline, bold it and
14 all that stuff. We are up here, ladies and gentlemen,
15 because we have a dispute about the facts in this case and
16 it's a dispute that can't be resolved in any fashion and
17 it could not be resolved other than to ask a jury to come
18 listen to the facts and the evidence presented here in the
19 courtroom and to listen to the law and to render a
20 decision that will resolve the dispute and that's what
21 your job is and that's what we ask you to do.

22 I would remind you again that the
23 indictments, arrest warrants, anything alleging a crime in
24 this case is not evidence and you should take no
25 presumption or inference from the fact that these

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1 documents were issued in this case. It is not evidence.

2 Evidence will be presented here in the
3 courtroom generally in one of three ways. The first is
4 most common that we all think of is oral testimony. The
5 second would be the introduction of tangible objects and
6 things like that, and the third could be way of
7 stipulation of the attorneys that some fact is so beyond
8 dispute that everyone agrees is true.

9 I don't know the combination of how this will
10 be presented. I know about as much about this case as you
11 do, but that's generally how evidence is presented and the
12 indictment and the warrant and other charging documents
13 are not evidence. Keep that in mind.

14 Also keep in mind that any person charged
15 with a criminal offense anywhere in this country,
16 particularly right here right now, is presumed innocent
17 unless or until the charging body, the person who is
18 alleged or the person or entity who has alleged a crime
19 has occurred and in this case it is the State, can prove
20 to you all beyond any reasonable doubt each and every
21 element of each offense that is charged.

22 There are two indictments in this case, two
23 individuals. Each one must be judged separately. Each
24 one must be judged using the same standards but each one
25 must stand on its own in order to remove the presumption

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1 of innocence and all that is based on the evidence
2 presented in the court.

3 But please remember everyone is presumed
4 innocent unless and until the charging body can prove them
5 guilty beyond any reasonable doubt of each and every
6 element of any offense that is charged.

7 I break a trial into five parts so you'd have
8 a procedural road map about where we are. The parts are
9 not of equal length but they are the opening statements to
10 you by the attorneys. The second part is the meat and
11 potatoes of the case presentation of the testimony and the
12 evidence. The third part after all the evidence has been
13 presented, the attorneys make their closing arguments to
14 you when they advocate their positions. The fourth part
15 of the trial is when I tell you the law as it applies to
16 this case and the fifth part will be when you all are
17 retired to your jury room to deliberate the case and
18 resolve the dispute.

19 They are not of equal length so you kind of
20 know where we all and what's coming next, that's sort of a
21 brief road map for you.

22 I'll ask you to do a lot of things in the
23 case. The first of which -- there are three things that
24 are very very important. The first is that you keep an
25 open mind throughout the course of the trial. We ask all

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1 these questions about being fair and impartial and we are
2 not just going through the motions. We want a fair and
3 impartial jury who could listen to the evidence and the
4 merits of the evidence that's presented and render a fair
5 and impartial verdict. So we need you to keep an open
6 mind and listen to all the evidence that's presented and
7 the law as well.

8 The second thing I ask you to do is pay
9 attention. That seems simple but if you allow yourself to
10 daydream and not pay attention, you may miss something
11 presented in the courtroom that may turn out to be crucial
12 to your deliberations and if you weren't paying attention,
13 you would be at a disadvantage with your fellow jurors at
14 the end of the case. So please pay attention.

15 The third important thing and its vital and
16 that is that you all not discuss this case with anyone
17 until deliberations. That means you don't talk about it
18 with the bailiffs. You don't talk about it among
19 yourselves. You don't talk about -- I'm going to break
20 for lunch in just a second -- when you all are out at
21 lunch and you don't know much about the case but don't
22 talk about it with anyone. If this case were to go into
23 tomorrow and you all were home and you went to see a
24 friend or a family member or loved one, someone you trust,
25 you can't talk about it to them.

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1 You might say well, I talk about all my big
2 decisions I made on advise from my family or friends. Not
3 in this case, ladies and gentlemen, and the reason is that
4 those people are not making the sacrifices that you all
5 are making to serve in this case. They're not up here
6 away from where they want to be so they should have no
7 input in how this case is resolved. They're not going to
8 here the evidence presented which is all subject to
9 Constitutional protection and scrutiny and they're not
10 going to observe everything that goes on so they should
11 not have an opportunity to have any input. It wouldn't be
12 fair to the parties and it wouldn't be fair to the fellow
13 jurors and it wouldn't be fair to yourselves.

14 So it may be difficult to do but it is
15 imperative for you to do that.

16 I'll ask you to do a number of other things.
17 One of which is when you return from lunch, I'll ask you
18 to see if you could decide on who you'd like to be your
19 fore person. That's just the person who moderates the
20 discussion during your deliberations at the end of the
21 case and if it's necessary as the spokesperson here in the
22 courtroom if that becomes necessary. So if y'all can
23 decide that among the first 12, please do that. If not,
24 then I can help you with that and appoint someone as the
25 fore person.

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1 I would also take from time to time
2 throughout the course of the trial, I may ask for the
3 lawyers to approach the bench or ask y'all the leave the
4 courtroom to handle some matter. And it's human nature to
5 be a little bit offended by that. Well, it is unless you
6 understand why. If you can imagine, we may be talking
7 about things that might -- perhaps a piece of evidence
8 that may or may not be admissible and if it's not
9 admissible, you can certainly understand why you shouldn't
10 hear about it because it wouldn't pass Constitutional
11 scrutiny. We discuss things out of your presence not to
12 deceive you in any way, but it may be to keep something
13 from you. So you may expect that throughout the course of
14 the trial.

15 The other couple things I need to tell you
16 that in every jury trial the jury is the sole and
17 exclusive judge of the facts. The trial judge is not
18 allowed by law to have an opinion about the facts. So
19 don't think that whatever I say or do throughout the
20 course of the trial that I have an opinion. I don't. The
21 law does not allow it. You all are the sole judges of the
22 facts so you have to determine what to believe and what
23 not to believe and where the truth lies.

24 The same law that makes you the judge of the
25 fact makes me the sole judge of the law so if you have any

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1 idea about what you think the law is or the law should be,
2 then you will swear and oath after lunch to set aside your
3 own views and apply the law precisely as I give it to you
4 in this case.

5 Now, we have a number of matters we need to
6 take up before we start the actual trial of the case. So
7 it might be a little bit early but we need to do it out of
8 your presence so you're going to get a lengthy lunch hour.
9 I'm going to ask y'all to be back at 1:15. That's about
10 two hours and five minutes and the reason we do that is
11 we've got some matters to discuss and of course all the
12 court personnel have to have an opportunity to get a
13 little bite of lunch to. I hate to do it, but that's what
14 we need to do.

15 If you will go with the red coats and they'll
16 show you where your room is and how to come and go.

17 Thank you very much.

18 (Jury exits the courtroom).

19 All right. Got any motions?

20 MR. HARBIN: We do, Your Honor.

21 MR. HOLLOWAY: The State does not have any
22 motions.

23 THE COURT: Let's have them.

24 MR. HARBIN: If I could have one minutes to
25 confer with Mr. Warder.

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1 THE COURT: I'll be back in one minute.

2 (Brief break).

3 All right.

4 MR. WARDER: If it pleases the Court, Your
5 Honor. This is a warrantless search of an automobile and
6 obviously we feel that there was no probable cause to
7 search the car. They didn't have any right. The officer
8 had no articulate suspicion of misconduct of illegal
9 activity.

10 THE COURT: What is it? A warrantless
11 search?

12 MR. HOLLOWAY: Yes, sir, Your Honor.

13 THE COURT: And they're objecting to the
14 introduction of the evidence and the burden shifts. Go
15 ahead.

16 MR. HOLLOWAY: Your Honor, the State calls
17 Office Chi Blair to the stand.

18 JACKSON V. DENNO HEARING

19 THE CLERK: Sir, please place your left hand
20 on the Bible and raise your right hand.

21 CHI BLAIR, having been duly sworn, testified
22 as follows:

23 Thank you. Please be seated. State your
24 full name for the record.

25 THE WITNESS: Chi Minh Blair.

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1 DIRECT EXAMINATION

2 BY MR. HOLLOWAY:

3 Q. Officer Blair, please tell us where you were on
4 patrol on March 12, 2009?

5 A. Interstate 85.

6 Q. And which part of the interstate were you at?

7 A. I was parked off to the shoulder between Mauldin
8 and Laurens.

9 Q. What jurisdiction were you in at that location?

10 A. Within the city limits of Greenville.

11 Q. Who was with you?

12 A. At that time my passenger was Deputy Broce from
13 Butts County.14 Q. And why was a deputy from Butts County, Georgia
15 with you?16 A. Each of us on the interstate during that week had
17 a deputy from Butts County riding with us. We were doing
18 a task force for criminal enforcement.19 Q. Was there any kind of written jurisdictional
20 contracts, agreements or anything like that?

21 A. Not that I'm aware of.

22 Q. How was this set up? How was this assignment
23 established?24 A. Most of the K-9 officers within our department
25 were each assigned. Once again a deputy from Butts

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1 County, all that was taken care of through administration.

2 Q. Now, was there any kind of in-car camera in your
3 vehicle?

4 A. No, sir.

5 Q. Why was that?

6 A. It wasn't installed. I didn't have a camera in
7 my car at that time.

8 Q. Now, what happened at about 4:06 p.m. that
9 afternoon?

10 A. I was sitting on the side of the interstate once
11 again watching traffic flowing northbound on 85. I
12 noticed a jeep, black in color that was in the middle lane
13 travelling in the traffic. It was behind another vehicle.
14 They are traveling at a extreme high rate of speed. It
15 was a little bit closer than I like, especially on 85. At
16 that point, got out onto the roadway and got behind the
17 jeep. Most folks once they see a patrol car, they'll slow
18 down. He did not. I paced him at 68 to 70 for
19 approximately about a mile. I initiated my emergency
20 equipment to pull him over. He pulled over just past the
21 385 interchange on to right about mile marker 52.

22 Q. At what point -- I'll ask it this way. At this
23 point -- I'll ask it this way. When you turned your blue
24 lights on, were you still within the City of Greenville?

25 A. We were, yes.

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1 Q. And mile marker 52, is that outside your ---

2 A. Yes, it's just beyond -- our city limits go to
3 Chrome Drive, which is right past the 385 interchange. He
4 continued past that onto where Pelham Road would come in,
5 but just before that there's no waste station off to the
6 right. That's been shut down and he pulled over right
7 there?

8 Q. Okay. When you had the stop what happened?

9 A. Got out of my vehicle, approached the passenger
10 side of the jeep. At that point I noticed Ms. Alexander,
11 I believe it is, sitting in the passenger's side of the
12 vehicle. I addressed Mr. Orlando Parker and asked him to
13 step back to the back of the vehicle with his
14 identification, the registration for the vehicle, and the
15 insurance.

16 Q. There's all kinds of jeeps. What kind of jeep
17 was this, Grand Cherokee, Jeep Ranger?

18 A. It was a Jeep Cherokee black in color.

19 Q. About how new was it?

20 A. It was fairly new. It was clean and wasn't beat
21 up or anything like that.

22 Q. Why did you have Mr. Parker step from the jeep?

23 A. We stopped the car on the interstate I like to
24 get people out of the car and get them to the back for
25 their safety. You've seen tons of video where they're

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1 watching the police cars and they end up having an
2 accident. If I can get them out of the car, get them off
3 to the side with me, at least we're in a safer position
4 and not standing on the side of the road.

5 Q. At that point you asked him for all of the
6 standard documentation, driver's license, insurance and
7 all that stuff. What was his response?

8 A. He stepped out of the vehicle, met me back at my
9 car and he didn't have anything in his hand, none of the
10 information I had asked him for. I asked him again and at
11 that point he told me he did not have a license.

12 Q. When you were first at the vehicle, what did you
13 notice about the vehicle, if anything?

14 A. Well, the first thing that hit me was the smell
15 of burnt marijuana. He was still behind the driver's seat
16 and I'm not going to give him a clue that I can smell the
17 marijuana. If I get the driver out, at least I don't have
18 to worry about a chase in the interstate.

19 Q. Once Mr. Parker was at the rear and in front of
20 yours, where was Ms. Alexander?

21 A. She was still in the passenger's seat of the
22 vehicle.

23 Q. Where was Officer Broce?

24 A. Officer Broce had come out and he was watching
25 her at this point.

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1 Q. When Mr. Parker said he didn't have the
2 documentation, what happened right after that?

3 A. We had a brief conversation, usually when someone
4 doesn't have a license or doesn't have their information,
5 it's usually suspended or they don't have it or something
6 of that nature. I asked him if he had a license. He said
7 he didn't. I asked him if it was suspended and we went
8 through the whole litany of questions there. I got his
9 information and was able to verify that. At which point I
10 asked him I could smell the marijuana in the car, where is
11 it? He told me my girlfriend's got it, she's trying to
12 hide it.

13 Q. What, if any, routine type questions did you ask
14 him other than that part of the conversation? What other
15 routine questions did you ask him?

16 A. Where are you going? Where are you coming back
17 from? He said he was going back to Pennsylvania. He said
18 he had been in Atlanta. He said he was visiting his 16
19 year old son in Atlanta. He said he had been there a
20 couple of days. Went through all of that and I asked him
21 if he had any money or narcotics in the vehicle to which
22 all that he said he did not.

23 Q. Did you run the tag number or the VIN number on
24 the vehicle at that point?

25 A. That's all ran as soon as we initiate a traffic

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1 stop.

2 Q. Who was the owner of that vehicle?

3 A. It came back, I believe, registered to his
4 mother.

5 Q. How do you know it's his mother? Is that
6 speculation?

7 A. After all was said and done and I put in for the
8 vehicle to be seized, it came back to his mother.

9 Q. And her address is the same as Mr. Parker's
10 address at that time?

11 A. That's correct.

12 Q. Now, when he said there wasn't any illegal
13 narcotics in the vehicle, what happened -- what happened
14 when he said his girlfriend was carrying?

15 A. Once he told me she had the marijuana, I placed
16 him in handcuffs. I do that for security reasons so he
17 doesn't have the ability to run on the interstate. At
18 that point I notified Deputy Broce that he had stated to
19 me that she had had marijuana with her. We had her get
20 out of the vehicle. She came back to my vehicle. We had
21 them both standing there. I explained to her that he told
22 me that she had marijuana, that she was trying to hide it,
23 that she needs to just go ahead and give it up to us.

24 She didn't even look at me any more. She
25 looked directly at him and he looked at her and he told

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1 her to just give it to him.

2 Q. So he told her to give it up?

3 A. Yes, sir.

4 Q. And how did she react?

5 A. She just looked at him, stood there for a couple
6 of seconds, dropped her head and he said it was okay. She
7 began to undo her pants on the side of the interstate. I
8 told her to turn around so we're not facing the
9 interstate. She turned around towards the wood line,
10 opened up her pants and pulled out a small bag of
11 marijuana.

12 Q. What kind of bag was it?

13 A. Clear plastic bag. I think it weighed in excess
14 of four grams.

15 Q. What did you do at the scene to confirm what that
16 plant like substance was?

17 A. Field tested marijuana and it came back positive
18 as it always do when it comes into contact with any type
19 of narcotic substance.

20 Q. Now, at that point, what did you do with the
21 defendants?

22 A. She was then placed in handcuffs as well. I got
23 on the radio and notified another officer to come up. At
24 which point Officer Reider showed up on scene. I did that
25 because now I have two defendants that are in custody and

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1 I need someone to watch the vehicles as we searched.

2 Q. So at that point, they both were under arrest for
3 what charges?

4 A. Simple possession of marijuana.

5 Q. Now, it's true that sometimes defendants are
6 giving tickets for that type of charge; is that correct?

7 A. Yes, sir.

8 Q. Why did you cuff them and take them in?

9 A. Well, one, Mr. Parker doesn't have a license.
10 He's already lied to me from the beginning of the stop.
11 He's not a resident of South Carolina. I don't know if
12 he'd been here before. I don't have any ID pack on him.
13 He was aware of the marijuana, she's got the marijuana, so
14 we're going to take them and place them in jail. We're
15 going to get them printed and make sure they are who they
16 say they are.

17 Q. Did Ms. Alexander produce any driver's license at
18 that point?

19 A. Not at that point. We were later able to find
20 identification on both of them.

21 MR. HOLLOWAY: Your Honor, I'm going to ask
22 this be marked as Court's Exhibit No. 1.

23 (marked as Court's Exhibit No. 1 for
24 identification).

25 BY MR. HOLLOWAY:

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1 Q. Officer Blair, I'm going to hand you up what's
2 been marked Court's Exhibit 1. Can you identify it for
3 the record?

4 A. This is our general supportive policy on towing
5 the vehicle.

6 Q. Now, according to that policy -- point to what
7 section of that policy that you had that vehicle towed?

8 A. It would be 6.0 all the way down through 6.3.

9 Q. 6.0 in Court's Exhibit 1, what does that say?

10 A. It's our policy of towing vehicles in the
11 subsection in it, un-attended vehicles, inventory, all the
12 way to towing the vehicle once you've arrested someone.
13 You can't leave a vehicle on the side of the road. If
14 it's get stolen, we're liable for that; anything becomes
15 damaged, we're liable for that, so we had it towed and put
16 into a storage facility.

17 Q. First of all, they were both under arrest and
18 neither one of them had any ID's on them, they could not
19 drive the car away; is that correct?

20 A. Correct.

21 Q. And the owner of the vehicle lives in
22 Pennsylvania, correct?

23 A. Correct.

24 Q. She lived in Pennsylvania, correct?

25 A. That's correct.

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1 Q. And that's why you towed the vehicle?

2 A. Yes.

3 Q. Thank you. Now, they're under arrest and they're
4 cuffed for possession of marijuana. What happened at that
5 point?

6 A. At that point Officer Reider arrived on scene.
7 He stayed with the two individuals as myself and Deputy
8 Broce decided to search the vehicle. Upon searching the
9 vehicle, nothing really looked out of normal. Like I
10 said, it was a nice clean truck inside. We noticed in the
11 center console it was a multi tool that was placed in the
12 center console. It really didn't raise any suspicions at
13 first. We moved from the front. Everything was
14 methodical moving from the front towards the back of the
15 vehicle during the search.

16 We get behind the seats, the driver's seat
17 and the passenger seat and we found on the floor board
18 there were several wood screws there, kind of out of place
19 for a vehicle to be as clean as it was. They had a
20 backpack on the back seat that had some clothing in it.
21 Not much. Really nothing there that we raised our
22 eyebrows to.

23 We moved to the back and opened up the hatch
24 and we noticed that there was a speaker box in the back,
25 one of those prefab made out of cardboard or what do you

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1 call it -- particle board. It had a couple of speakers in
2 it. We did notice there was a screw laying there that was
3 on the back deck of that cargo area and the crews that
4 were holding the speakers in were the same screws that
5 were littered on the back floor board.

6 Q. When you saw that screw by the speaker box, what
7 did that indicate to you? What were you thinking?

8 A. We were thinking they secreted some more
9 narcotics somewhere. As clean as the vehicle was, you
10 find a bunch of screws littered all over the place and now
11 you've got a speaker box back there that obviously told us
12 that someone had been messing with those speakers taking
13 the screws out, taking the speakers out and placing the
14 screws back in.

15 Q. The smell of marijuana, how did that play into
16 your suspicions that were raised?

17 A. When I first made the stop and I approached the
18 vehicle, the smell of marijuana was just overwhelming and
19 our initial thought at that point was we've got to a whole
20 load of marijuana in this vehicle. Once we got the
21 marijuana from Ms. Alexander, then we knew there was a
22 possibility there was going to be quite a bit more in the
23 vehicle.

24 Q. And the speaker box, can you describe that in
25 more detail?

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1 A. Yeah. It was one of the particle board speaker
2 boxes I believe. It went from side to side in the back of
3 the jeep. It had two, I would say, 12-inch speakers in it
4 and it just sat right up against the back of the back
5 seat.

6 Q. And when you found the other wood screw, what did
7 you then do?

8 A. Well, finding the singular wood screw along with
9 the ones that were littered up in the front, we tied that
10 together with the multi tool and we said, well, let's
11 check the speaker box now. Nothing else seemed to be out
12 of place, abnormal, so we started to take the screws out
13 of the speaker box.

14 Q. Where there any indications that the screws you
15 found came to that speaker box?

16 A. The screws that were in the speaker holding them
17 into the speaker box were the same. They were all
18 identical screws.

19 Q. Were there any screw holes on the box were screws
20 would be?

21 A. Oh, there were several. There were some of them
22 didn't have screws in them. Most of them did. I you
23 looked at them it looked like somebody was trying to put
24 them in a hurry and weren't able to get them all in there,
25 dropped one in the back, left some in the front.

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1 Q. Now, when you started to take the speakers out --
2 first of all, how many speakers were in this box?

3 A. Two.

4 Q. How did you go about doing that?

5 A. We unscrewed the one to the right first. We got
6 it out, placed it off to the side, and then we moved to
7 the one on the left.

8 Q. When you were taking them out, physically, were
9 you prying on the box to pry them out or were you using
10 the multi tool?

11 A. Well, we used the multi tool that they had in the
12 center console.

13 Q. When you took the speakers out -- first of all
14 where were Ms. Alexander and Mr. Parker during this
15 process?

16 A. They are still at the front of my patrol car
17 which was directly behind the jeep. They were able to see
18 everything that we were doing. Officer Reider was
19 standing with them. They had complete view of everything
20 that was going on.

21 Q. How were they acting to this?

22 A. Well, they were both very polite once we started
23 the search. Neither one of them really said anything at
24 all. I don't know if they spoke anything to each other.
25 I wasn't standing there with them. Once we moved to the

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1 back and we were within walking distance of each other, we
2 took the right speaker off, I did look back and I noticed
3 Ms. Alexander was steadily looking at the ground. I did
4 notice Mr. Parker was sweaty. I thought at first he was
5 crying. I came back and asked him if he was crying and he
6 told me he wasn't.

7 I noticed that day as he is still today bald.
8 He had a baseball cap on but he was just sweating
9 profusely. I asked him if he was okay. He didn't
10 respond. I took his hat off and it was just pouring with
11 sweat. I put his hat back on and went back to the vehicle
12 where Deputy Broce was getting the other screws.

13 Q. What, if any, reactions that Ms. Alexander have?

14 A. Once we started on the left speaker and got a few
15 of those screws out -- I don't recall how many screws
16 there were because there was a bunch of screws. We were
17 taking turns getting them all out. Deputy Broce started
18 unscrewing the left side of the box, the speaker on the
19 left side. Once he got a few of those screws out,
20 Ms. Alexander started dry heaving on the side of the road.
21 I turned around and asked her if she was okay. She shook
22 her head, no. I asked her if she felt like she was going
23 to be sick, she shook her head yes. I asked her to turn
24 away from the interstate so she, at least, wouldn't be
25 getting sick on the interstate and keeping her out of

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1 harms way.

2 Q. During this time, what questions did you guys ask
3 them? Did you ask them anything?

4 A. No. We proceeded with taking the speaker out.
5 Once we did, we located the two packages that was taped to
6 the back of the speaker box.

7 Q. How were the items taped in? What kind of tape?
8 Could you tell?

9 A. It looked like Scotch tape or beige masking tape
10 that had it taped to the back wall two brick like packages
11 of that size right on top of each other just taped to the
12 back of the speaker box.

13 Q. And did you figure out or -- what if any field
14 testing did you do the figure out the substance was?

15 A. Once we realize what we had, we took those out of
16 the box, notified more supervision to arrive on the scene,
17 notified our DEA liaison which is Trace Garden to arrive
18 on the scene. When we got those types of quantities of
19 narcotics, we'll go ahead and notify DEA and have them
20 come out there. We took the packages and put them on the
21 hood of my vehicle. One was cut open and it was field
22 tested with a NicWipe(ph) and it tested positive for
23 cocaine.

24 Q. At that time, you gave an approximate weight?

25 A. Not at that time.

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1 Q. Okay.

2 MR. HOLLOWAY: Your Honor, if you don't mind
3 I'd like to go into some questions regarding Jackson v.
4 Denno to speed things up.

5 THE COURT: All right, go ahead.

6 BY MR. HOLLOWAY:

7 Q. When you were speaking to the defendants, you've
8 already mentioned what Mr. Parker said, what, if any,
9 threats you made to him to make him talk to you?

10 A. None. We had a casual conversation just as you
11 and I are having a conversation now.

12 Q. Did you make any promises about how the
13 prosecution would work out for him?

14 A. No, sir.

15 Q. While you were speaking to him and Deputy Broce,
16 where were you guns and taser and such?

17 A. Just as you see them now on my duty belt.

18 Q. When he initially said to you that she's hiding
19 marijuana, was he in cuffs at that time?

20 A. No, sir.

21 Q. Did you advise them both of their rights at that
22 time to remain silent or anything like that?

23 A. No, sir.

24 Q. Why not?

25 A. I wasn't asking them any particular questions

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1 pertaining to that crime. He advised me that she had hit
2 marijuana. I didn't say anything else to him at that
3 point other than hang out here for a second and that's
4 when we brought her out of the vehicle.

5 Q. That tag on the vehicle, which state was it from?

6 A. Pennsylvania.

7 Q. Is it routine for you to ask questions like where
8 are you coming from and that sort of thing?

9 A. Absolutely. I ask that of folks that drive in
10 South Carolina with South Carolina tags.

11 Q. Did they appear to be high, intoxicated?

12 A. They did not. He was very coherent, knew what I
13 was asking and answered clearly and concisely.

14 Q. Thanks very much. That's all I have for you at
15 this time. Please answer any questions either of the
16 attorneys have for you?

17 A. Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WARDER:

20 Q. Officer, you were parked between Mauldin and
21 Woodruff Road?

22 A. Yes, sir.

23 Q. And what lane was the vehicle traveling in when
24 you saw it?

25 A. It was in the middle lane of three.

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1 Q. When you pulled out, what lane did you pull out
2 into?

3 A. I pulled out into the lane closest to the
4 shoulder.

5 Q. And did you travel down and catch up with their
6 vehicle in the shoulder lane?

7 A. No, sir, I got into traffic, got up to speed into
8 traffic, moved up the center lane, got behind them just
9 (inaudible.)

10 Q. You never pulled up beside the vehicle?

11 A. No, sir.

12 Q. Never pulled up and looked in or anything like
13 that?

14 A. No, sir.

15 Q. And you were never over in the far left lane?

16 A. No, sir.

17 Q. When you turned on your blue lights, did they
18 have to move over one lane and then come to a stop on the
19 shoulder?

20 A. Yes, sir, they did. They stayed in the center
21 lane until I initiated my emergency equipment.

22 Q. And then did they start to move over?

23 A. Yeah, they came into the right lane and then off
24 onto the shoulder.

25 Q. And after you stopped the vehicle, you made

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1 contact with my client?

2 A. That's correct.

3 Q. And when you made contact with my client, was the
4 first thing you did was tell him to get out of the car and
5 come to the back?

6 A. I asked him to get his information and his
7 driver's license, registration, insurance and meet me at
8 the back of the vehicle.

9 Q. Did you handcuff him at that time?

10 A. No, sir.

11 Q. When you said he appeared at the back of the car
12 and he didn't have the information, did you ask him to go
13 back and get it?

14 A. No, I asked him where it was and he told me he
15 didn't have a license.

16 Q. What about the other information, did he tell you
17 where it was?

18 A. No, sir.

19 Q. And did he tell you his license was suspended?

20 A. After a brief conversation, he did. He said his
21 license was suspended and he was headed back home. He had
22 visited his son in Atlanta. We had, like I said once
23 again, we had a small conversation just like you and I are
24 having.

25 Q. And at that point, did you give him his Miranda

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1 Rights?

2 A. No, sir.

3 Q. Did you take him into custody?

4 A. No, sir.

5 Q. Did you tell him he was under arrest?

6 A. No, sir.

7 Q. Was he free to leave?

8 A. No, sir.

9 Q. Did you have more conversation with him?

10 A. Yes, sir. Once again I asked him where the
11 marijuana in the vehicle was because I could smell it. At
12 which point he told me that his girlfriend hid it on her
13 body.

14 Q. And then you said you got her out of the car?

15 A. That's correct.

16 Q. And then you retrieved the marijuana from her?

17 A. She retrieved it for us.

18 Q. And handed it to you?

19 A. Yes, sir. She actually put it on the top of the
20 vehicle.

21 Q. At that point, did you put the handcuffs on my
22 client?

23 A. At that point they were both placed in custody,
24 yes, sir.

25 Q. And did you give them the Miranda Rights then?

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1 A. No, sir.

2 Q. Were there any other conversations that they had
3 with you that relate to this case?

4 A. No, sir.

5 Q. And you said something about -- did my client say
6 some of the drugs were his?

7 A. I'm sorry?

8 Q. Did my client say anything that the ownership of
9 any of the drugs.

10 A. No, sir, either one of them did.

11 Q. Neither the marijuana or the cocaine that was
12 ultimately discovered?

13 A. No, sir.

14 Q. Did any one of them deny ownership of it?

15 A. Not that I'm aware of. Once again, once they
16 were placed into custody and we began our search, neither
17 one of them said anything.

18 Q. When the marijuana was taken, did they give it to
19 you or did you have them place it on the hood of the car?

20 A. She placed it on the hood of my vehicle.

21 Q. Did you tell her to place it in front of the
22 camera there?

23 A. I don't have a camera, sir.

24 Q. And would a camera have been mentioned when you
25 put it on the hood?

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- 1 A. No, sir, I don't have a camera in my vehicle.
- 2 Q. And there's never been one?
- 3 A. It has one now.
- 4 Q. When did it get one?
- 5 A. Earlier this year.
- 6 Q. Some time in 2011?
- 7 A. Yes, sir.
- 8 Q. This happened back in 2010?
- 9 A. This happened in 2009.
- 10 Q. Now, there was a second car there from Greenville
- 11 City?
- 12 A. Yes, sir.
- 13 Q. Did that car have a camera?
- 14 A. I don't know if Officer Reider has a camera in
- 15 his vehicle or not.
- 16 Q. Was a camera used that day?
- 17 A. There was a camera used to take pictures of the
- 18 narcotics in the vehicle and that was a hand held digital
- 19 camera.
- 20 Q. Was a video camera used that day?
- 21 A. No, sir.
- 22 Q. Thank you.
- 23 A. Yes, sir.
- 24 THE COURT: Mr. Harbin.
- 25 MR. HARBIN: May it please the Court, Judge.

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1 BY MR. HARBIN:

2 Q. I'll start with Mr. Warder's last question. You
3 said that there were photographs taken of the scene?

4 A. That's correct.

5 Q. Were they handed over to the Solicitor's Office?

6 A. Yes, sir.

7 MR. HOLLOWAY: Your Honor, if I may interject
8 here. I don't know if this is the appropriate time but we
9 provided that per discovery. I have proof of that.

10 THE COURT: Okay.

11 BY MR. HARBIN:

12 Q. When you pulled Mr. Parker out of the car, he
13 told you he didn't license. Did he tell you it simply
14 wasn't in his possession or he never had one or?

15 A. Once again we had a brief conversation and when I
16 get folks out and they tell me they don't have a license
17 it's usually because it's suspended or no state deal of
18 that nature. We had a brief conversation and he said it
19 was suspended. I got his information, birth date, state
20 where the license would have been issued out of, verified
21 all that stuff.

22 Q. I'm sorry. He did volunteer it was suspended
23 during that conversation?

24 A. That's correct.

25 Q. That was my question. I didn't phrase it

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1 correctly.

2 At what point did you ever believe that
3 Mr. Parker or Ms. Alexander for that matter were violating
4 the law other than the suspension of the license?

5 A. The speeding was the initial and the smelling of
6 the marijuana in the vehicle.

7 Q. So once you smelled the marijuana, you
8 immediately have suspicion upon smelling the marijuana?

9 A. Absolutely.

10 Q. And it's your testimony that Mr. Parker was not
11 cuffed whether for safety or any other reason, he was not
12 cuffed until after the marijuana was found or actually
13 handed over; is that correct?

14 A. We brought her out -- yes, I believe that's
15 correct.

16 Q. And you had earlier testified that Mr. Parker was
17 asked to immediately get out of the vehicle rather than
18 exchanging information ---

19 A. That's correct.

20 Q. What was the purpose of having him get out of the
21 vehicle?

22 A. For his safety and mine.

23 Q. And what would be his safety in that scenario?

24 A. If he stayed in the vehicle there once again,
25 people tend to see the blue lights of the police cars and

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1 they're not paying attention to their driving.
2 Unfortunately they run into the back of police car, they
3 run into the back of suspect vehicles so we get them out
4 of the car and bring them to the side of the road and
5 we're all out of dangers way at that point. If somebody
6 hit my car, they just hit another car and not somebody.

7 Q. So, in other words, if you're sitting in the car
8 the car could be jostled and hit?

9 A. Absolutely.

10 Q. The problem is you left Ms. Alexander in the car.

11 A. Right.

12 Q. Would she have the same expectation that
13 something might happen to her?

14 A. She does, yes, absolutely but I could only deal
15 with one person at a time.

16 Q. I understand that but this is safety and you need
17 to get on it, right.

18 A. Yes.

19 Q. So you basically ignored Ms. Alexander and you
20 got to her when you got to her?

21 A. No, sir, I didn't ignore her safety at all. We
22 had another deputy on scene that was watching her in the
23 vehicle?

24 Q. I understand that and I'm only going to ask one
25 more time. You pulled Mr. Parker out of the car for his

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1 safety because somebody might hit this car.

2 A. That's correct.

3 Q. But you didn't have the other deputy on scene
4 pull Ms. Alexander out of the car for same safety reasons
5 you pulled Mr. Parker out of the car.

6 A. I didn't have her pulled out of the car, no, I
7 did not.

8 Q. And you said the marijuana was just a simple
9 possession of marijuana, a little over four grams, not
10 what you call a whole bunch of marijuana?

11 A. Right.

12 Q. I believe you also testified that after you found
13 the marijuana you immediately got suspicious that there
14 was going to be a lot more in that. I'm paraphrasing but
15 that's ---

16 A. That's correct. From the smell, yes, sir.

17 Q. So it's your testimony that based the possession
18 of four grams of marijuana that you suspect any random
19 person to have many more drugs on them?

20 A. No, sir.

21 Q. So you do not expect as a matter of course to
22 find many more drugs in a vehicle or where ever just
23 because they have four grams of marijuana on them?

24 A. I think if you take the totality of my testimony
25 with where they're coming from, where they were going, how

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1 long they had been there, you put all that together, yeah,
2 it raises suspicion there may be more narcotics in the
3 vehicle.

4 Q. There may be more narcotics in the vehicle --
5 there may be more or there was going to be a whole lot
6 more because I think you were pretty definite on the first
7 statement?

8 A. Yes, sir, I was.

9 Q. Mr. Warder asked you whether or not Mr. Parker
10 was free to go. I believe at a point that you were having
11 with Mr. Warder, the marijuana had not yet been removed
12 from Ms. Alexander?

13 A. Yes, sir.

14 Q. And Mr. Warder said was he handcuffed and you
15 said, no, was he free to go, you said no?

16 A. That's correct.

17 Q. At that point he was not free to go why?

18 A. Because he was still being retained under
19 investigative reasons. I've got a suspicion that there's
20 a crime that's occurred, I can detain them.

21 Q. I understand. And the suspicion was possession
22 of marijuana?

23 A. Of the crime?

24 Q. What ---

25 A. Yes, I smelled marijuana and he confirmed that.

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1 she had it, absolutely.

2 Q. Riding with you that night was an officer from
3 Georgia as part of a task force.

4 A. That's correct.

5 Q. But you are not aware of any kind of written
6 approval, authorization for a law enforcement officer
7 deputized in another jurisdiction to assist in law
8 enforcement matters in Greenville County.

9 A. Not that I'm -- once again that would be handled
10 by my chief or the administration above me.

11 Q. So you just follow along and they tell him to get
12 in the car with you and you say, yes, sir, and then you
13 roll?

14 A. Yes, sir.

15 Q. Just to be clear, you don't have anything with
16 you today that can tell the Court or myself or my clients
17 what basis Mr. Broce had for actually being essentially a
18 law enforcement agent that night?

19 A. No, sir.

20 Q. At any point in this stop, did you try to get in
21 touch with a magistrate for a search warrant for this
22 vehicle?

23 A. No, sir.

24 Q. Were you prevented if you had the desire to
25 actually call the magistrate for a search warrant for this

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1 vehicle?

2 A. No, sir.

3 Q. So there is no reason you could not have if you
4 so chose; is that fair?

5 A. Yes, sir.

6 Q. Let me ask you a few questions about the vehicle.
7 The vehicle is a standard jeep Cherokee and we all kind of
8 know what those are. I believe it's your testimony that
9 Mr. Parker is driving and Ms. Alexander is in the front
10 passenger seat; is that correct?

11 A. That's correct.

12 Q. And that the results of a search of the front
13 seats and the rear seats and all the seats yielded nothing
14 accept for a curious amount of screws and that peaked your
15 interest?

16 A. The screws and the multi tool, yes, sir.

17 Q. Then you moved into the cargo area in the back
18 and you flipped up the hatch; is this correct?

19 A. That's correct.

20 Q. How many -- I know you don't have a ruler on you
21 but based upon your observation, how far away is the rear
22 cargo area from either front seat?

23 A. I don't know. Four feet, I would say.

24 Q. And you testified that when you got in the back
25 of the trunk and you were looking at the speaker box, in

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1 order to gain access into the speaker box you had to use a
2 tool and you had to unscrew screws to get to them?

3 A. That's correct.

4 Q. You had mentioned that when you found a large
5 amount of drugs like you did that evening -- I don't want
6 to put words in your mouth -- the standard operating
7 procedure would be is the call DEA and then I believe you
8 said you called them to come out?

9 A. That's correct.

10 Q. And did they come out?

11 A. They did.

12 Q. To your knowledge, did they ever speak to my
13 client or Mr. Warder's client?

14 A. I'm sure they did. We went back to the DEA
15 office.

16 Q. And did you transport them back to the DEA
17 office?

18 A. No, sir. I have a dog and I don't transport.

19 Q. Was your dog with you that night?

20 A. Yes.

21 Q. What's your dog's name?

22 A. Nero.

23 Q. Was Nero ever deployed to sniff?

24 A. No, sir. Because I could smell it.

25 Q. Whenever Mr. Parker and Ms. Alexander were

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1 transported to the DEA office, how were they transported?

2 Not in your car because you said you had the dog.

3 A. Right.

4 Q. Did you observe them being transported?

5 A. I believe Officer Reider transported one and I
6 believe the other was transported by another. Once again
7 I was still involved with getting the information on the
8 vehicle.

9 Q. You said that you referenced the procedure here
10 for Greenville and the tow report.

11 A. That's right.

12 Q. When did the tow truck come and when did it tow
13 the car away?

14 A. It would have been -- we call them and they have
15 to get there within 45 minutes. The tow report has the
16 date and the time.

17 Q. The tow truck came to mile marker 52, picked it
18 up and towed it away and sent it to where ever you told
19 them to go.

20 A. That's correct. Whoever was the tow company at
21 the time and took it back to their storage locker.

22 Q. And so did they take it directly from mile marker
23 52 and -- do y'all have a locker facility that they would
24 go to?

25 A. Their storage facility.

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1 Q. Greenville City storage facility?

2 A. Which ever facility at the time.

3 Q. I'm sorry. Their own storage facility?

4 A. Yes.

5 Q. Officer, do you recall -- and I believe you were
6 assisting and the primary in actually extracting the
7 cocaine from the speaker box and I understand from
8 discovery that it was handed over to Sergeant Estes ---

9 A. That's correct.

10 Q. Did the drugs go with y'all to DEA or did it go
11 to P&E?

12 A. Sergeant Estes maintained possession of the
13 narcotics. He took it to the DEA office, I believe, and
14 then you took it from there to Property and Evidence.

15 Q. He took it from the roadside to the DEA and then
16 to P&E?

17 A. Yes, sir. It stayed in possession the whole
18 time.

19 Q. Did you observe him to whole time with the drugs?

20 A. I observed him on the side of the road with the
21 drugs and observed him at the DEA office and once he left
22 there the went to Property and Evidence.

23 Q. And did you observe our clients the whole time at
24 the DEA office?

25 A. No, sir.

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1 Q. You were outside of their presence for whatever
2 DEA wanted to do?

3 A. Absolutely.

4 Q. So you had no knowledge of what particular DEA
5 agent did you did not do or ask or did not ask?

6 A. That's correct.

7 MR. HARBIN: Thank you, Officer. I have no
8 further questions, Your Honor.

9 MR. HOLLOWAY: The State has no further
10 questions for this witness. We have one further witness
11 to call.

12 THE COURT: All right. Thank you, sir. You
13 can step down.

14 MR. HOLLOWAY: Your Honor, the State calls
15 Mike Estes.

16 THE CLERK: Please come around to be sworn.
17 You can put down the bag, place your left hand on the
18 Bible and raise your right hand.

19 MICHAEL ESTES, having been duly sworn,
20 testified as follows:

21 Thank you. Please be seated. State your
22 full name for the record.

23 THE WITNESS: Michael Estes.

24 DIRECT EXAMINATION

25 BY MR. HOLLOWAY:

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1 Q. This bag is not your personal bag?

2 A. No, sir.

3 Q. What is in that bag?

4 A. These are the drugs that were seized by Corporal
5 Blair.

6 Q. Tell us how you were involved in this case?

7 A. I responded to Corporal Blair just to assist.

8 Basically Detective Reider had responded also. We like to
9 all share a little bit of responsibility I believe.

10 Detective Reider may have transported one or two of the
11 subjects for Corporal Blair and I responded. Corporal
12 Blair asked me to take the drugs, keep it in my
13 possession, and ultimately put them into Property and
14 Evidence.

15 Q. And is that what happened?

16 A. Yes.

17 Q. When did you log it into Property and Evidence?

18 A. That same day at 16:06 so 4:06 p.m.

19 Q. It was testified earlier that you went with Agent
20 Trace Garden to the DEA office; is that correct?

21 A. Yes, sir.

22 Q. Did you bring those drugs with you, that cocaine?

23 A. Yes, sir.

24 Q. Did you let anybody else touch it and hold it or
25 squeeze those bricks of cocaine?

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1 A. No, sir.

2 Q. Where were the bricks of cocaine while you were
3 at the DEA office?

4 A. In my vehicle.

5 Q. Did anybody go out to the car and say hey, cool,
6 I want to see it?

7 A. No.

8 Q. How long were you at the office there?

9 A. I don't think it was -- it couldn't have been
10 more than an hour, if that, I don't believe.

11 Q. After you left there, what did you do to preserve
12 that cocaine evidence?

13 A. Took it took Property and Evidence and the drugs
14 were packaged and heat sealed, in that heat seal package
15 there, and the date, case number and my initials are all
16 on each package that was placed in Property and Evidence.
17 And then it was handed over to a evidence technician at
18 that time.

19 Q. Now, right now you're holding a baggie of
20 marijuana and you've also examined the brick of cocaine
21 inside of the bag right there?

22 A. Yes, sir.

23 Q. And you signed it in, correct?

24 A. Yes, sir.

25 Q. And on March 12th, 2009?

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1. A. Yes, sir, that's the date.

2. Q. And those items are in the same condition that
3 they were when you logged them in, correct?

4. A. Yes, sir. The packaging, I think, it was removed
5 for testing purposes but other than that, yes, sir.

6. Q. Thank you very much. Please answer any questions
7 that counsel may have for you.

8. CROSS-EXAMINATION

9. BY MR. WARDER:

10. Q. Officer, when you got the defendant's to DEA,
11 what was done with them?

12. A. I have no idea. I stayed with the evidence and
13 basically the reason for that was if the Drug Enforcement
14 Administration chose to adopt to take that case, then they
15 would also take the evidence.

16. Q. Were the defendants physically given to DEA
17 agents to do something with, talk to, to interview?

18. A. I have no idea. I hate to speculate. I have no
19 idea.

20. Q. You didn't transport a defendant there, you just
21 transported the drugs?

22. A. Yes, sir.

23. Q. Did you see the defendants when you got there?

24. A. I'm sure I did. I don't recall. Yes, they were
25 taken there.

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1 Q. And they were transported how?

2 A. I know Detective Reider I'm not sure if one or
3 both subjects, I'm not sure.

4 Q. Who told you wouldn't take the case and to take
5 the drugs on to the Law Enforcement Center?

6 A. I believe it was Task Force Officer Skullen(ph.)

7 Q. Thank you.

8 THE COURT: Cross.

9 BY MR. HARBIN:

10 Q. I just want to you to clarify something. I'm
11 going to show you a copy of the tow report, is this your
12 signature at the bottom?

13 A. It is.

14 Q. So if you want to take a glance at that and I'll
15 ask you a quick question.

16 A. Okay.

17 Q. I had asked Officer Blair earlier what the timing
18 of the towing of the vehicle from the scene was and his
19 response, I believe, was that it was towed from
20 essentially the interstate at mile marker 52. Can you
21 read for the record where this form says it was towed
22 from?

23 A. I85 and Pelham.

24 Q. And I want to make sure that I'm correct but I
25 don't believe that is where mile marker 52 is?

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1 A. I have no idea.

2 Q. Is I85 and Pelham within the city limits of
3 Greenville?

4 A. No.

5 Q. It's not. Do you have an further explanation as
6 to why this tow report indicates it was towed from I85 and
7 Pelham?

8 A. I'm not sure I understand your question.

9 Q. What I'm trying to do is confirm -- well, trying
10 to clarify why this tow report says it wasn't towed from
11 mile marker 52. And I don't know that it's a big deal but
12 I'm just trying to figure out exactly why this says it was
13 in Greenville County several miles away from where the
14 incident location was.

15 A. It would be as a reference a better location to
16 put I85 and Pelham than to be very vague and put mile
17 marker 52 because not everybody might understand where
18 mile marker 52 is. I couldn't tell you where mile marker
19 52 is.

20 Q. I'm right there with you and I couldn't either
21 but I do understand now after reviewing the case that mile
22 marker 52 is very close to I85 and Laurens Road. It's not
23 close to I85 and Pelham.

24 A. I have no idea. Again, I'm not really sure where
25 we're going with this.

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1 Q. Just trying to figure out why this report doesn't
2 jive with what Officer Blair said.

3 A. Again, I don't -- I'm kind of ---

4 Q. Any chance the car was moved and then the tow
5 truck got it and the tow truck took it where it was going
6 to go? It was taken to some other secure location and
7 then the tow truck got it later. I don't want to beat a
8 dead horse but you signed it and its got to accurate, I
9 suppose, right? That's your signature that you testified
10 to so I'm asking you to explain for the Court why this
11 says I85 and Pelham Road in Greenville County where the
12 stop was made in Greenville City at mile marker 52. I
13 know it seems like a silly question, but it's kind of
14 important.

15 THE COURT: That's not the testimony. The
16 testimony was blue lights were initiated inside the city
17 limits but then the stop didn't occur until they were
18 outside the city limits.

19 MR. HARBIN: If that's what it is, then I'm
20 through questioning.

21 THE COURT: That's what Officer Blair
22 testified to.

23 MR. HARBIN: Thank you.

24 THE COURT: Who filled out that report?

25 MR. HARBIN: Officer Estes.

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1 THE COURT: You fill out the report?

2 THE WITNESS: Yes, sirs.

3 MR. HARBIN: Thank you, Judge.

4 MR. HOLLOWAY: That's all from the State on
5 this issue.

6 THE COURT: Just for the record, Officer
7 Estes, where are you employed?

8 THE WITNESS: Greenville Police Department.

9 THE COURT: Greenville City Police
10 Department?

11 THE WITNESS: Yes, sir.

12 THE COURT: And were you employed at the time
13 of this incident at that same location?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Thank you very much.

16 All right, anything else?

17 MR. HOLLOWAY: That's all from the State.

18 THE COURT: Y'all got anything?

19 MR. HARBIN: Judge, may we have one minute to
20 confer?

21 (Counsel confers with client).

22 (Witness leaves the witness stand).

23 MR. HARBIN: Judge, I think we'll just go
24 with arguments.

25 THE COURT: Okay. What y'all want to tell

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1 me.

2 MR. HARBIN: Judge, I'll start. Mr. Warder
3 can correct me if I misstep.

4 Judge, our concerns here are probably obvious
5 to the Court. This is a warrantless search which
6 obviously there's a plethora of cases on it. Obviously,
7 officers had the ability to search a vehicle after they-
8 had -- detained somebody after they had articulable
9 suspicion, had probable cause and certainly satisfied by
10 the presence of marijuana. I'm conceding that. Finding
11 marijuana on a person would give you PC to search the
12 interior of the vehicle; however, I think that the case
13 law was very clear and I'm going to cite New York v.
14 Belton to start and then more recently Arizona v. Gant
15 which limits and it explicit limits the search subject to
16 a lawful arrest and the search, as I understand it to be
17 the automobile exception, it limits that search to the
18 passenger compartment of that vehicle.

19 Belton goes straight to telling you that the
20 reason they want that extended only to the passenger
21 compartment is by logical conclusion that is only where
22 anybody having the vehicle (inaudible).

23 You noticed I asked what seemed like a
24 meaningless question to Officer Blair is how far away is
25 the cargo area. And I refer to it as being the cargo area

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1 and he didn't correct me that I was wrong that it was over
2 four feet away. Now, I'm not holding that to him whether
3 it was four feet or five feet or three-and-a-half feet,
4 but I think that the argument would be certain that
5 there's absolutely no way to reach from a front seat which
6 is the testimony that both of these passengers were in the
7 front seat over the back seat into the cargo area, and I
8 think it's also important to note that the container for
9 this, and I guess we can call it a container -- I know
10 that the other case law refers to the other containers as
11 being locked or sealed -- I would argue that screws is
12 definitely a seal or a lock. You have to use an implement
13 or a tool which they testified they had to use to get
14 inside the speaker box. I would argue that that makes
15 that search outside of the scope of New York v. Belton and
16 more recently Arizona v. Gant.

17 I believe that the opportunity to seek a
18 search warrant from the magistrate was present. Officer
19 Blair testified that he had multiple officers. Officer
20 Blair testified that they were actually in custody. There
21 was no way for them to get back to the vehicle. There was
22 no chance they were going to hop in the vehicle and drive.
23 There was no chance they could get to the vehicle and
24 destroy the evidence, and I believe New York v. Belton and
25 Arizona v. Gant gives us fairly right line rule if it's

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1 outside the passenger compartment. I'll admit that I
2 believe that New York v. Belton probably did not
3 anticipate and SUV, Judge.

4 I'm sure that those big old station wagons
5 existed back then but I don't know that they were specific
6 for us not to have to extrapolate something from this. I
7 think that it follows logic a cargo area in an SUV located
8 well outside the reach of a passenger or a driver that was
9 sealed up or locked up with screws falls outside of what
10 an officer has a right to search without seeking a search
11 warrant from a neutral and detached magistrate.

12 I'll concede the floor to Mr. Warder.

13 MR. WARDER: Your Honor, the argument has
14 essentially been made and I think the position of the law
15 is it's clear that they can search the passenger
16 compartment but certainly for anything more than that they
17 would need a warrant and I believe certainly to disassemble
18 a part of the car after the defendant's were in custody,
19 they would need a warrant and certainly that speaker box
20 is one of the parts of the car. It was put together and
21 had no appearance from the outside and there was reason
22 they couldn't have taken all the facts they had in their
23 hand and taken it to the magistrate before they entered
24 that luggage area or that part of the vehicle outside of
25 the passenger compartment and started disassembling it.

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1 So I would join in to the motion.

2 THE COURT: Okay. Mr. Holloway.

3 MR. HOLLOWAY: Yes, sir, Your Honor. I would
4 start of by saying there is plenty of case law in the
5 Fourth Circuit, US versus Ford and US versus Humphrey that
6 says that the smell of marijuana, burnt marijuana, raw
7 marijuana creates probable cause to search the vehicle.
8 That alone gave him the right to go to the speaker box.
9 The speaker box was not sealed. Some of the screws had
10 fallen out is the testimony by the officers and I'm sure
11 you've read this case before and I got the cites right
12 here. So that alone gave them the right to search the
13 vehicle.

14 Now, regarding Gant, there's a case out of
15 the US Supreme Court as of just last week, Davis versus
16 the United States which in that case, like this one, the
17 arrest was before Gant was handed down. The decision,
18 Davis versus US, was on June 16th just last week and
19 allows sort of a safety net that allows officers who rely
20 on the old law of Belton to -- if that was the law they
21 were operating under, it gives them a safety net. If they
22 were acting in good faith, then they were in the right.

23 The court goes into public policy behind
24 search that's incident to arrest and also when court's
25 rule to exclude evidence, then it's not a knee jerk

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1 reaction. It is -- the court must go through a cost to
2 benefit test to determine is it the appropriate resolution
3 in light of the facts of the case. So there is somewhat
4 of a safety net given to officers who did, at the time of
5 the arrest, operate under the old Belton law as opposed to
6 Gant.

7 We would argue that Gant still gives them the
8 right to search the vehicle. It says if officers have a
9 probable cause of any kind, they can search the vehicle
10 for evidence of that crime. In this case, these
11 defendants were found in possession -- at least
12 Ms. Alexander was found in possession of marijuana and
13 Mr. Parker obviously had knowledge that she was in
14 possession of marijuana. They also had the smell of
15 marijuana, so the officer's suspicion was probably raise
16 and said, hey, there's probably more marijuana in the car
17 especially considering how the marijuana was packaged. It
18 was in a plastic baggie.

19 Common sense would tell you that perhaps the
20 smell is not coming from the weed or the marijuana inside
21 her pants inside a baggie, it's coming from someone else
22 in the vehicle.

23 Also, they didn't know who these people were.
24 Neither one of the produced any ID, any driver's license.
25 I would say the officers could look for any identifying

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1 information in that vehicle to figure out who they are.

2 So even under Gant, we're okay.

3 THE COURT: Do you have a copy of Gant?

4 MR. HOLLOWAY: I do. I'm going to hand you a
5 copy of Davis as well.

6 THE COURT: Okay. That'd be great.

7 MR. HOLLOWAY: There is a Seventh Circuit
8 case out of Indiana and I have copies of that, too, Judge.
9 It's obviously a persuasive precedent for the Court to
10 consider. It's about a hatchback case. A Jeep Cherokee
11 is very much like a hatchback vehicle. In fact, the
12 tailgates open in much the same manner. And the Court
13 ruled that the cargo bay, if you will, the back part of
14 the hatchback was part of the passenger compartment.

15 That case out of the Seventh Circuit is US
16 versus Arnold. It was decided October 4th, 2004 and that
17 citation is 388 Federal 3rd 237. The cite I said earlier
18 US versus Humphrey, 372 Federal Circuit 653. US versus
19 Ford, this is all about the smell of marijuana providing
20 probable cause to search the vehicle.

21 US versus Ford was decided just this past
22 year, 2010, even goes a bit further and says officers can
23 look in baggage. Obviously this is not a baggage, but
24 baggage implies that there is a zipper or some sort of
25 buckle that keeps the seal. This is not any further

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1 stretch with that. They use the proper tool to open up
2 the speaker box and they found the contraband cocaine.

3 MR. HARBIN: Judge, I don't think that this
4 2004 case enlightens us very much particularly with the
5 specific facts in this case makes this case kind of unique
6 in itself. It says immediately following the stop,
7 officer had observed the suspect clambering into the back
8 seat. That's also a 2004 case.

9 Judge, I would concede that Mr. Holloway is
10 correct that you can look in baggage. I think that's been
11 decided for quite some time. If there's a suitcase or if
12 there is a book bag or purse within the passenger
13 compartment, you can look in it. I think where we differ
14 is whether or not Belton has ever been expanded or
15 contracted depending on your view. My argument would be
16 specifically that USA v Gant cites Belton and it Belton
17 says passenger compartment only. It choices not to expand
18 upon Belton. It is the same case we have here, a traffic
19 stop and how far you can go.

20 It becomes an absurd argument to say
21 something that is built in or screwed in is not a sealed
22 or locked box and my argument would be that anyone that
23 uses a padlock also knows what a rasp is. The rasp is
24 actually put on the screw. So absent the screws, the
25 padlock is worthless. So a screw is essentially part of a

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1 sealed container. It's hard to equate a screw with a
2 zipper or a button or a snap.

3 The final think I would say Judge is that the
4 case he cited before and I apologize I forget which one is
5 that there is a cost benefit analysis here that was used
6 to come to their conclusion and I would welcome that here,
7 because the cost of the benefit to society to make sure
8 all of these warrants are properly obtained and properly
9 executed, the cost in this particular example would have
10 been a telephone call. Everybody was stationary,
11 everybody was handcuffed, they weren't going anywhere and
12 all they had to do was make a telephone call. So the
13 benefit is obviously the protection of society's freedom
14 and the cost is a telephone call made in 10 or 12 minutes.

15 And I don't believe that asking them to
16 procure this warrant in this particular type of
17 circumstances with the number of officers, the fact that
18 our clients were in custody at the time and handcuffed,
19 there's no (inaudible). So essentially they're just
20 pushing the envelope when there is no need to.

21 THE COURT: Gant, I believe, it holds that
22 search is justified incident to a lawful arrest when it is
23 reasonable to believe evidence relevant to the crime of
24 arrest might be found in the vehicle.

25 MR. HARBIN: I agree with that. If I may, I

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1 understand that, but again Gant also specifically
2 references Belton. It does not say to go beyond the scope
3 of Belton. That's what they go back to and -- in fact,
4 Judge, I poured over every case I could possible find
5 trying to find an automobile exception which is
6 essentially what we're dealing with, and automobile
7 exception case that delineates exactly what the parameters
8 of the search could be. In other words ---

9 THE COURT: Well, what about Wyoming versus
10 Halton?

11 MR. HARBIN: I read it but I can't tell you
12 off the top of my head.

13 THE COURT: I believe that stands for
14 principle and "probable cause justifies the search of a
15 lawfully stopped vehicle and justified the search of every
16 part of the vehicle and it's contents that may conceal the
17 object of the search. The rule applies to all containers
18 in the car without qualification as to ownership and
19 without a showing of individualized probable cause for
20 each container." And that's 119 Supreme Court 1297.

21 I'll finish reading these cases but I'm not
22 inclined to grant your Motion to Suppress. Anything else
23 we need to go over before we break? Any other motions?

24 MR. HARBIN: No, sir.

25 THE COURT: All right. We'll see y'all back

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1 at 1:15.

2 Off bond. Take him into custody.

3 (Whereupon, there was a lunch break.)

4 THE BAILIFF: All rise. Court will come to
5 order.

6 THE COURT: Thank you. Please be seated.

7 The fore person is Felicia Dendy Jones.

8 (Fore person note from jury marked as Court's
9 Exhibit No. 1 for identification).

10 All right. Y'all ready to go?

11 MR. HOLLOWAY: Your Honor, if we may have
12 just a second. The State is ready, Judge.

13 THE COURT: Defense ready.

14 MR. HARBIN: I am but I believe Mr. Warder
15 would like a minute or two with his client.

16 THE COURT: What's he been doing? Are you
17 ready?

18 MR. HARBIN: Can we approach real quick,
19 Judge.

20 (Whereupon, there was a brief bench
21 conference).

22 THE COURT: Bring the jury. Let's go.

23 MR. HOLLOWAY: Your Honor, I think there's a
24 motion on the table as to whether the drugs will be
25 suppressed or not.

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1 THE COURT: Denied.

2 (Jury re-enters the courtroom).

3 Ms. Dendy Jones, thank you very much for
4 agreeing to serve. At this time I'll ask you all to stand
5 and take the oath.

6 THE CLERK: Please raise your right hand.
7 The proper response is I will.

8 You shall well and truly try the case
9 2009-GS-23-6587, the State versus Shantana Lynn Alexander
10 indicted for trafficking cocaine, also the case 2009-GS-
11 23-6279, the State versus Orlando Parker, also indicted
12 for trafficking cocaine and a true verdict rendered
13 according to the law and the evidence so help you God. "I
14 will."

15 THE JURY: (Collectively I will).

16 THE CLERK: Thank you. Please be seated.

17 THE COURT: Ladies and gentlemen, thank you
18 for your patience. We had a number of things to dispose
19 of in this case and we had something to dispose of in
20 another case. I apologize for making you wait. At this
21 time I'll turn it into the attorneys for their opening
22 statements.

23 MR. HOLLOWAY: In the last 50 years or so we
24 have built multiple interstates across this country and in
25 fact it is called the backbone of American commerce. It

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1 has helped transport goods from sea to shining sea over
2 the past 40 and 50 years or even longer than that. It's
3 used to carry merchandise from Best Buy to Walmart
4 travelling all across this country in a very efficient
5 way.

6 It's also being used in a way that is very
7 much illegal. In this type of case, as the case goes in
8 and there's testimony, you'll hear about these two
9 defendants. The two defendants are from Pittsburgh. On
10 March 12th, 2009, that's where they lived. In fact, they
11 lived about two blocks from each other at that time. They
12 drove around a eleven hour trip from Pittsburgh to
13 Atlanta, Georgia from Mr. Parker's own words.

14 They went to Atlanta. He later told police
15 that they were visiting his son. Coming back from
16 Atlanta, he's on Interstate 85. During that time it's
17 around 4:06 p.m. It's still daylight. It's March. The
18 weather is kind of cool. It's not quite warm because
19 spring is not quite here yet. Two officers were watching
20 Interstate 85 within the bounds here in this county.

21 Officer Chi Blair, which is the chief officer
22 in this case is accompanied by a sheriff's deputy from
23 Georgia -- Butts County, Georgia. They were in sort of a
24 combined task force for stopping the drug trade, which is
25 often used on the interstates, Interstate 85. Around

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1 4:06 p.m., these two defendants were driving a 2006 Jeep
2 Cherokee, an SUV. In fact, the owner of the vehicle has
3 his same last name and has his same address at that time.
4 I would assume it belongs to his mother.

5 The officers observed this defendant driving
6 and he was following one vehicle a bit too closely. So
7 Officer Blair pulled out on I85 and followed him. He
8 paced the vehicle at 68 in a 60. There's exceeding the
9 speed limit and then there's speeding. Where that line is
10 drawn, who knows, but the law says that you are supposed
11 to drive 60 miles an hour on Interstate 85 which the law
12 knows the reality of rush hour traffic.

13 In any event, the officer stopped and turned
14 the blue lights on. There isn't any car video in this
15 case. Some officers' vehicles have a video tape and a
16 camera to record was going on. In this case there was on
17 in-car video. Officer Blair will testify his car didn't
18 have a camera in it.

19 So Officer Blair stopped the vehicle and
20 approached the vehicle. He approached it on the passenger
21 side. The passenger in that vehicle was Ms. Alexander
22 also from Pittsburgh. As I said she, at that time, lived
23 two blocks from Mr. Parker. When Officer Blair approached
24 the vehicle his partner, Officer Broce, followed to. They
25 went to the passenger side because it's common sense it's

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1 safer for an officer to approach on the passenger side
2 which is away from the traffic especially on the
3 interstate.

4 When he got to the vehicle, he could smell an
5 order of marijuana coming from that vehicle and he asked
6 the driver, Mr. Parker, do you have the standard
7 documentation which should be driver's license,
8 registration, proof of insurance and that sort of thing.
9 And he had Mr. Parker come from his vehicle to the back
10 and in front of his police car which was marked. Officer
11 Blair will testify that he had Mr. Parker to come out of
12 the vehicle was safety for Mr. Parker. Ms. Alexander
13 stayed in the vehicle with Deputy Broce in case some sort
14 of accident would be impending or something like that.

15 He will testify that there wasn't much
16 conversation going on; however, Mr. Parker began to speak
17 a little bit. He told Officer Blair that he was coming
18 from Atlanta visiting my teenage son. They had drove the
19 eleven hours from Pittsburgh down there and there wasn't
20 much clothing in the car. There was according to Officer
21 Blair there was nothing more than a backpack in the car.
22 Where was their clothing? That's something to consider.
23 They are driving eleven hours to visit his son with not
24 much clothing to bring.

25 Well, Officer Blair asked them is there

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1 anything illegal in the car and Mr. Parker said --
2 admitted that she, Ms. Alexander was carrying drugs. She
3 had marijuana on her. At that point they had her exit the
4 vehicle and Mr. Parker told her to just own up to it.
5 Give it up and she did. She had a plastic baggie of
6 marijuana inside of her pants. The officer is thinking at
7 that point is there other marijuana in the car? Is that
8 smell coming from the marijuana inside the plastic baggie
9 that's inside her pants? They don't know. However as
10 with any person with common sense, there's --

11 MR. WARDER: Your Honor.

12 THE COURT: Yeah.

13 MR. WARDER: If it please the Court, I have
14 an objection. The opening is not ---

15 THE COURT: Okay. Speed it up. Non
16 argumentative. Just tell them just basically what it is
17 and let's move on. Let's get going with this.

18 MR. HOLLOWAY: The meat of this case is this,
19 the smell of marijuana led these officers to red flags and
20 their suspicions were raised and they were correct.
21 Inside the vehicle they found two screws -- screws on the
22 passenger floor board and they saw this multi tool screw
23 driver. That led them to the back of the jeep. The jeep
24 is an SUV and they raised the gate of the jeep and they
25 found more wooden screws next to a speaker box. It's not

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1 a speaker box that came with the jeep, it was one of those
2 fancy speaker boxes that sounds a whole lot better
3 apparently.

4 And so there were some empty screw holes
5 inside the speakers.

6 THE COURT: Mr. Holloway, you don't need to
7 tell them every fact that you think is going to come out.
8 Let's speed it up.

9 MR. HOLLOWAY: They found cocaine bricks
10 inside the speaker box. They're suspicions were raised
11 and they proved to be correct.

12 In this case, we have two individuals from a
13 different state coming through South Carolina coming back
14 from Georgia with a load of cocaine in the car. They're
15 charged with trafficking in powdered cocaine.

16 The judge will instruct you what the law is
17 later on either today or tomorrow depending on when the
18 case ends, and the law of trafficking encompasses a lot
19 but when you hear those instructions it's going to
20 including bringing drugs into the State of South Carolina.

21 There's no doubt they did it. There is no
22 doubt that both defendants were involved. Examine the
23 facts ---

24 MR. WARDER: Objection. He's testifying as
25 to there's no doubt.

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1 THE COURT: Yeah, don't be argumentative.

2 Let's just wrap it up.

3 MR. HOLLOWAY: Yes, sir.

4 As far as defining what's going on here, the
5 fact of the matter is there was cocaine in the car. Our
6 expert witness for the State, a chemist will testify ---

7 MR. WARDER: Your Honor, he's testifying ---

8 THE COURT: Mr. Holloway, just wrap this up,
9 let's go.

10 MR. HOLLOWAY: As I said, you'll hear the
11 State's testimony. You'll hear from the State and we'll
12 talk about how much the cocaine was. The defense may talk
13 about burden of proof and of course the State has the
14 burden of proof in this case.

15 MR. WARDER: It's improper for him to
16 speculate what the defense will do in its opening
17 statement.

18 THE COURT: Okay. Wrap it up, Mr. Holloway.

19 MR. HOLLOWAY: The fact is the State has the
20 burden of proof and the evidence that you will hear from
21 the officer, we submit, the evidence will prove beyond a
22 reasonable doubt, and beyond a reasonable doubt is what
23 the State has. And the role of the jury would be to
24 analyze the evidence that's presented and determine if the
25 State has met its burden.

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1 At the close of the case, we will come back
2 before you and clarify and flush out what's been heard
3 from our perspective what this case means.

4 I thank you for your patience and I thank you
5 for listening.

6 THE COURT: Okay. Thank you. Mr. Harbin.

7 MR. HARBIN: If it please the Court, I'll be
8 brief. You got the basic nuts and bolts of this case. It
9 was a car stop and as a result of the car stop, there were
10 drugs found in back rear portion of this Jeep Cherokee.
11 The State alleges that Mr. Parker was driving and
12 Ms. Alexander, my client, was in the passenger seat. And
13 they arrested both of them for possession.

14 What I am going to suggest to you now is
15 there is no evidence whatsoever is my client knew anything
16 about it. They don't have any fingerprints, no witness,
17 or a statement. They don't have anything. They just
18 assumed that because she was along for the ride that she
19 must be guilty. And I'm going to submit to you now that
20 doesn't mean the burden that the Judge going to instruct
21 you that is (inaudible) today.

22 You have to believe in your heart and in your
23 mind that she's guilty beyond any reasonable doubt.
24 You'll have to say to yourself there is no way that she
25 couldn't have possibly known that something was hidden

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1 inside the speaker box as the evidence will show. That's
2 my whole argument here.

3 I'm going to address you again at the end of
4 the trial but pay attention to not only what they say but
5 what they don't say and what they can't say. They can
6 only work with what they have. They found drugs in the
7 back of the vehicle and that's it. They don't have any
8 way to tell you that Ms. Alexander knew anything about it.

9 I ask you just to keep your minds open, like
10 I said, not for what's there but also what's not there.
11 Thank you.

12 THE COURT: Mr. Warder.

13 MR. WARDER: Thank you. This is a case will
14 the State will fail to prove my client guilty and the
15 reason is my client had no knowledge that the drugs were
16 there. What happened is my client is charged with
17 possessing drugs found in a speaker box in the back of a
18 family car. The car was borrowed by my client to visit
19 his son in Miami. On the way back, the car was stopped
20 and there were drugs in there.

21 My client will testify in this case that he
22 was surprised as anyone that there was drugs in the car.
23 The State has to prove their case and they have to prove
24 knowledge that my client knew they were there because you
25 can not possess something you do not know about like if

Chi Blair - Direct Examination

1 somebody has hidden something or somebody put something
2 there for transport and you don't know anything about it.
3 Knowledge is what the State would have to prove.

4 So I ask you to listen carefully to the
5 testimony in this case and when you're done decide this
6 case on the issue of knowledge and whether my client knew
7 that it was there.

8 Thank you, very much.

9 THE COURT: All right, call your first
10 witness.

11 MR. HOLLOWAY: The State calls Corporal Chi
12 Blair.

13 THE CLERK: Sir, please place your left hand
14 on the Bible and raise your right hand.

15 CHI BLAIR, having been duly sworn, testified
16 as follows:

17 Thank you. Please state your full name for
18 the record.

19 THE WITNESS: Chi Blair.

20 DIRECT EXAMINATION

21 BY MR. HOLLOWAY:

22 Q. Officer Blair, where were you working on March
23 12, 2009?

24 A. Greenville City Police Department on Interstate
25 85.

Chi Blair - Direct Examination

1 Q. Describe to the jury your normal duties as an
2 officer?

3 A. I am currently a K9 handler with the city. I
4 support other officers in their daily duties, answering
5 calls, use the dogs for apprehension, narcotics, searches.
6 That's usually my day.

7 Q. Now, where were you at around 4:06 p.m. on March
8 12, 2009?

9 A. Sitting on the side of the Interstate 85 off to
10 the shoulder to the right on the northbound between
11 Mauldin and Laurens Road.

12 Q. And what county was that located?

13 A. That's located here in Greenville County.

14 Q. Is that still within the bounds of the city of
15 Greenville?

16 A. Yes.

17 Q. Now, who was with you?

18 A. Deputy Mike Broce.

19 Q. And where is he from?

20 A. He's from Butts County, Georgia.

21 Q. And why was he with you?

22 A. Mr. Broce was up with several other deputies from
23 Butts County. We were doing a joint criminal enforcement
24 task force on 85.

25 Q. Now, around 4:06 p.m. tell us what you saw?

Chi Blair - Direct Examination

1 A. We were sitting there, we're observing the
2 traffic northbound on 85. We observed a black jeep
3 coming up 85, it's in the center lane. He's closer to the
4 vehicle in front of him than he should be travelling at
5 60, 70 miles an hour as everybody does on 85. He passes
6 us. We get out on to the interstate, get in position
7 behind him, travel behind him for about a mile
8 approximately and I pace him at 68 miles per hour.

9 Q. When you say he was following too close, could
10 you tell us what that really means?

11 A. Yeah. The standard definition of travelling at
12 anything above 50 miles of hour you want to have every car
13 length at about 10 miles per hour, that's the general rule
14 for safety. As everybody knows 85 becomes a traffic jam
15 after 4:00, 5:00 and you're just pushing people and he was
16 close enough to where if that vehicle saw something to
17 make it stop, it would have been a major accident on the
18 interstate.

19 Q. And describe to the jury what you saw. As you
20 got on the interstate -- first, when you got on the
21 interstate, where were you?

22 A Once again I'm between Mauldin and Laurens Road.
23 I get out on to the interstate. Coming on to the
24 interstate I have to get up to speed. I'm travelling
25 behind him, once again, about a mile. I initiate my

Chi Blair - Direct Examination

1 emergency equipment to initiate the stop. Once again he
2 started to move his way over to the shoulder of the road.

3 Q. When you turned the blue lights on, just for the
4 record, you were still within the city, correct?

5 A. That's correct.

6 Q. And what happened when you finally stop him?

7 A. We stopped the vehicle. He pulled up a little
8 past Woodruff Road between 385 and Pelham. There's a
9 weigh station up there on the right. He pulled up there a
10 little bit close to that. I got of the vehicle and
11 approached the passenger's side of the vehicle where I
12 noticed Ms. Alexander seated in the front passenger seat.
13 At that point I address Mr. Parker and asked him to grab
14 his license, insurance, registration and meet me at the
15 back of the vehicle.

16 Q. Why did you have him get out of the vehicle?

17 A. Safety reasons for my safety and his safety,
18 we've all seen police officers out on the interstate and
19 some will want to watch and see what they're doing and hit
20 a squad car or a car that's been pulled over to the side
21 of the road.

22 Q. And during that time where was Officer Broce?

23 A. Officer Broce got out of the passenger side of my
24 vehicle. As Mr. Parker had come to the back of the
25 vehicle, Officer Broce had moved up to the passenger side

Chi Blair - Direct Examination

1 of the jeep.

2 Q. Why did you initially approach the jeep on that
3 side?

4 A. On the passenger's side? My safety. I didn't
5 want to get hit.

6 Q. And what, if anything, did you notice when you
7 approached the vehicle and reached the vehicle?

8 A. The first thing I noticed was Ms. Alexander
9 sitting in the passenger's seat and then the smell of
10 burnt marijuana inside of the vehicle.

11 Q. How could you tell it was marijuana and not say
12 tobacco cigarette smoke?

13 A. We had training in our in service. In that
14 department for years where they actually brought in
15 marijuana -- raw marijuana and burnt marijuana.

16 Q. And the smell you were smelling was it burnt
17 marijuana or raw marijuana or what?

18 A. It was burnt marijuana.

19 Q. Now, when you got back to the police car and he
20 approaches with you, Mr. Parker, what happened?

21 A. We come back to the car, he doesn't have anything
22 in his hands, license, insurance, registration with him.
23 We come to the side of the vehicle and I ask him where his
24 information is and he says he doesn't have it. We get
25 into a small conversation as to why he doesn't have it and

Chi Blair - Direct Examination

1 he tells me he doesn't have a license.

2 Q. Let's go back for a second. What kind of jeep
3 was it?

4 A. It was a jeep SUV, newer model jeep. It looked
5 like a Cherokee. It was probably a Cherokee. At that
6 point, you'd have to look at the records to know which
7 model it was.

8 Q. Okay. Once he told you he didn't have that
9 required documentation, what did you then do?

10 A. We got into another conversation, a lot of folks
11 their licenses are usually suspended or they don't have
12 one. I talked to him a second and asked him does he have
13 one is it suspended then he needs to go ahead and let me
14 know that. He did tell me it was suspended. I got his
15 name, birth date. I was able to run all that information
16 to verify that his license was suspended out of
17 Pennsylvania.

18 Q. At that point, tell the jury what happened?
19 Where did the case go from there?

20 A. I'm sitting there and I'm talking to him and
21 saying, yeah, I know your license is suspended out of
22 Pennsylvania. For us that's basically considered not have
23 a license out of the State of South Carolina. So we
24 continued talking a little bit more and explained to him
25 why I stopped him for the speeding and driving too

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1 closely. I go to ask him if he has anything in the
2 vehicle so far as narcotics, firearms and money. We had
3 conversation about where he was coming from and he stated
4 he was coming from Atlanta and going back to Pennsylvania.
5 He was visiting his 16 year old son, I believe it was, and
6 had been down there for a few days. I didn't notice
7 anything in the vehicle when I looked around on the
8 passenger's side to say someone had been on a trip for a
9 few days.

10 So we went through all of that and got to the
11 point do you have any marijuana, narcotics, cocaine and he
12 said that he didn't. I said that I smelled the marijuana
13 and it would be best to just let me know where it was at
14 that point and he stated Ms. Alexander was hiding it.

15 Q. What sort of records did you run on the vehicle,
16 itself?

17 A. When we stop a vehicle, you call our dispatch and
18 you give them the tag number of the vehicle ---

19 MR. WARDER: Objection, calls for hearsay,
20 Your Honor.

21 THE COURT: I'm going to let him go at this
22 time.

23 MR. HOLLOWAY: Case law says that ---

24 THE COURT: I just overruled the objection,
25 Mr. Holloway. Go ahead.

Chi Blair - Direct Examination

1 BY MR. HOLLOWAY:

2 Q. What did you discovery when you ran the tag
3 number?

4 MR. WARDER: Objection, calls for hearsay.

5 THE COURT: Same ruling, overruled. Go
6 ahead.

7 THE WITNESS: The vehicle doesn't come back
8 to Mr. Parker. It comes back to another Parker individual
9 which we later found out was his mother.

10 BY MR. HOLLOWAY:

11 Q. How did you know it was his mother? How did you
12 find that out?

13 A. I believe he told us when we were going through
14 the conversation at the stop.

15 Q. During your investigation, did you learn where
16 they lived both of these defendants?

17 A. Yeah, he said they were out of Pittsburgh. It
18 had a Pennsylvania license tag on it so everything seemed
19 to work out. Everything about that part of it seemed to
20 be truthful.

21 Q. What, if any, information did you have about the
22 owner's address?

23 A. It was the same address that came back to
24 Mr. Parker.

25 Q. So they had the same address?

Chi Blair - Direct Examination

1 A. Yes.

2 Q. Now, he's out of the vehicle, you're conversing,
3 what happened?

4 A. We get into the part where he tells me his
5 girlfriend has the marijuana with her and she's trying to
6 hide it. I looked at Officer Broce, advised him to go
7 ahead and have her step out of the vehicle. He had her
8 step out of the vehicle and she comes back to patrol car,
9 we're all standing there. I told her to go ahead and give
10 me the marijuana, he had already told us that she had it,
11 she was hiding it. She didn't look at me. She looked
12 directly at him. There was no eye contact, no
13 conversation between her and I other than her looking at
14 him.

15 He looked at her and said just go ahead and
16 give it up. At that point she began to open up her pants.
17 I told her to please turn away from the interstate. She
18 was facing the interstate. We turned her away from the
19 interstate. At which point, she opened up her pants and
20 produced a small bag of marijuana.

21 Q. And what were Mr. Parker's words to her?

22 A. Just give it up.

23 Q. And what did she produce out there?

24 A. She pulled out the front of her pants a clear
25 plastic bag containing green leafy substance which field

Chi Blair - Direct Examination

1 tested for marijuana.

2 Q. Who actually did the field test?

3 A. I did.

4 Q. Okay. And at that point, what did you then do
5 with both of these defendants?

6 A. At that point they're both placed into custody.
7 We placed them into handcuffs. They were placed in
8 custody for the possession of the marijuana. I did then
9 notify other units I needed somebody to stand by with them
10 while I searched the vehicle.

11 Q. At what point in time -- were they both cuffed at
12 the same time? Can you explain that to the jury? When
13 were they actually cuffed?

14 A. Mr. Parker, I believe, was cuffed when he advised
15 me that the marijuana was in the vehicle. At that point
16 he has knowledge that there's drugs in the vehicle. At
17 that point with drugs comes guns so we're going to protect
18 ourselves. He was placed into custody at that point, I
19 believe. As soon as the marijuana was produced from
20 Ms. Alexander, she placed it on the hood of my vehicle,
21 she was placed under custody.

22 Q. So at that point they're both cuffed?

23 A. Yes, sir.

24 Q. Now, at that point, explain to the jury as an
25 officer what's running through your mind, all these things

Chi Blair - Direct Examination

1 you've seen?

2 A. Well, taken all the information that they've
3 given me, where they were coming from, how long they
4 stayed there, where they're going, they're behavior, a lot
5 of folks when they give up a little bit of weed or a
6 little bit of marijuana just to get that ticket and go on
7 about their business. Right now, I've got a cause to
8 search the vehicle, so I'm going to search the vehicle.

9 Q. Okay. Now, explain step by step your search of
10 that vehicle. What did you do first thing?

11 A. First thing we did was make sure an officer was
12 there and stood with these two and made sure they couldn't
13 go anywhere. At that point we started at the front of the
14 vehicle. It's always at the driver's compartment of the
15 vehicle and you just search it in a methodical manner, top
16 to bottom, front to back and just search everything?

17 Q. And when you search, describe what you're doing?
18 Are you just looking or are you moving things? Which is
19 it?

20 A. A search gives us the -- we can go in and we can
21 open up compartments. We can open up glove boxes, inter
22 consoles, look under seats, compress the seats things like
23 that. We start from the front and we would go back. Got
24 to the center console in the front and we noticed a multi
25 tool like one of the things you can buy at Home Depo.

Chi Blair - Direct Examination

1 It's got all of the screwdrivers and attachments on it.

2 We really didn't think much of it.

3 We got pass the front part of the vehicle
4 into the passenger compartment right behind the front
5 passenger seat. Back there, didn't notice much of
6 anything back there. It was pretty much a clean vehicle,
7 very clean, other than it had some wood screws on the
8 floor board on the back. It had a backpack and a little
9 bit of clothing laying up on the back seat there. That
10 really didn't cause any interest at that point.

11 We moved on to the cargo area and raised the
12 hatchback on the back of the vehicle and noticed the
13 speaker box there. It had one screw that was lying on the
14 floor board in front of the speaker box and that kind of
15 peaked our interest in looking at the speaker box. Pretty
16 good looking speaker box and hit had just screws laying
17 around.

18 Q. Okay. You found a screw on the back passenger
19 floor board, correct?

20 A. Yes, we found screws on the back passenger floor
21 board.

22 Q. And when you saw that screws in back with the
23 speaker box, what did you then do?

24 A. Well, we noticed that the screws were used to
25 hold the speaker into the box were the same wood screws as

Chi Blair - Direct Examination

1 the one lying in the cargo area and the screws up front
2 and the speaker had screws in them. They were missing a
3 few in the speaker as someone had tried to do a quick job,
4 you know, go in and put some screws in and go in a hurry.

5 At that point we went and retrieved the tool
6 that was in the center console and started unscrewing the
7 speakers from the box.

8 Q. And as you were unscrewing it, are you prying
9 open the speakers? Describe what you're actually doing?

10 A. It's got a lot of screws and I want to say they
11 were 12-inch speakers I think. There's a lot of screws
12 holding a 12-inch speaker into a box so we were just
13 manually unscrewing each one all the way through. I got
14 the right speaker unscrewed, laid it down to the side,
15 turned around, Deputy Broce started with the left speaker
16 to start getting the screws out of it.

17 As he did I noticed Mr. Parker and I asked
18 him -- I thought he was crying so I went back to him and
19 asked him if he was crying. He said he wasn't but he was
20 sweating profusely. The day of the stop he had a baseball
21 cap on and it was kind of cold outside. I like cold
22 weather but he had a ton of sweat coming down. It was
23 just pouring with sweat. I asked him if he was okay and
24 he said he was and I put his ball cap back on. I turned
25 back to Deputy Broce as he was getting the remainder of

Chi Blair - Direct Examination

1 the screws off the speaker and Ms. Alexander started dry
2 heaving on the side of the road.

3 Q. Dry heaving?

4 A. As like throwing up.

5 Q. During that time what, if anything, did they say
6 to you as you're searching?

7 A. Nothing.

8 Q. You get the speaker box open, what happens next?

9 A. I remove the third or the left hand speaker, at
10 that point you could see two packages that were taped to
11 the back wall of the speaker box.

12 Q. Okay. And at that point, what did you do?

13 A. We took the packages out, removed them. At this
14 point Officer Reider was on the scene with them. We had
15 supervision which would have been Sergeant Estes at the
16 time. He was one scene. We took the packages out, put
17 them on the hood of my vehicle. One of the packages was
18 cut open. It revealed a white powder substance which
19 field tested at that time which proved to be cocaine.

20 Q. The speaker box, can you describe that for the
21 jury? Not the brand, but what kind of speaker is it?

22 A. It's just an speaker box made out of the particle
23 board type of material. It's got two holes and you put
24 the speakers in them. It's a nice wooden box and
25 basically you just stick it in the vehicle. You see them

Chi Blair - Direct Examination

1 in backs of cars and this was just laid up in the back of
2 the SUV.

3 MR. HOLLOWAY: Your Honor, for the record I'm
4 going to have these marked as State's Exhibits 1 and 2.

5 (Drugs marked as State's Exhibit No. 1 for
6 identification.)

7 (Drugs marked as State's Exhibit No. 2 for
8 identification.)

9 BY MR. HOLLOWAY:

10 Q. If there is no objection, Officer Blair I'm going
11 to ask you what's been marked as State's Exhibits 1 and 2.
12 Can you identify these for the jury?

13 A. These are the packages that were taped up in the
14 box essentially like this back to back. It has masking
15 tape or some type of beige tape that was holding them in
16 in a crisscross pattern.

17 Q. And just for the record, these two exhibits are
18 in the same condition as they were -- at least
19 substantially the condition as they were back on March 12,
20 2009?

21 A. Other than this one was probably tested but that
22 looks like the packaging, yes, sir.

23 Q. Thank you very much.

24 Officer Blair, I'm showing you a few
25 different items here.

Chi Blair - Direct Examination

1 MR. HOLLOWAY: I'm going to get them
2 premarked as State's Exhibits 3, 4, and 5.

3 Any objection?

4 MR. WARDER: Your Honor, there is no
5 objection to State's 3, 4 and 5.

6 (Photograph marked as State's Exhibit No. 3
7 for identification and admitted into evidence.)

8 (Photograph marked as State's Exhibit No. 4
9 for identification and admitted into evidence.)

10 (Photograph marked as State's Exhibit No. 5
11 for identification and admitted into evidence.)

12 BY MR. HOLLOWAY:

13 Q. Officer Blair, can you identify these three
14 exhibits for the jury?

15 A. Yes, sir, that's the jeep. This is the picture
16 of the box in the cargo area and of the multi tool which
17 is located in the center console area, also the packaging
18 there and the packaging removed from the vehicle.

19 Q. Are these photographs a fair and accurate
20 betrayal of what you saw, the location of these drugs and
21 the speaker box?

22 A. Yes, sir. As you can notice this one we haven't
23 even removed it yet. I took that before we removed the
24 product from the speaker box.

25 MR. HOLLOWAY: Your Honor, I'd like to ask

Chi Blair - Direct Examination

1 these three exhibits been moved into evidence.

2 THE COURT: They've already been moved into
3 evidence.

4 MR. HOLLOWAY: I ask that I be allowed to
5 publish them.

6 THE COURT: Yes, sir.

7 BY MR. HOLLOWAY:

8 Q. When you and Deputy Broce found the drugs, what
9 did you do to preserve them as evidence?

10 A. At that point, Sergeant Estes was one scene.
11 Once it was field tested, Sergeant Estes took custody of
12 the cocaine along with the marijuana and it stayed in his
13 possession until it was placed into Property and Evidence.

14 Q. Okay. And at that point in time, what, if any
15 interrogation of these two defendants did you conduct?

16 A. I didn't conduct any. I had no conversation with
17 them once we got into noticing the packages were there.
18 When we located two kilos of cocaine, I notified our DEA
19 liaison at that point, advised him of the situation and he
20 arrived on the scene with some of his DEA individuals.
21 They discussed whether they were going to adopt the case
22 or not.

23 Q. And from your perspective, what was the result of
24 that?

25 A. Well, they ended up not adopting the case. We

Chi Blair - Direct Examination

1 talked to them and they said bring everything back to DEA
2 office and we did that. The vehicle was towed. They had
3 their meeting with what they do. Unfortunately, with the
4 city, we're not really privy to DEA and what goes on in
5 their offices there. They came to me and told me they
6 wouldn't adopt the case.

7 MR. WARDER: Your Honor, I'm going to object.

8 THE COURT: That's objectionable hearsay. Go
9 ahead.

10 BY MR. HOLLOWAY:

11 Q. Now, one last question for you. You mentioned in
12 your testimony earlier that sometimes defendants with
13 marijuana charges are given a ticket. What separated this
14 case from that case?

15 A. We don't have a record on those in the county of
16 Greenville. Anyone who gets arrested, you go down and you
17 get fingerprinted and things like that. Everybody is an
18 arrestable offense in the State of South Carolina, traffic
19 violation or not. We didn't have any information on them
20 and they were found with marijuana. They are residents of
21 another state and possibly won't come back even if it's
22 simple possession of marijuana. So it's in our best
23 interest to go ahead and incarcerate them and get them
24 printed and go through that process.

25 Q. What, if any, identification did they produce?

Michael Estes - Cross-examination

1 A. They didn't produce any initially. I was able to
2 find identification, I believe, from Ms. Alexander. It
3 was in her purse so I was able to find some
4 identification.

5 Q. Describe that. Was it a driver's license? It
6 wasn't a driver's license, was it?

7 A. I believe his was an ID card out of Pennsylvania
8 and I don't recall if hers was an ID card or driver's
9 license.

10 Q. Thank you very much. Please answer any questions
11 either counsel has for you.

12 A. Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. HARBIN:

15 Q. Officer Blair, just a few questions.

16 A. Yes, sir.

17 Q. After Ms. Parker gave you information that my
18 client had a small amount of marijuana on her, did you
19 have any trouble getting her to give the marijuana over or
20 put it on the car? Did she refuse any instruction.

21 A. Not after he told her to give it up, no, sir.

22 Q. So essentially she complied with the request to
23 give it up immediately?

24 A. Yes, sir.

25 Q. You had made the statements and I believe this is

Michael Estes - Cross-examination

1 a quote, "with drugs comes guns," did you find any guns
2 in the car?

3 A. We did not.

4 Q. And did you tell us what -- did you ask what
5 Mr. Parker what the purpose of his visit to Atlanta was?

6 A. Yes, in the prior conversation as I stated before
7 he stated he was down there visiting his 16 year old son.

8 Q. Did you have the occasion to verify this
9 information?

10 A. That he was visiting his son?

11 Q. Yes.

12 A. No, sir.

13 Q. And finally you said that after you made this
14 arrest you basically took this case to the DEA and they
15 decided they didn't want this case.

16 A. That's correct.

17 Q. Thank you. No further questions, Judge.

18 THE COURT: All right.

19 BY MR. WARDER:

20 Q. How close was the vehicle when Mr. Parker was
21 driving to the vehicle ahead of him when you initially
22 stopped him?

23 A. I can only guesstimate. They were travelling a
24 high rate of speed on 85 but it was close enough to gather
25 my attention.

Michael Estes - Cross-examination

1 Q. It's difficult to estimate distances when they're
2 travelling at a high speed at 85?

3 A. It would be difficult for me to be accurate on
4 exactly his distance.

5 Q. You suggested that cars were supposed to keep a
6 car length for every 10 mile an hour?

7 A. That's the general rule, yes, sir.

8 Q. Are you often on 85?

9 A. Yes, sir.

10 Q. That day this happened then a car wreck down 85
11 of some kind backed traffic up?

12 A. I'm not aware of one.

13 Q. Did you notice traffic was all travelling
14 together that day?

15 A. As much as it does on 85, yes, sir.

16 Q. Is it unusual not to see a separation of 140 feet
17 cars travelling at 70 mile an hour?

18 A. To not see a separation, not on 85, no, sir, it's
19 not unusual. Vehicles travel up and down 85 at all rates
20 of speed.

21 Q. Well, do they travel a lot closer together than
22 that?

23 A. Not as close as your client.

24 Q. And you decided that this vehicle was so close
25 that you wanted to stop it?

Michael Estes - Cross-examination

1 A. Yes, sir.

2 Q. And did you write a ticket for following too
3 close?

4 A. I did, sir.

5 Q. Now, you're telling us that you got in behind the
6 vehicle and pulled it over and not beside it?

7 A. That's correct.

8 Q. Didn't get up to look and see anything about the
9 driver particularly?

10 A. No, sir, as I said I was travelling behind the
11 vehicle pacing it.

12 Q. And you didn't travel beside it, look at it, turn
13 on your blue lights, slow down and then get behind it?

14 A. No, sir.

15 Q. Okay. You told us that there was some screws on
16 the floor of the car and that attracted your attention; is
17 that right?

18 A. That's correct.

19 Q. And those were wood screws?

20 A. That's correct.

21 Q. Was the speaker box wired up and working?

22 A. I don't know. The vehicle was turned off when we
23 searched it.

24 Q. Did a wire run out of it and up to the front of
25 the vehicle where the radio was located?

Michael Estes - Cross-examination

1 A. I don't recall if they had a wire in it or not to
2 be honest with you.

3 Q. Did you have to disconnect a wire to get the
4 speaker out?

5 A. No, sir.

6 Q. Was there a wire hanging on the back of it?

7 A. Not that I'm aware of. The pictures would be
8 able to show you. The speakers came out pretty easily.

9 Q. Okay. Was the container the speaker box that
10 held the speaker, was it a new or old box?

11 A. That you would have to ask your client. I don't
12 know when the box was purchased.

13 Q. Well, did my client say that he had knowledge
14 whether it was new or old?

15 A. Your client did not speak to me once I started
16 the search of the vehicle.

17 Q. So you don't know whether he knows that or not?

18 A. No, sir.

19 Q. You said I should ask him because you thought
20 that answer would make him seem more guilty, is that why
21 you responded that way?

22 A. No, sir, it's not. It's the box in the vehicle
23 he was in possession of.

24 Q. What did he do to make you think he possessed the
25 speaker box?

Michael Estes - Cross-examination

1 A. It's in the vehicle he's in possession of.

2 Q. Well, did the female defendant also possess the
3 speaker box?

4 A. She's in the vehicle, sir. I can't tell you ---

5 Q. You're trying to classify and I'm trying to find
6 out what your standard is.

7 A. Standard of?

8 Q. Possession.

9 A. He's operating the motor vehicle so he's in
10 possession of everything that's in that motor vehicle at
11 the time that the vehicle was stopped.

12 Q. If there's two passengers in the vehicle, what do
13 you all them?

14 A. Passengers.

15 Q. And they don't possess things in the vehicle?

16 A. They could be in constructive possession, yes,
17 sir.

18 Q. So your position would be that the passengers
19 possess everything in a vehicle, too?

20 A. I would say they had knowledge, yes, sir.

21 Q. And the driver doesn't need knowledge; is that
22 right?

23 A. The driver has possession of the vehicle, they
24 should have knowledge of what was in it.

25 MR. HOLLOWAY: Your Honor, I'm going to

Michael Estes - Cross-examination

1 object here.

2 THE COURT: Yeah, you're asking for a legal
3 conclusion here. I'll give the jury what the law is with
4 respect to constructive possession.

5 BY MR. WARDER:

6 Q. Now, you said that when you started working on
7 the speaker box, my client sweat too much.

8 A. No, sir, I didn't say he sweat too much. I said
9 he was sweating profusely?

10 Q. Well, sweat enough to draw your attention?

11 A. Yes, sir.

12 Q. You said the passenger threw up?

13 A. She was dry heaving, yes, sir.

14 Q. Did she really throw up vomit?

15 A. She was dry heaving on the side of the road.

16 Q. Dry heaving ---

17 A. Can I finish? To the point where I asked her if
18 she was okay.

19 Q. Did you take fingerprints off of the speaker box.

20 A. No, sir.

21 Q. Take fingerprints off of the speaker?

22 A. No, sir.

23 Q. Take fingerprints off of the packages that were
24 in it?

25 A. The cocaine, yes, sir. They were sent in for

Michael Estes - Cross-examination

1 processing.

2 Q. Did you take fingerprints off of the screwdriver
3 or whatever you used?

4 A. No, sir.

5 Q. Was a label on the speaker box that showed where
6 it was purchased?

7 A. Not that I'm aware of. I didn't notice.

8 Q. Thank you.

9 THE COURT: Anything else.

10 MR. HOLLOWAY: That's all the State has for
11 this witness.

12 THE COURT: You can step down.

13 (Witness leaves the witness stand).

14 MR. HOLLOWAY: Your Honor, the State would
15 call Sergeant Mike Estes to the stand.

16 THE CLERK: Sir, if you would please place
17 your left hand on the Bible and raise your right hand.

18 MICHAEL ESTES, having been duly sworn,
19 testified as follows:

20 Thank you. Please be seated. State your
21 full name for the record.

22 THE WITNESS: Michael Estes.

23 DIRECT EXAMINATION

24 BY MR. HOLLOWAY:

25 Q. Please tell us where you work.

Michael Estes - Cross-examination

1 A. Greenville Police Department.

2 Q. And how long have you been there?

3 A. Almost 13 years.

4 Q. Tell us how you became involved in this case with
5 Mr. Parker and Ms. Alexander?

6 A. I heard that Corporal Blair had a vehicle pulled
7 over. I believe that he had called for additional unit if
8 I'm not mistaken, and I went to also assist them in the
9 interstate.

10 Q. And what did you observe when you got there?

11 A. I observed a traffic stop with an SUV. Corporal
12 Blair's vehicle was directly behind that vehicle and
13 Detective Reider was also there.

14 Q. Can you briefly describe what was going on?

15 A. It appeared that the back hatch on the jeep was
16 up and there was a speaker box that I could see and one of
17 those speakers you could tell there was a void there and
18 it appeared both of the defendants were in custody in
19 handcuffs at that time.

20 Q. I'm going to hand you what's been previously
21 marked as State's Exhibits 1 and 2, can you identify this
22 for the record?

23 A. Those are ---

24 THE COURT: Just answer his questions, don't
25 describe what they are.

Michael Estes - Cross-examination

1 BY MR. HOLLOWAY:

2 Q. What are they?

3 THE COURT: Can you identify them?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay.

6 THE WITNESS: These are the items that were
7 recovered or given to me by Corporal Blair on the side of
8 the road on I85.

9 BY MR. HOLLOWAY:

10 Q. Now, when they handed them to you, describe what
11 you did with them?

12 A. I kept them in my possession, in my vehicle.
13 From that location I drove from the DEA office which is
14 off of Woods Lake Road and basically stayed there with the
15 evidence along with the marijuana that's on the table over
16 there also. I stayed in my vehicle with the evidence
17 until the DEA, whatever they did, and the defendants came
18 back out and we were given word that the DEA wasn't going
19 to take or adopt this case. So I drove straight to
20 property and evidence which is at the Law Enforcement
21 Center and punched it in.

22 Q. From the time you accepted custody to these two
23 exhibits to the time you took them to property and
24 evidence, how long did that take?

25 A. Looking over my report the traffic stop was at

Michael Estes - Cross-examination

1 6:10.06 which is -- it was impounded at 4:06 p.m., and the
2 evidence custodian received it at 19:52 which is 7:52 p.m.

3 Q. During that time period, who else touched those
4 two exhibits?

5 A. Nobody.

6 Q. So in that entire time nobody else had access to
7 it, is that correct?

8 A. No. It was in my vehicle and put into evidence
9 -- the only other person was the custodian that I gave
10 these items to directly. That's the only other person who
11 had contact with them after Corporal Blair gave them to
12 me.

13 Q. These two exhibits, State's Exhibits 1 and 2, are
14 they in the same condition today as when you logged them
15 into evidence on March 12th?

16 A. Yes.

17 Q. What differences do you see?

18 A. This actually appears to be the packaging that
19 was around each of these items at the time I took
20 possession of them, and they would have to remove these to
21 lab test to confirm the field test that this is actually
22 cocaine. But other than that it appears to be the same.

23 Q. Now, how long were you at the traffic scene?

24 A. I'd say approximately 30 to 45 minutes maybe at
25 the most.

Michael Estes - Cross-examination

1 MR. HOLLOWAY: I'd like to have these marked
2 as State's Exhibit 6.

3 (Tow From marked as State's Exhibit 6 for
4 identification.)

5 MR. WARDER: I object to the relevancy of it.
6 It has no probative value.

7 THE COURT: Just bring it to me and let me
8 see it.

9 MR. HOLLOWAY: Your Honor, that proves that
10 the officers ---

11 THE COURT: Just a minute, Mr. Holloway.

12 MR. HOLLOWAY: Sorry, Your Honor.

13 THE COURT: Come up here.

14 (Whereupon, there was a bench conference).

15 Madam fore lady, ladies and gentlemen of the
16 jury, this is one of those times I need to discuss a legal
17 issue. This is a good time to take a short break so we'll
18 get back with you. Do not talk about the case and we'll
19 see you in just a few minutes. Thank you.

20 (Jury exits the courtroom).

21 All right. The document at issue is a form
22 belonging to the Greenville Police Department entitled a
23 Motor Vehicle Tow Report.

24 Sergeant Estes, can you identify that?

25 THE WITNESS: Yes, sir. That's a standard

Michael Estes - Cross-examination

1 motor vehicle tow report that we use any time a vehicle is
2 towed by the police department.

3 THE COURT: And whose handwriting is on that
4 report?

5 THE WITNESS: It appears to be mine and
6 thinking back ---

7 THE COURT: You're pointing to the box in the
8 upper right hand side describing the driver of the vehicle
9 at the time of the impoundment?

10 THE WITNESS: Yes, sir, that would be mine
11 where it says lienholder name and none, that is mine. The
12 property in the vehicle other than standard equipment,
13 that's mine.

14 THE COURT: How about the owner of the
15 vehicle, whose handwriting is that? It's not yours.

16 THE WITNESS: No, sir.

17 THE COURT: It's hearsay. How is he going to
18 put it in? Why are you putting it in anyway?

19 MR. HOLLOWAY: I think it's relevant to the
20 fact that it proves who the owner of the vehicle is. The
21 officers did run that record.

22 THE COURT: And it's proving it through
23 hearsay. You're offering it for the truth of the matter
24 inserted. He didn't do it.

25 MR. HOLLOWAY: There's a hearsay exception,

Michael Estes - Cross-examination

1 Judge.

2 THE COURT: For what?

3 MR. HOLLOWAY: These are the records of the
4 police department and it's under Rule 803. It meets the
5 hearsay exception.

6 THE COURT: Incident reports are business
7 records of the police department so are they all
8 admissible?

9 MR. HOLLOWAY: Well, Your Honor, there's a
10 separate statute that forbids the introduction of police
11 reports into trials, but regarding towing slip, it is as
12 business record. It is their policy to tow a vehicle for
13 certain reasons and it's already been testified to and
14 that form was filled out pursuant to that policy.

15 THE COURT: He didn't do it. Get the person
16 who found out who the vehicle belonged to and have them
17 testify, Mr. Holloway. I'm not allowing that.

18 MR. HOLLOWAY: But he identified that he
19 wrote some of the information on that form.

20 THE COURT: We'll see where you go. Right
21 now his objection is sustained.

22 Sergeant, you can step down and don't talk
23 about your testimony.

24 (Whereupon, there was a brief break).

25 THE BAILIFF: Remain seated. Court is now in

Michael Estes - Cross-examination

1 session.

2 THE COURT: Thank you. Sergeant, come on
3 back.

4 Are we ready?

5 MR. HOLLOWAY: Yes, sir.

6 THE COURT: Bring them in.

7 (Jury re-enters the courtroom).

8 All right. You may resume.

9 MR. HOLLOWAY: Thank you, Your Honor.

10 I'd like to have this premarked as State's
11 Exhibit 7.

12 (Property and Evidence Form marked as State's
13 Exhibit No. 7 for identification).

14 Is there no objection to showing this to
15 Officer Estes?

16 MR. HARBIN: There's no objection from
17 Ms. Alexander.

18 THE COURT: Do you have an objection?

19 MR. WARDER: Your Honor, I don't think we're
20 going to raise an objection.

21 BY MR. HOLLOWAY:

22 Q. I've already had this marked as State Exhibit 7,
23 what is that form?

24 A. It's a Property and Evidence Sheet that we use to
25 log all of our evidence when we're putting the evidence

Michael Estes - Cross-examination

1 into Property and Evidence at the Law Enforcement Center.

2 Q. And can you describe where you sign on that form?

3 A. I signed -- I printed my name as the impounding
4 officer and signed my name in the signature block and that
5 would be block 18.

6 Q. Thank you very much.

7 MR. HOLLOWAY: That's all I have for this
8 witness at this time. Please answer any questions either
9 attorney had for you.

10 MR. HARBIN: Judge, Ms. Alexander does not
11 have any questions for this witness.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. WARDER:

15 Q. Officer, did you see a dog out there?

16 A. I know Corporal Blair has a canine, but I didn't
17 see him maybe meandering about or anything.

18 Q. Was the dog in the car or was it outside?

19 A. To the best of my recollection, it was inside the
20 car unless he had let him out to use the bathroom.

21 Q. Was that the car that the defendants were in?

22 A. Which one?

23 Q. The one that the dog was in.

24 A. Absolutely not. We can't put people in the back
25 of ---

Michael Estes - Redirect Examination

1 Q. Which was the first car behind the suspects car
2 then?

3 A. Corporal Blair's car.

4 Q. Okay, and that's also a marked police cruiser?

5 A. Yes.

6 Q. And is it a station wagon or is it a more regular
7 sedan type?

8 A. Police vehicle. It's regular Ford Crown
9 Victoria.

10 Q. Okay. And you got the package of drugs at the
11 scene?

12 A. Yes, sir.

13 Q. And you carried it out to the FBI so they could
14 evaluate the case.

15 A. It's DEA, sir.

16 Q. DEA. That's the Drug Enforcement Agency?

17 A. Administration, yes, sir.

18 Q. And then after they said they didn't want
19 anything to do with it, you took it on down to the police
20 station?

21 A. Yes, sir.

22 Q. Thank you.

23 THE COURT: Any redirect?

24 MR. HOLLOWAY: Just one question.

25 REDIRECT EXAMINATION

Michael Estes - Redirect Examination

1 BY MR. HOLLOWAY:

2 Q. The DEA you witnessed did not want anything to do
3 with the case or they decided not to adopt the case?

4 MR. HARBIN: Objection.

5 THE COURT: Wait a minute, what's your
6 objection?

7 MR. HARBIN: This calls for speculation.
8 He's going to ask him ---

9 THE COURT: If he knows of his own personal
10 knowledge.

11 BY MR. HOLLOWAY:

12 Q. Did they just throw away the case or did they
13 decide not to adopt the case?

14 THE COURT: Do you know, sir?

15 THE WITNESS: Not beyond a shadow of the
16 doubt, no, sir.

17 BY MR. HOLLOWAY:

18 Q. The phrase that Mr. Warder used that they decided
19 not to take the case, the way he describes it, that's not
20 clear how it happened; isn't that correct?

21 MR. WARDER: Objection, Your Honor.

22 THE COURT: Leading. You can ask him what he
23 knows about it, Mr. Holloway.

24 BY MR. HOLLOWAY:

25 Q. When you were out there, what did you learn had

Mike Broce - Direct Examination

1 happened from the DEA?

2 A. I was told that they had chose not to adopt the
3 case.

4 MR. HOLLOWAY: Thank you very much.

5 THE COURT: Anything else?

6 MR. WARDER: Nothing, Your Honor.

7 MR. HARBIN: No, Your Honor.

8 THE COURT: Okay. You can step down.

9 (Witness leaves witness stand).

10 MR. HOLLOWAY: The next witness for the State
11 is Mike Broce.

12 THE CLERK: Sir, if you would please place
13 your left hand on the Bible and raise your right hand.

14 MIKE BROCE, having been duly sworn, testified
15 as follows:

16 Thank you. Please be seated. Please state
17 your full name for the record.

18 THE WITNESS: Michael Broce.

19 DIRECT EXAMINATION

20 BY MR. HOLLOWAY:

21 Q. Please tell us where you work currently?

22 A. I work for the Butts County Sheriff's Office in
23 Georgia.

24 Q. How long is that away from here?

25 A. It's about three hours.

Mike Broce - Direct Examination

1 Q. Is that close to Atlanta or which part of the
2 State is that in?

3 A. It's between Macon, Atlanta -- Interstate 75 runs
4 through the State of Georgia and on Interstate 75 it's
5 between Macon and Atlanta.

6 Q. Now, on March 12, 2009, tell the jury where you
7 were working at that time?

8 A. We were working with the Greenville Police
9 Department.

10 Q. And you are still with the Sheriff's Office in
11 Butts County, Georgia?

12 A. Correct.

13 Q. And what brought you to South Carolina,
14 Greenville?

15 A. Our supervisors came to us and asked if we would
16 come to work in a joint task force effort. It's not
17 uncommon. We've worked with other agencies in other
18 states doing the same thing on the interstates.

19 Q. What sort of cases do you work on? What cases
20 did you sort of work around March of 2009?

21 A. I'm not ---

22 Q. What sort of cases did you work on for Butts
23 County, Georgia Sheriff's Office.

24 A. I can answer that but it's more of what my job
25 description is. I'm assigned to the interstate and

Mike Broce - Direct Examination

1 problem areas in the county but mainly on the interstate
2 basically what that consists of is doing high volume
3 traffic stops and we had training and noticing criminal
4 behavior, criminal indicators, also drugs and major
5 criminals is what we're looking for.

6 Q. What happened around 4:00 March 12, 2009?

7 A. I was riding with Corporal Blair. A traffic stop
8 was performed. I'll be honest with you I don't know the
9 mile markers or points of references on 85. I just know
10 we were inside the city limits on 85 and we performed a
11 traffic stop of a Jeep Cherokee type vehicle.

12 Q. Once the vehicle was stopped, what did you then
13 do?

14 A. Basically shadowing the corporal in the traffic
15 stop.

16 Q. And once their cars stopped, what did you do at
17 that point, at the traffic stop?

18 A. Exited the vehicle.

19 Q. Where did you walk?

20 A. I basically shadowed Corporal Blair.

21 Q. When you got to the front of the vehicle, what,
22 if anything, did you notice?

23 A. I did note that it was hardly any luggage and I
24 noticed that the plate was out-of-state, a few states
25 away. Usually when you stop somebody from out-of-state

Mike Broce - Direct Examination

1 especially three or four states away, they're going to
2 have some luggage. Especially in that type of vehicle,
3 you can see through the windows and the loading trap of it
4 and there was no luggage in the vehicle.

5 Corporal Blair made contact with the driver
6 of the vehicle through the passenger side. As soon as the
7 window cracked, you could smell the marijuana inside the
8 vehicle.

9 He asked the driver to exit the vehicle, met
10 with him at the rear of his vehicle and in front of his
11 patrol car and he stayed back there with them and I spoke
12 with the female defendant while he was speaking with the
13 male.

14 Q. What, if any, conversation did you have with the
15 female defendant, Ms. Alexander?

16 A. Nothing that I can remember, just small talk,
17 just basically standing with her. Same type of small talk
18 you'd have in a hallway with someone you didn't know. It
19 was unimportant.

20 Q. What, if any, interrogation did Officer Blair do
21 on both defendants?

22 A. I don't know of any interrogations.

23 Q. Any questions he asked?

24 A. Usually traffic stops all go the same way because
25 we do so many of them. We ask the same questions.

Mike Broce - Direct Examination

1 MR. WARDER: Objection to what he usually
2 asks.

3 THE COURT: You can testify to what you saw
4 out there that day.

5 THE WITNESS: He asked what the purpose of
6 the trips is, after he explained to them why they were
7 stopped. I know there was a conversation about the
8 license of the driver and him not having one.

9 BY MR. HOLLOWAY:

10 Q. After that conversation, what, if anything, did
11 you hear at that point regarding any illegal drugs in the
12 car?

13 A. I do remember the driving stating that the
14 passenger did have some marijuana on her after he was
15 confronted about the smell of marijuana in the vehicle.

16 Q. What did the driver say?

17 A. That the female in the car had the marijuana.

18 Q. And what, if anything, did he say to her, the
19 driver, Mr. Parker?

20 A. When he said this he was not with the female.
21 The female was brought to the front of the car and they
22 were next to each other and he told her to turn it over or
23 hand it over what she had and she removed the contraband
24 from the female area.

25 Q. Is it fair to say it was inside her clothing?

Mike Broce - Direct Examination

1 A. I couldn't actually see. Where it came from I
2 don't know whether it was inside her clothing area or her
3 underwear, I don't know.

4 Q. At what point what, if any, handcuffs come out of
5 his holster?

6 A. The driver was detained and placed in handcuffs
7 when he spoke of the marijuana being inside the vehicle.
8 Once the female was removed and she handed the contraband,
9 she was always placed in handcuffs.

10 Q. At that point, what did you and Officer Blair
11 then do?

12 A. I believe another unit arrived after that and we
13 started a systematic search of the vehicle. We search all
14 the vehicles the same way. When we search a vehicle,
15 especially when drugs are involved you can't just flop
16 things around, you have to systematic look at everything.
17 Screws, plastic and it's just not going through luggage
18 because in this line of work, you come across hidden
19 compartments. They're taken to shops and get hidden
20 compartments in the vehicle, so you really really have to
21 take your time and search the vehicle systematically.

22 Q. During that search, what did you find?

23 A. One of the first things we found like a multi
24 tool. You can tell it was new. I can't be a 100 percent
25 but I think the packaging was still there, but I can't be

Mike Broce - Direct Examination

1 100 percent of that. But it was a new tool. If you're
2 the driver, there is a little area where you put your arm,
3 it was inside that.

4 Q. I'm showing you what's been previously admitted
5 into evidence as State's Exhibit 5. Can you identify that
6 multi tool in that photograph?

7 A. Yes, it's the yellow and black item in the center
8 in front of the speakers.

9 Q. Now, during the search of the vehicle, what else
10 did you find?

11 A. There were wood type screws found on the floor
12 board behind the passenger and driver seat area. There
13 was a book bag which had, I think, I don't know if it was
14 male or female clothing but it wasn't enough for the
15 length of stay that they said. It was just a book bag.
16 For the bag in the cargo area where the spare tire would
17 bit, there was a speaker box. The first thing I noticed
18 about the speaker box, it did have some screws missing.
19 And in front of the speaker box it was a wood screw. And
20 what struck me is it was the same type of screws that was
21 used to put the speaker in the speaker box.

22 In this line of work, we have found that the
23 suspects in these types of things they watch the crimes
24 shows and cop shows and they cover their tracks. They use
25 gloves. In past experience in some of my cases where

Mike Broce - Cross-examination

1 they've taken the screws and not leave a mark on the
2 screws. If you go on and take a screw out of a cabinet
3 and you go back and look at it, it's going to be little
4 metal pieces where you've unscrewed it. Well, they'll get
5 black markers and coloring that back in.

6 In this case, it appeared they put new screws
7 into the speaker box to hide that mark where they have
8 taken the speaker on and off numerous time on, I guess,
9 trips where they're smuggling contraband.

10 Q. What was found in the speaker box?

11 A. It was two kilos which is the equivalent of a
12 little over four pounds -- like 4.4 pounds -- of cocaine.
13 It was taped to the inside of the speaker box.

14 There's a picture of it and there was two
15 speakers. I think they were 12-inch speakers. It was
16 separated by a piece of wood in the middle so you can take
17 out one speaker at a time. You got the second speaker and
18 you take it off and there was two kilos of cocaine taped
19 inside of there. And the reason they tape it in there is
20 because if you take that speaker box and shook it like we
21 do, it wouldn't shake.

22 Q. Thank you very much. Please answer any questions
23 either attorneys have for you.

24 MR. HARBIN: Ms. Alexander doesn't have any
25 questions for this witness.

Christopher Reider - Direct Examination

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. WARDER:

4 Q. You were in the police cruiser when it pulled up
5 beside the defendant's car prior to being stopped?

6 A. When he pulled behind the vehicle.

7 Q. Didn't pull up beside it?

8 A. No.

9 Q. Didn't look at the driver and then drop in behind
10 it?

11 A. No.

12 MR. WARDER: Thank you.

13 MR. HOLLOWAY: Your Honor, that's all the
14 State has for this officer.

15 THE COURT: Thank you. You can step down.

16 MR. HOLLOWAY: Your Honor, the State calls
17 Officer Christopher Reider.

18 THE COURT: All right.

19 THE CLERK: Sir, please place your left hand
20 on the Bible and raise your right hand.

21 CHRISTOPHER REIDER, having been duly sworn,
22 testified as follows:

23 Thank you. Please be seated. Please state
24 your full name for the record.

25 THE WITNESS: Christopher Reider.

Christopher Reider - Direct Examination

1 DIRECT EXAMINATION

2 BY MR. HOLLOWAY:

3 Q. Officer Reider, tell us where you work today and
4 where you were working March 12, ;09?5 A. I'm currently working at the Greenville Police
6 Department. In '09, I was also employed with the
7 Greenville Police Department.8 Q. And can you tell the jury how you became involved
9 in the case against Mr. Parker and Ms. Alexander?10 A. I was too was assigned to the task for on
11 Interstate 85. I had a Sergeant for the Butts County
12 Sheriff's Office riding with me on that day. I received a
13 radio call for assistance from Corporal Blair. I was
14 sitting northbound Interstate 85 just off of the Mauldin
15 Road entrance ramp onto 85 when Corporal Blair called out
16 needing assistance. I drove over to where he was.17 Q. And the officer with you from Butts County that's
18 a different officer from Officer Broce?

19 A. Yes.

20 Q. When you arrived, what did you observe?

21 A. When I arrived on the scene, Corporal Blair's
22 vehicle was directly behind a black Jeep Cherokee which I
23 did identify Pennsylvania license plate. Mr. Parker and
24 Ms. Alexander was standing outside of the vehicle. I
25 believe Ms. Alexander was standing to like the right

Christopher Reider - Direct Examination

1 corner of Corporal Blair's vehicle and Mr. Parker was
2 standing kind of in the middle if you were to dissect the
3 vehicles.

4 Q. And at what point during the search of the
5 vehicle did you arrive?

6 A. I arrived just -- as I was pulling up they could
7 see I was pulling up. Both Ms. Parker and Ms. Alexander
8 had already been detained so as we were coming up the
9 search is beginning of the vehicle because I can observe
10 them as they're starting. So it was kind of a
11 transitional period.

12 Q. What was the purpose of having you respond to
13 that scene?

14 A. Officer safety. They're backs are going to be to
15 the occupants of the vehicle and we never search a vehicle
16 that way. Someone is always with us to watch while we
17 conduct the search of that vehicle.

18 Q. What sort of objects were found inside the
19 speaker box?

20 A. Two brick packages were taken out of the speaker
21 box.

22 Q. And what, if any, field testing did you do to the
23 contents of the packages?

24 A. I used a narcotics identification. You take what
25 likes like a moist towelette only it's infused with a

Christopher Reider - Cross-examination

1 chemical that will act to the presence of cocaine.

2 Q. What happened with the two objects that were
3 found in the speaker box?

4 A. We dissected one package which is methodically
5 taking each layer of the wrapping a part and I wipe what's
6 called the NicWipe(ph) over it and it turned blue,
7 positive test for the cocaine.

8 Q. Thank you very much. Please answer any questions
9 either attorney has for you.

10 MR. HARBIN: Judge, I have no questions for
11 this witness.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. WARDER:

15 Q. Were the defendants put into a car while you were
16 there?

17 A. At which point in time because I was there for a
18 while?

19 Q. You arrived and they were standing outside of
20 their car; is that right?

21 A. They were standing at the front of Corporal
22 Blair's patrol car.

23 Q. Okay. And when were they put into a car? In
24 other words, when were they taken from the roadway and
25 seated into an automobile?

Christopher Reider - Cross-examination

1 A. I don't know the exact time but I know it was not
2 long after we had obtained a positive field test for the
3 presence of narcotics that we placed them into the back of
4 -- and officer that is no longer with the department -- we
5 placed them in his vehicle to secure them safely in the
6 vehicle.

7 Q. That's not a K9 vehicle?

8 A. No, it's not a K9 vehicle. It was a uniformed
9 patrol vehicle.

10 Q. Where as the K9 at when you arrived at the scene?

11 A. You're talking about Corporal Blair's K9?

12 Q. Yeah.

13 A. It was in his kennel which is inside the back
14 seat of the Ford Crown Victoria.

15 Q. It was never outside of the vehicle while you
16 were there?

17 A. When I was on scene, on my arrival as I'm
18 approaching and the entire time I was on the side of the
19 roadway, the K9 was never deployed from the vehicle.

20 Q. Thank you.

21 THE COURT: Anything else?

22 MR. HOLLOWAY: Nothing from the State from
23 this witness.

24 THE COURT: Thank you, sir. You can step
25 down.

Christopher Reider - Cross-examination

1 (Witness leaves the witness stand.)

2 MR. HOLLOWAY: Your Honor, we need a brief
3 recess. We have two more witnesses.

4 MR. WARDER: May we approach, Your Honor.

5 THE COURT: Well, we're going to break anyway
6 so just wait.

7 Ladies and gentlemen, we're going to break.
8 Don't talk about the case.

9 (Jury exits the courtroom).

10 Okay.

11 MR. WARDER: Your Honor, I was going to tell
12 you we might stipulate to the weights so we didn't need
13 one witness.

14 THE COURT: What are you talking about?
15 You're telling me you might, yes or no, fish or cut bait.

16 MR. WARDER: I was thinking he had
17 Mr. Armstrong coming to testify to the analysis and the
18 weight and, Your Honor, I would stipulate to the report.

19 THE COURT: How about you, Mr. Harbin.

20 MR. HARBIN: Your Honor, that is fine by me.

21 MR. HOLLOWAY: Your Honor, if they are both
22 willing to agree it's 1,998 grams of cocaine.

23 THE COURT: Do you have a drug report?

24 MR. HOLLOWAY: Yes, sir.

25 THE COURT: Show it to them and see if that's

Christopher Reider - Cross-examination

1 what they're going to stipulate to and we'll put it in.

2 MR. HARBIN: Okay.

3 MR. WARDER: All right.

4 MR. HOLLOWAY: That's fine with me, Judge. I
5 would like to put this in as State's Exhibit 8.

6 (Drug report marked as State's Exhibit No. 8
7 for identification and admitted into evidence.)

8 THE COURT: Anything else? Got any more
9 witnesses?

10 MR. HOLLOWAY: Also, Judge, we need to fully
11 admit the drugs into evidence. Not only does this exhibit
12 include the actual document and other report but also the
13 drugs themselves into evidence.

14 MR. WARDER: Your Honor, for the record I
15 think we have to raise our objection.

16 THE COURT: Well, we'll wait until it goes up
17 here and then we'll put it in.

18 MR. WARDER: Over our objection.

19 MR. HARBIN: To the extent necessary, I'll
20 join in the objection.

21 THE COURT: We'll just wait on Mr. Armstrong.
22 Where is he?

23 MR. HOLLOWAY: He's on his way.

24 THE COURT: All right, we'll be in recess.

25 (Whereupon, there was a brief recess).

James Armstrong - Direct Examination

1 (Jury re-enters the courtroom).

2 MR. HOLLOWAY: Your Honor, the State calls
3 James Armstrong.

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

6 JAMES ARMSTRONG, having been duly sworn,
7 testified as follows:

8 Thank you. Please be seated. Please state
9 your full name for the record.

10 THE WITNESS: James William Armstrong.

11 DIRECT EXAMINATION

12 BY MR. HOLLOWAY:

13 Q. Tell us where you work.

14 A. I'm employed with the Greenville County
15 Department of Public Safety, Forensics Division, Crime
16 Laboratory.

17 Q. And tell us about your educational background?

18 A. I have a Bachelor's Of Science Degree in
19 Chemistry from Ursland College. I've attended the
20 forensic chemist seminars sponsored by the Drug
21 Enforcement Administration in Washington, DC. I've
22 trained under the supervision of our lab supervisor for
23 approximately one year in the area of drug identification.
24 I've testified at least 142 times as an expert in drug
25 identification in federal, state, and local courts.

James Armstrong - Direct Examination

1 MR. HOLLOWAY: We'll offer him as an expert
2 witness.

3 THE COURT: Any voir dire?

4 MR. HARBIN: None from Ms. Alexander.

5 MR. WARDER: No voir dire.

6 THE COURT: So qualified.

7 BY MR. HOLLOWAY:

8 Q. I'd like to show you what's already been
9 premarked as State's Exhibit 1 and 2 and ask you to
10 identify them for the jury.

11 A. State's Exhibit No. 1 is some packaging which I
12 removed from an item that was sent for latent process.
13 State's Exhibit No. 2 is the item AA a block of white
14 powder substance?

15 Q. And what sort of testing did you do to State's
16 Exhibit No. 2?

17 A. State's 2 I proceeded with a chemical spot test
18 and an instrumental analysis to confirm the findings.

19 Q. What were your findings?

20 A. No. 2 would be two blocks of a powdered substance
21 wrapped in plastic that contain cocaine with a weight of
22 1,998.10 grams.

23 Q. Okay. I'm handing you what's been previously
24 marked as State's Exhibit No. 7, can you identify where
25 you signed this form.

James Armstrong - Cross-examination

1 A. Yes, sir, I can.

2 Q. And where is that?

3 A. I have it signed on two location, once up on the
4 description area where I separated the packaging from the
5 powder substance, as well down there on where I received
6 it on May 4, 2009 at 8:30 in the morning.

7 Q. This has already been admitted as evidence as
8 State's Exhibit No. 8, can you identify this please?

9 A. Yes, I can. This is a copy of my lab report
10 based on my findings of this item.

11 Q. Thank you very much. Please answer any questions
12 either counsel has for you.

13 MR. HARBIN: Judge, I have no questions for
14 this witness.

15 CROSS-EXAMINATION

16 BY MR. WARDER:

17 Q. Mr. Armstrong, on one of those occasions the
18 packaging was removed so it could be fingerprinted?

19 A. Yes, sir.

20 Q. And your the one that took that package off and
21 prepared it to be sent to the fingerprint experts in the
22 Forensic Division or whoever would do that?

23 A. Yes, sir, I did.

24 Q. Thank you, very much.

25 MR. HOLLOWAY: The last thing is that we ask

James Armstrong - Cross-examination

1 that State's Exhibits 1 and 2 be admitted into evidence.

2 THE COURT: Subject to all previous
3 objections.

4 (Drugs previously marked as State's Exhibit
5 Nos. 1 and 2 for identification was admitted into
6 evidence.)

7 Thank you, sir.

8 THE WITNESS: Thank you.

9 (Witness leaves the witness stand.)

10 THE COURT: Call your next witness.

11 MR. HOLLOWAY: The State does rest at this
12 time.

13 THE COURT: All right. Let me talk to the
14 lawyers up here for a second.

15 (Whereupon, there was a bench conference).

16 I was going to ask if any of you were
17 Episcopalian, but I'm not going to do that. Being on a
18 jury is like being an Episcopalian, You're up and down, up
19 and down. Ladies and gentlemen, I have to go over some
20 things with the lawyers at this time so I'll have to
21 excuse you again. Don't get too comfortable. I will not
22 be long. I promise.

23 (Jury exits the courtroom).

24 All right, you got any motions? I know
25 you're renewing all prior motions. Any new motions?

State versus Parker

1 MR. HARBIN: No new motions, Judge, just the
2 renewal.

3 MR. WARDER: We'd ask for a direct verdict
4 based on the sufficiency of the evidence.

5 THE COURT: Denied.

6 Mr. Parker and Ms. Alexander, if you would,
7 and stay seated, raise your right hand for me. You swear
8 to tell the truth, the whole truth and nothing but the
9 truth, Mr. Parker.

10 DEFENDANT PARKER: I do.

11 THE COURT: Ms. Alexander?

12 DEFENDANT ALEXANDER: I do.

13 THE COURT: I want to explain to you both you
14 have an absolute Constitutional Right to testify in your
15 own defense. You have an equal absolute right not to
16 testify and if you decide not to testify, that can not be
17 held against you and I will give a strong instruction to
18 the jury to that effect.

19 The decision about whether or not to testify
20 is one that you make in consultation with your attorney.
21 And there are strategic things that go into play with
22 making that decision, but it's not your attorney's
23 decision, it's your decision.

24 So I will ask you now if you have had enough
25 time to make a decision to testify. Mr. Parker?

State versus Parker

1 DEFENDANT PARKER: I would be willing to
2 testify.

3 MR. WARDER: Your Honor, we would like to
4 hear the other testimony and then we'll make our decision
5 at the end. So it's a substantial chance we will.

6 THE COURT: I guess that puts the ball in
7 your court, Mr. Harbin.

8 How about you, Ms. Alexander, have you made a
9 decision?

10 MR. HARBIN: We would like just a minute to
11 discuss it.

12 THE COURT: Okay. Why don't y'all step in
13 the room there and we'll wait.

14 (Whereupon, Mr. Harbin and Defendant
15 Alexander exit the courtroom).

16 Okay.

17 MR. WARDER: Your Honor, he wants to hear the
18 evidence.

19 THE COURT: This is not a cat and mouse game.
20 Is this a game of chicken you're playing here?

21 MR. WARDER: I don't ---

22 THE COURT: I mean your client's decision to
23 testify has to stand on its own.

24 MR. WARDER: Yes, sir. He just wants to know
25 the evidence at this point.

State versus Parker

1 THE COURT: Well, we're there. The State has
2 rested.

3 MR. WARDER: Yes, sir. I have co-defendants
4 that will testify and I might have to clarify something or
5 I might not.

6 THE COURT: We don't know if she's going to
7 testify or not and I understand that but this is not a
8 game of chicken.

9 MR. WARDER: As for my client, also, this
10 might be a good time to ask what they're going to use as
11 impeachable offenses.

12 THE COURT: We'll wait until she comes back
13 because that might impact her decision.

14 (Mr. Harbin and Defendant Alexander returns
15 to the courtroom).

16 All right. I hope you all have had enough
17 chance to decide this matter. What do you want to tell
18 me, Mr. Harbin?

19 MR. HARBIN: I just wanted to tell you that
20 Ms. Alexander has decided to testify and we would like to
21 testify first, if possible.

22 THE COURT: Mr. Warder, do you consent to
23 that?

24 MR. WARDER: Your Honor, could you go ahead
25 and ask my client the questions now and he may decide not

State versus Parker

1 to testify.

2 THE COURT: I did ask him the questions.
3 What questions are you talking about?

4 MR. WARDER: We need to clear up the
5 impeachable.

6 THE COURT: Well, we can do that. What do
7 you got that might impeachment.

8 MR. HOLLOWAY: The State has a prior
9 conviction that we will use to impeach him with.

10 THE COURT: There you go.

11 MR. WARDER: We'll testify, Your Honor.

12 THE COURT: All right. Mr. Harbin wants to
13 know if he can go first.

14 MR. WARDER: Okay.

15 MR. HOLLOWAY: Your Honor, I see a book bag
16 back there and I have some concerns about that. When they
17 sent us a Rule 5, we sent a response on the Rule 5 Motion
18 for Discovery and we asked for any tangible objects that
19 they had in their possession, and they've obviously not
20 given us this book bag here.

21 MR. HARBIN: Your Honor, in response, this
22 book bag is the book bag that was referenced by the
23 officers. It was in their possession. This is the exact
24 book so we're simply allowing the jury to see the book bag
25 that they're already described to the jury.

State versus Parker

1 MR. HOLLOWAY: Again, they're in violation of
2 Rule 5 that binds us just as much as them. They are
3 producing what they say it's the actual book bag, we don't
4 know for sure or not, today, the day at trial.

5 MR. HARBIN: Judge, they are welcomed to call
6 somebody to the stand to say that's not the book bag that
7 I saw if that's what they believe, but I don't believe I'm
8 in violation of a discovery order. All I'm doing is
9 referencing something that they presented in direct in the
10 State's case.

11 THE COURT: Show it to them, let them look at
12 it, let the officers look at it.

13 (State and defense complies).

14 Have you had a chance to review it?

15 MR. HOLLOWAY: Yes, sir, I have, Judge.

16 THE COURT: Do you have an objection to it?

17 MR. HOLLOWAY: I still object because we
18 don't know if it's the actually book bag.

19 THE COURT: That's a matter of credibility
20 for the jury to determine. I just need to know if you
21 need any more time to inspect it.

22 MR. HOLLOWAY: I've seen it.

23 THE COURT: Would you like your officers to
24 look at it?

25 MR. HOLLOWAY: They don't know if it's the

Shantana Alexander - Direct Examination

1 book bag or not. They can't, frankly, testify to that.

2 THE COURT: If there was a Rule 5 violation

3 -- I don't think there is one. Anything else?

4 MR. HOLLOWAY: Nothing from the State, Your
5 Honor.

6 THE COURT: Let's bring them.

7 (Jury re-enters the courtroom).

8 I'd like to thank you very much for your
9 patience. At this time I'll turn it over to the defense.

10 MR. HARBIN: We call Shantana Alexander.

11 THE CLERK: Place your left hand on the Bible
12 and raise your right hand.

13 SHANTANA LYNN ALEXANDER, having been duly
14 sworn, testified as follows:

15 Thank you. You may be seated. State your
16 full name for the record.

17 THE WITNESS: Shantana Lynn Alexander.

18 DIRECT EXAMINATION

19 BY MR. HARBIN:

20 Q. Ms. Alexander, you've had an opportunity to hear
21 the testimony thus far here today.

22 A. Yes.

23 Q. You know the date in question.

24 A. Yes.

25 Q. Could you tell the jury what you were doing in

Shantana Alexander - Direct Examination

1 the days leading up to the incident date you were
2 arrested?

3 A. I went to visit Mr. Parker's son, Orlando Parker,
4 Jr.

5 Q. And where were you headed?

6 A. We went to Atlanta and stayed in a hotel room.

7 Q. Okay. So you arrived in Atlanta and you said you
8 checked into a hotel room?

9 A. Yes.

10 Q. Did Mr. Parker stay with you in the hotel room?

11 A. Yes.

12 Q. Did you spend every moment with Mr. Parker?

13 A. No.

14 Q. Could you tell us when you arrived in Atlanta how
15 much time you spent with him, if you went anywhere, if he
16 went anywhere and that sort of thing, please?

17 A. As far as spending the time with him, after we
18 settled him he spent the night there. And then after that
19 he went to visit his son.

20 Q. What did you do while he was visiting with his
21 son?

22 A. Stayed in the hotel room.

23 Q. Did you have use of the vehicle at the time or
24 did Mr. Parker have use of the vehicle during that time?

25 A. I did not have use of the vehicle at that time.

Shantana Alexander - Direct Examination

1 Q. So after -- is it fair to say the purpose of the
2 visit was the visitation of his son?

3 A. Yes.

4 Q. After the visitation, what did y'all do? After
5 he visited with his son, what did y'all then do?

6 A. He came back, went to sleep and we left the next
7 day.

8 Q. So you left the following day after the
9 visitation?

10 A. Yes.

11 Q. And your in route from Atlanta back towards
12 Pennsylvania; is that correct?

13 A. Yes.

14 Q. To the best of your recollection, could you tell
15 the jury what you remember from the moment you saw the
16 blue lights could you begin to tell the jury what you can
17 remember as best as you can recollect?

18 A. I remember being woken up by Mr. Parker him
19 saying we're being pulled over and I woke up. And the
20 officer came over to Mr. Parker's window asking him to
21 step out of the vehicle. Mr. Parker stepped out of the
22 vehicle and they put him in cuffs.

23 Q. What happened after that?

24 A. Walked him back to the back. Another officer
25 came up to where I was sitting in the passenger's seat

Shantana Alexander - Direct Examination

1 while they was back there talking to Mr. Parker. When the
2 officer came up he asked me did I have any drugs and he
3 claimed he smelled marijuana. And I told him no at first
4 and then he looked at the other officer and then the
5 officer turned back around and looked at me and said
6 Mr. Parker said you have marijuana on you.

7 Q. What did you do after he told you what Mr. Parker
8 said?

9 A. He said I did and I went to go hand it to him
10 right there and he said, no, stop out of the car I'm going
11 to take you to the back of the vehicle.

12 Q. Let me stop you there, do you recall which
13 officer was at your window speaking to you at the time?

14 A. It was either officer -- the one there close to
15 him.

16 Q. Could you point out what he's wearing or
17 something like that?

18 A. The suit, red tie.

19 THE COURT: Stand up, sir.

20 (Officer complies).

21 Is that him?

22 THE WITNESS: Yes, sir.

23 BY MR. HARBIN:

24 Q. That would be Officer Broce from Georgia?

25 A. I don't know his name.

Shantana Alexander - Direct Examination

1 Q. For the record. After he asked you for the
2 marijuana and you admitted that you had it, what happened.

3 A. It took it and I put it on the police car.

4 Q. So you didn't hand it to him?

5 A. No.

6 Q. Why?

7 A. Because he told me to get out and put it in his
8 car.

9 Q. On the hood?

10 A. Yes, sir.

11 Q. And after you placed it on the hood, what then
12 happened?

13 A. After that I just stood there. I was never put
14 in any cuffs at that time. I was just standing there.

15 Q. What happened after you had placed the drugs on
16 the hood of the car?

17 A. After that the officers decided to search the
18 vehicle and they started to look through the vehicle.

19 Q. Now, as you recall Officer Blair made a specific
20 point to tell the jury that he saw or what he perceived
21 that you were in some sort of distress. He described it
22 as you were dry heaving. Can you describe to the jury
23 what, if anything, was going on during that particular
24 moment?

25 A. There was actually nothing going on at that

Shantana Alexander - Direct Examination

1 particular moment. I never started to dry heave at all.

2 I just stood there.

3 Q. So whatever he perceived was not the case?

4 A. Yes.

5 Q. Now, skip ahead or perhaps back, actually,
6 Ms. Alexander could you tell us if you can tell me what
7 this is?

8 A. A book bag that was in the vehicle at that point
9 in time.

10 Q. Are you telling the Court this is your book bag?

11 A. Yes.

12 Q. This is or is not the same exact book bag that
13 was in the car at the time of the arrest?

14 A. It's the same book bag that was in the car at the
15 time of the arrest.

16 Q. Did you bring this book bag for court just for
17 this purpose or are you actually using it?

18 A. I'm actually using it.

19 Q. What's in it today?

20 A. Clothes, medicine, hair grease, a charger to my
21 phone.

22 Q. So it's several days worth of clothes and
23 supplies.

24 A. Yes.

25 MR. HARBIN: Judge, I would like to mark this

Shantana Alexander - Direct Examination

1 as Defense Exhibit 1.

2 THE COURT: Any objection?

3 MR. HOLLOWAY: None from the State, Your
4 Honor.

5 MR. WARDER: No objection.

6 (Book bag marked as Defendant's Exhibit No. 1
7 for identification).

8 MR. HARBIN: Without objection I would like
9 to move this into evidence as the bag that was in question
10 at the time of the arrest.

11 THE COURT: Well, he wants to move it in as
12 the bag in question at the time of the arrest.

13 MR. HOLLOWAY: The State does object.

14 THE COURT: On that basis, I'll let it be
15 introduced into evidence but the jury gets to determine
16 what book bag it is.

17 MR. HARBIN: Yes, sir.

18 THE COURT: Okay. And we admit it subject to
19 the personal items inside.

20 MR. HARBIN: Sure.

21 (Book bag previously marked as Defendant's
22 Exhibit No. 1 for identification was admitted into
23 evidence.)

24 BY MR. HARBIN:

25 Q. Let me back up a little bit and if you could tell

Shantana Alexander - Direct Examination

1 the jury what is your relationship with Orlando Parker?

2 A. He is the father of my child and my boyfriend.

3 Q. So it was not unusual, of course, for you to
4 travel with him?

5 A. No.

6 Q. You had stated earlier that you had been
7 traveling for the purpose of his visitation with his son,
8 correct?

9 A. Yes.

10 Q. Was that the first visit that you had ever made
11 to Atlanta for that purpose along with Mr. Parker?

12 A. No.

13 Q. So, in fact, his son does live in Atlanta?

14 A. Yes, along with his mother and his sister.

15 Q. And how long is his son?

16 A. At that time his son was around 16.

17 Q. When the officer -- I'm jumping around a little
18 bit and I apologize for that -- when the officer found the
19 marijuana on you and you handed it over to him, did you
20 get charged with simple possession of marijuana?

21 A. Yes.

22 Q. And did you plead guilty to simple possession of
23 marijuana?

24 A. Yes.

25 Q. Can you tell the jury whether or not you smoke

Shantana Alexander - Cross-Examination

1 marijuana?

2 A. I did at that time.

3 Q. Can you tell the jury whether or not you are a
4 user of cocaine?

5 A. No, I am not.

6 Q. Can you tell the jury whether or not you had any
7 idea whether or not there was cocaine or any other
8 substance in the car or in the speaker box?

9 A. No, I did not.

10 Q. The bag that we just talked about here it appears
11 to be packed with various items that you described. Do
12 you remember what was in the bag the day you got arrested?

13 A. Yes.

14 Q. Could you please tell the jury what you
15 recollect?

16 A. There was jeans, shirts, undergarments, and
17 skirts, shorts, socks, enough between me and Mr. Parker.

18 Q. For a weekend trip?

19 A. Yes.

20 MR. HARBIN: No further question, Judge.

21 Please answer any questions Mr. Warder or Mr. Holloway may
22 have.

23 CROSS-EXAMINATION

24 BY MR. HOLLOWAY:

25 Q. Do you recall what you packed in a bag more than

Shantana Alexander - Cross-Examination

1 two years ago?

2 A. Yes.

3 Q. And you said just now you're packing for both you
4 and Mr. Parker.

5 A. That was two years ago. Everything in that bag
6 belongs to me at this time.

7 Q. You just testified you were packing what was in
8 the contents of the bag at that time ---

9 A. For me and Mr. Parker, but at this point in the
10 time the contents in the bag belongs to me?

11 Q. Now, this bag as you say is fairly big?

12 A. Yes.

13 Q. Why didn't you hide the marijuana in this bag?

14 A. Why would I put the marijuana in the bag? I kept
15 it on my person.

16 Q. Why would you chose your person in an intimate
17 location versus this bag?

18 A. Because at that point in time that's just where I
19 had it.

20 Q. You can't tell the jury or explain to them why
21 you would chose your book bag versus putting it in a
22 location that's pretty culpable?

23 A. Because I didn't put it in the book bag, I ended
24 up putting it on me. I had it on me.

25 Q. When the officer ask you about that, what did you

Shantana Alexander - Cross-Examination

1 tell him?

2 A. I told him I didn't have it.

3 Q. So you lied to the police officer?

4 A. At that time, yes, I did when he first asked me.

5 Q. He asked you were you hiding any drugs and you
6 lied to him?

7 A. No, he didn't ask me if I was hiding any drugs.
8 He asked me did I have any marijuana because he smelled
9 the marijuana.

10 Q. And you testified that you smoke marijuana during
11 that time period. Were you smoking in the car that day?

12 A. Yes, I was.

13 Q. And was Mr. Parker smoking marijuana in the
14 vehicle?

15 A. We both actually was.

16 Q. He was driving a vehicle on the roadways and you
17 both were high on marijuana?

18 A. We were sitting in traffic.

19 Q. Get's pretty boring in traffic, doesn't it?

20 A. Yes, it is.

21 Q. In Atlanta, where was the jeep parked?

22 A. We went to the hotel. After that, I don't know
23 where he took the jeep.

24 Q. And can you tell the jury, explain in more
25 detail, this time line. What day did you leave from

Shantana Alexander - Cross-Examination

1 Pittsburgh? Was it the 11th of March, 10th, when was
2 that?

3 A. We left early in the morning. It was I believe
4 the 10th or the 9th.

5 Q. And this is the 12th, correct, when this all
6 happened?

7 A. Yes.

8 Q. That is at most -- so if you count the early
9 morning of the 9th, it's fair to say that was four full
10 days, correct?

11 A. No.

12 Q. That's not correct. 9th, 10th, 11th, 12th,
13 that's not four days?

14 A. It would be but not four full days.

15 Q. What was your address in Pittsburgh?

16 A. Cedarhurst Street.

17 Q. And where did he live?

18 A. At Savannah Avenue.

19 Q. How far is that from your house?

20 A. Not that far.

21 Q. Fair to say two blocks.

22 A. About two blocks.

23 Q. How far is your house from Atlanta, Georgia?

24 A. Very far?

25 Q. More than five hours?

Shantana Alexander - Cross-Examination

1 A. Yes.

2 Q. More than 10 hours?

3 A. Yes.

4 Q. During that trip down to Atlanta, did you stop
5 anywhere?

6 A. Stopped and got gas, something to eat.

7 Q. And you're driving a pretty big SUV so you're
8 going to be stopping quite a bit to fill out with gas,
9 correct?

10 A. Not actually.

11 Q. Pretty good gas mileage?

12 A. It runs pretty good on gas.

13 Q. It's fair to say that the day that you left it
14 took a full day of you driving to get to Atlanta, correct?

15 A. Yes.

16 Q. And then you spent the night in Atlanta, correct?

17 A. Yes, sir.

18 Q. How many nights did you spend in Atlanta?

19 A. We had the hotel room a night, two days because
20 we left on the 12th.

21 Q. So you want to tell this jury that you packed
22 enough belongings for yourself for a three or four day
23 trip in the one little book bag?

24 A. Yes. I always did. All you got to do is roll up
25 the pants and at the bottom and make sure the shirts were

Shantana Alexander - Cross-Examination

1 nice and neat and put them in.

2 Q. Now, you testified that you lied to the officer
3 about having marijuana on you because you were afraid that
4 he'd find the marijuana?

5 A. No.

6 Q. You weren't afraid that he'd find any legal drugs
7 on your person?

8 A. No.

9 Q. Did you believe that he wouldn't search you?

10 A. No.

11 Q. You believe he'd search you. Can you show me on
12 this photograph, State's Exhibit 3 where this book bag is?

13 A. This book bag would be sitting in the back
14 because here is a bag of dirty clothes.

15 THE COURT: Ma'am, you've got to keep your
16 voice up and talk into the microphone.

17 THE WITNESS: The book bag is sitting right
18 behind the dirty clothes because the bag is full of dirty
19 clothes right there.

20 BY MR. HOLLOWAY:

21 Q. Okay. So can you show me where the red Fred is
22 in that photograph because I sure?

23 A. You would have to have the book bag facing
24 towards you.

25 Q. Right. So this is not a different book bag in

Shantana Alexander - Cross-Examination

1 this photograph?

2 A. No, it is not. That's the only book bag I own.

3 Q. And you're sure that two years after the fact,
4 that's the same book bag?

5 A. Yes, because that was never taken out of the
6 vehicle.

7 Q. How many children do you have with Mr. Parker?

8 A. Our daughter is now deceased.

9 Q. And how old was she when she died?

10 A. I was six month pregnant at the time.

11 Q. When did you get pregnant?

12 A. I got pregnant September 29, 2007.

13 Q. 2007?

14 A. Yes.

15 Q. But you weren't pregnant during this time?

16 A. No, I was not.

17 Q. That's all I have for you. Thank you.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MR. WARDER:

21 Q. The police car that stopped you, when was the
22 first time that you saw it?

23 A. After Mr. Parker woke me up we was pulling over
24 at that time.

25 Q. You were sleep when the blue lights came on?

Shantana Alexander - Cross-Examination

1 A. Yes.

2 Q. And when you pulled over and the office
3 approached the car, which side did he approach it on?

4 A. The driver's side.

5 Q. And he had Mr. Parker get out?

6 A. Yes, he did.

7 Q. What did he do after Mr. Parker got out?

8 A. Mr. Parker was immediately put in cuffs and taken
9 to the back.

10 Q. So the officer handcuffed Mr. Parker right
11 outside of the door before he went to the back or
12 anything?

13 A. Yes, sir, he did.

14 Q. Did he tell Mr. Parker why they were handcuffing
15 him?

16 A. I didn't hear the conversation of what Mr. Parker
17 and the officer was having because I sat in the vehicle.

18 Q. Did there come a time when an officer approached
19 you?

20 A. Yes.

21 Q. And what did the officer have you do?

22 A. He asked me if I had any marijuana because he
23 told me he smelled it and I told him no. And then after
24 he looked back at Mr. Parker and the other officers, he
25 looked back me and said Mr. Parker said that you have it

Shantana Alexander - Cross-Examination

1 and I went to reach down and get it. He said, no, step
2 out and go to the back. So when I went back to the back
3 to where the vehicle was where Mr. Parker and the other
4 officer was standing, I reached down in my pants and
5 pulled out the marijuana and put it down on the top of the
6 hood.

7 Q. Did anyone tell you where to put the marijuana?

8 A. Yes, the officer.

9 Q. What did he tell you?

10 A. He told me to put it on top of the hood.

11 Q. Did he mention a camera?

12 A. Yes, he did. The first officer did; the one that
13 came over to me.

14 Q. What did he say about a camera?

15 A. Because when I first tried to hand it him he told
16 me no, you have to put it in front of the camera. So I
17 went to the back and put it right where he told me to.

18 Q. Did you put it in front of the camera?

19 A. I just put it on top of the hood.

20 Q. Is that where he indicated the camera would pick
21 it up?

22 A. Yes.

23 Q. And what did they do with the other drugs when
24 they got them? Did they lay them on the hood in front of
25 the camera also?

Orlando Parker - Direct Examination

1 A. Yes, they did, they laid them on top of the K9
2 Unit hood.

3 Q. Thank you. That's all the questions I have.

4 THE COURT: Any redirect?

5 MR. HARBIN: No, sir.

6 THE COURT: Thank you, ma'am, you can step
7 down.

8 MR. HARBIN: Judge, there's nothing further
9 from Ms. Alexander.

10 THE COURT: All right.

11 MR. WARDER: If the Court please, we'll call
12 the defendant Orlando Parker to the stand.

13 THE CLERK: Mr. Parker, if you would please
14 place your left hand on the Bible and raise your right
15 hand.

16 ORLANDO PARKER, having been duly sworn,
17 testified as follows:

18 Thank you. Please be seated. Please state
19 your full name for the record.

20 THE WITNESS: Orlando Parker.

DIRECT EXAMINATION

21 BY MR. WARDER:

22 Q. Mr. Parker, sir, do you remember the day that you
23 were coming back from Atlanta and got stopped here in
24 Greenville?
25

Orlando Parker - Direct Examination

1 A. I'll never forget it, yes.

2 Q. Now, you want to speak loud enough so everybody
3 can hear you and I can hear you over here.

4 A. Okay.

5 Q. Now, I guess that was your first night spent in
6 Greenville?

7 A. Yes.

8 Q. Tell us about being stopped, what happened?

9 A. Well, we were on I85 and like 20 minutes earlier
10 we had to stop because a truck had overturned and they
11 were cleaning up the mess. And then maybe 20 minutes
12 after the stop, the truck had turned over -- it's a lot of
13 traffic that day. It was around 4:00. I noticed a police
14 car coming up to my left. We were in the middle lane.
15 There were basically wall to wall cars.

16 Q. Now, the car that had been on your left, that
17 would have been closest to the median, the passing lane?

18 A. Yes, the passing lane.

19 Q. And the police car came up to you in that lane?

20 A. Yes.

21 Q. Did it go around you or what did it do?

22 A. Well, the proceeded to go -- to pull up level to
23 where I was. The passenger Mr. Broce he looked up and he
24 made eye contact. He turned towards Mr. Blair and
25 Mr. Blair like turned on his lights and slowed down and

Orlando Parker - Direct Examination

1 put his brakes on to get behind us.

2 Q. Now, you said that they got beside you and the
3 officer from Georgia looked at you?

4 A. He was like leaning forward looking up to see who
5 he could see.

6 Q. Making eye contact?

7 A. As they got directly beside us, he was leaning
8 forward looking to see. I looked over at him and he
9 turned towards Officer Blair and said something. He
10 turned the lights on, slammed on the brakes and pulled
11 behind us.

12 Q. Did they have to slow down to pull behind you?

13 A. Yes.

14 Q. And did they have to be travelling than you were
15 to catch up and get beside you?

16 A. Well, every car in the passing lane was going
17 past us so he was behind -- there were like two cars in
18 front of him, directly in front of him, so those two cars
19 passed us up and that allowed them to get beside us. Like
20 I said he leaned forward and looked at me, I looked at
21 him, turned the lights on, slammed the brakes on, pulled
22 behind us and then we proceeded to pull over.

23 Q. How far had you travelled until you got pulled
24 over to the edge of the road?

25 A. It wasn't that far. It maybe a tenth of a mile

Orlando Parker - Direct Examination

1 or not even that long.

2 Q. When you got pulled over what happened?

3 A. When I got pulled over Mr. Blair comes to my side
4 and I rolled the window down and I said, what are you
5 stopping us for and he said -- I said why did you stop us
6 and he pulled on the door and said step out of the car. I
7 stepped out the car and he told me to turn around and then
8 he put handcuffs on me. He says it's for my protection
9 and his and then he walked me to the back of the truck.

10 Q. Were you standing right beside the door when he
11 put the handcuffs on you?

12 A. Yes.

13 Q. And he said he was doing it for his protection
14 and your protection?

15 A. Yes, for his safety and mines, sir.

16 Q. He took you to the back of the car and then what
17 happened?

18 A. He took me to the back of the truck in front of
19 the police car and he told me to stand there. And then he
20 asked me is there anything in there that's illegal. I
21 said my girl has a little bit of weed. So that's when he
22 told the guy -- the officer that was standing by the door
23 that she had the weed. The thing that I remember after
24 that is he said something to her and she got out and he
25 was walking towards me and Officer Blair. He said, you

Orlando Parker - Direct Examination

1 got the weed and I said give to him, it's only a little
2 bit of marijuana.

3 She went to reach down to get it for him and
4 he was like, no, do it so the camera can see you.

5 Q. Now, what was that? You said for the camera?

6 A. For the police car camera. He said do it so the
7 camera can see you. So she pulls it out and he said put
8 it on the hood of the car in front of the camera. She put
9 it in front the camera and the camera was, like, directly
10 behind me. I'm leaning against the fender and the camera
11 is like right behind me where she put it on the hood. And
12 then he told her to stand there and wait.

13 While me, Blair, and her were standing there,
14 the other officer started searching the truck and I asked
15 him again why did you stop us and he didn't say nothing.
16 He just looked at me and didn't say nothing. Then the guy
17 they searched the truck for like a half hour. It's just
18 -- I don't know.

19 Q. You knew that marijuana was in the car?

20 A. Yeah.

21 Q. They got cocaine out of the car, did you know
22 anything about that?

23 A. I didn't know anything about any cocaine. I
24 didn't see them actually bring anything out the speaker
25 box. I saw them fiddling with it and I saw that once

Orlando Parker - Direct Examination

1 things started getting -- once the other officers came and
2 the DEA came, they took us three cars back and they put us
3 in those cars and I saw them taking pictures. I thought I
4 saw them -- I don't know. I didn't know what the hell was
5 going on, excuse my language.

6 From the time we got stopped he never asked
7 for any paperwork, he didn't even ask me for my name. He
8 put me in handcuffs and took me to the bag and he said,
9 you guys holding anything and I said we got a little weed.
10 So she just gave it up or whatever and after that I never
11 seen anything. My fingerprints aren't on there. I mean I
12 don't get it.

13 Q. Your fingerprints wouldn't have been there
14 because you never touched anything, is that right?

15 A. Never touch anything and that speaker box was
16 fully assembled whether there was a screw missing or
17 screws in the truck -- I mean they have pictures so they
18 should have pictures of that if that was the case.

19 Q. Did it seem like the police were just stopping
20 you?

21 MR. HOLLOWAY: Objection, Your Honor, his
22 question is going somewhere that's inadmissible.

23 THE COURT: Ask the question. I don't know.

24 BY MR. WARDER:

25 Q. Did it seem like the police were stopping you,

Orlando Parker - Direct Examination

1 were they looking for you?

2 MR. HOLLOWAY: Objection, Your Honor.

3 THE COURT: That's speculative.

4 BY MR. WARDER:

5 Q. You say the police pulled up beside you and
6 looked at you and then dropped behind you?

7 A. Yes. It was like a bang bang, he looked, turned,
8 lights came on and the brakes.

9 Q. Did they go right to the speaker box?

10 A. No, they actually searched pretty much everywhere
11 in the truck. They didn't go straight to it. They
12 searched the back, they searched the front where the
13 hatchback is. Broce did all the searching. Blair was
14 standing with me the whole time. He moved the speaker box
15 over and then he searched and then he went back and he
16 searched again front to back and then he came back to the
17 speaker box and he said something to Blair about getting a
18 screwdriver. And then Blair was radioing in for a
19 Phillips screwdriver and then he was like, oh, I found
20 something good to open it and I guess that was the multi
21 tool he keeps talking about. I don't even remember that.

22 After that they started going in there. Like
23 I said, I never even seen the drugs on the scene. I saw
24 them fiddling with the speaker box and whenever he took
25 out the first one, the first speaker thing or whatever, he

Orlando Parker - Direct Examination

1 handcuffed her and then he took us to the other car and he
2 put us in there.

3 Q. He testified that you were sweating profusely.

4 A. I don't remember anything like that. We were
5 just standing on the side of the road. I was really kind
6 of bothered that I had to stand there in handcuffs all
7 that time. I couldn't understand why they didn't read me
8 my rights or anything. He didn't even tell me why he was
9 stopping me. I got to jail, whatever, I got tickets that
10 I was speeding. That's the first I had heard of any kind
11 of speeding and close following too closely. That's the
12 first I heard of any of that.

13 We went to the DEA's office and they
14 questioned us and they never mentioned any reason why we
15 were stopped and they never mentioned anything about
16 following too closely. They never mentioned anything. No
17 one ever read me my rights or anything?

18 Q. The officer testified that your co-defendant got
19 the dry heaves, did that happen?

20 A. A lot of things in that police report, but
21 everything was pretty calm. Like I said after she gave
22 them the marijuana, they didn't even handcuff her. They
23 didn't handcuff her until after they started messing with
24 the box. After they messed with the box, they handcuffed
25 her and I couldn't see what happened after that. Like I

Orlando Parker - Cross-examination

1 said they took us to the second police car.

2 The first police car I was leaning own was
3 Office Blair's K9 car and I was asking him why don't you
4 use your dog and he never responded.

5 Q. Now, the car, whose car was it?

6 A. Whose truck that I was driving?

7 Q. Yeah.

8 A. That's my mother's truck.

9 Q. Who all drives the truck?

10 A. There's quite a few family members that use to
11 get it use it. She was getting older and wasn't driving
12 it much.

13 Q. Anybody drive it in Atlanta?

14 A. No.

15 Q. Did you have any knowledge that cocaine was
16 there?

17 A. No.

18 Q. Is that your cocaine?

19 A. No.

20 Q. Do you know whose it was?

21 A. No.

22 Q. Thank you. You can answer any questions.

23 CROSS-EXAMINATION

24 BY MR. HOLLOWAY:

25 Q. So you testified earlier that the traffic was

Orlando Parker - Cross-examination

1 backed up, correct?

2 A. Yes.

3 Q. And then you testified that the officers rolled up
4 beside you to presumably get a look at your face, correct?

5 How does that work? You're in bumper to bumper traffic so
6 it was piecemeal by piecemeal easing up to the car and
7 then they back up, is that what you're telling this jury

8 A. No. What happened was there was a truck
9 overturned and the contents were on the highway. We were
10 going like a mile and hour. After they cleared it up,
11 there was a lot of cars and the traffic was close
12 together. By the time we got stopped it was maybe 20
13 minutes later, and the cars in the passing lane they were
14 going about the speed limit. Everyone else was going
15 pretty much under. And the lane he was in -- he was
16 behind two cars before he got to me and the lane that he
17 was in, the cars that he was following ran pass me.

18 Q. So what you're saying is traffic had been backed
19 up and then it started to back up again?

20 A. No. After the accident where the truck was and
21 it started moving a little bit better. The middle lane
22 and the far right lane were going relatively slow compared
23 to the passing lane. They were passing us up.

24 Q. Okay. But you're still saying that the officers
25 might have been in this fast lane after this traffic

Orlando Parker - Cross-examination

1 accident. They're in this fast lane, they take a look at
2 you, right, and that's what you're saying to this jury,
3 right? You're saying that these officers approached you
4 in this fast lane, looked at you, and then dropped back
5 again, isn't that what you're testifying to?

6 A. I'm saying that he pulled up beside us and looked
7 and -- he was pulling out beside me and he looked up to
8 see me and he stopped me.

9 Q. And then he quickly got back behind you in a
10 bumper to bumper situation?

11 A. Exactly. I never said it was bumper to bumper.
12 I said we were going relatively slow. I never said that
13 we were following too close. That was only the ticket.
14 We were going relatively slow, maybe like 55 and everyone
15 else. The fast lane, they were going fast. They were
16 zooming through.

17 Q. Do you at least admit to the jury that you
18 weren't driving with any valid license?

19 A. I didn't have a license. My girl was sick and
20 she was the designated driver and she wasn't feeling well
21 and I drove.

22 Q. And you were driving with no proof of insurance?

23 A. We had proof of everything. The truck was
24 completely legal.

25 Q. Right. Okay. and you were smoking marijuana

Orlando Parker - Cross-examination

1 while you were driving, correct?

2 A. Yes.

3 Q. So you were breaking at least two laws in South
4 Carolina that day, weren't you?

5 A. Yes.

6 Q. That's pretty dangerous to drive on an interstate
7 when you're intoxicated, correct?

8 A. Yeah. Well, they didn't give us any type of DUI
9 test.

10 Q. So that makes it right. Were you okay to drive
11 that day?

12 A. They didn't feel as though I wasn't. They didn't
13 field test me for that. They never even mentioned it.

14 Q. How would you know? If you're taking marijuana,
15 how would you know if you're okay to drive?

16 A. They're the police and they're saying I was under
17 the influence and they didn't check me.

18 Q. And for that matter, if you're smoking marijuana
19 how could you be sure of any of these details that you're
20 testifying to especially two years after the fact?

21 A. Well, I can be 100 years after the fact but I was
22 sure that I didn't have any drugs. Like I said he asked
23 me was there anything in there and I told him she had a
24 little bit of marijuana. I didn't say, no, or I didn't
25 try to evade the question.

Orlando Parker - Cross-examination

1 Q. Who else, you testified on direct examination
2 that all these other members of your family were allowed
3 to drive the jeep, correct?

4 A. Yes.

5 Q. Who bought the jeep?

6 A. My mother she owed money on it. She didn't own
7 it outright.

8 Q. Well, who was making the payments?

9 A. She was.

10 Q. Have you told her you were smoking marijuana in
11 her car on that day?

12 A. No.

13 Q. How do you think she feels -- strike that.

14 During that time are you saying that other
15 members of your family put that cocaine in that jeep?

16 A. I'm saying I didn't. I don't know.

17 Q. If you didn't, you must have an explanation of
18 who put that cocaine, just shy of 2000 grams in your
19 mother's jeep, do you have any explanation for that?

20 A. I thought that was your job.

21 Q. Have you discussed this with your family in the
22 past two years?

23 A. I honestly believe they put it there so I don't
24 know how to explain it.

25 Q. You're accusing the police of putting 2000 grams

Orlando Parker - Cross-examination

1 of cocaine --

2 A. I know I didn't have it. I never even seen it on
3 the scene. I never seen any drugs?

4 Q. As of March 12, 2009, who, to your personal
5 knowledge, drove that jeep?

6 A. Up until that point?

7 Q. Up until that point who drove that jeep?

8 A. I would say three or four of my cousins, my mom,
9 my uncle, say maybe from the time she had it until that
10 time may eight or ten people, but I mean, I'm not saying
11 that any of them did it, I don't know. I just know that I
12 didn't.

13 Q. When did she buy that jeep?

14 A. I think September '08.

15 Q. If you didn't do it, then your family must have
16 put that cocaine in the vehicle, correct?

17 A. I don't know. The truck -- I don't know who did
18 it. I'm just saying I didn't. The speaker box, they
19 don't come with the truck. The speaker box was an after
20 mark thing.

21 Q. Who bought it?

22 A. I bought it.

23 Q. Where at?

24 A. Actually I bought it off the streets, basically.

25 Q. You don't know who the guy is?

Orlando Parker - Cross-examination

1 A. Do I know who the person I bought it off of.

2 Q. Uh-hum.

3 A. Yeah, I know the guy.

4 Q. Have you had a little chat with him in the past
5 two years?

6 A. Actually, he's deceased.

7 Q. When did he die?

8 A. I think last summer.

9 Q. So this date of the incident was March 12, 2009.
10 He died last summer say June, July. Did you have any
11 chats with him as to where that cocaine came from?

12 A. I asked him and he basically told me it was
13 ridiculous.

14 Q. Ridiculous that he would put it there?

15 A. Yeah.

16 Q. Now, you drove -- how far is from where you live
17 in Pittsburgh to Atlanta?

18 A. I'd say may be 11 hours.

19 Q. You were in Atlanta for how many days?

20 A. I think we got there it was that night, the 9th
21 or the 10th and left the 12th. I think we got there the
22 10th, went out. We got there the night of the 10th,
23 stayed there the whole day of the 11th and we left on the
24 12th.

25 Q. During the trip to Atlanta, where was the jeep

Orlando Parker - Cross-examination

1 parked?

2 A. During the trip to Atlanta, where was it parked?

3 Q. While you were in Atlanta, where was it parked?

4 A. At the hotel.

5 Q. Was it in a parking lot?

6 A. Yes.

7 Q. Was it in any garage?

8 A. No.

9 Q. During that time, did anybody break into the
10 jeep?

11 A. Not to my knowledge.

12 Q. Did you see any signs that anybody broke into it?

13 A. Wasn't really thinking about it.

14 Q. So nothing raised your antennas that somebody
15 might have broken into your mom's jeep?

16 A. No.

17 Q. Thank you very much.

18 MR. HARBIN: Just one question, Judge.

19 BY MR. HARBIN:

20 Q. My client earlier testified that y'all spent the
21 night and the next day is the day that you went to visit
22 your son; is that correct?

23 A. Yes.

24 Q. So is it true that you left her at the hotel
25 while you went to go and visit your son and then came back

State versus Parker

1 to pick up her?

2 A. That's true.

3 MR. HARBIN: No further questions.

4 THE COURT: Redirect.

5 MR. WARDER: No redirect.

6 THE COURT: You can step down.

7 (Witness leaves the stand).

8 MR. WARDER: If it please the Court, that
9 would be the defendant's case.

10 THE COURT: Any reply?

11 MR. HOLLOWAY: The State has no reply.

12 THE COURT: All right, ladies and gentlemen
13 of the jury, it's 10 until 5:00. We have now completed
14 the first two portions of the trial and as you all
15 remember we had three parts left, closing arguments,
16 charge on the law, and your deliberation to resolve the
17 dispute. We're not going to start that tonight. Okay.
18 I'm going to send y'all home and I can't emphasis enough
19 how important it is that you not talk about this with
20 anybody.

21 I've explained to you why but just remember
22 that these other people who you would want to talk to and
23 get their advise and input and all that, they haven't been
24 in this courtroom, they have not heard what you heard,
25 they have not seen what you seen. And more than that,

State versus Parker

1 they were not selected to serve. Y'all were selected to
2 serve. So don't talk about, don't do research or anything
3 along those lines. Have a pleasant evening. We'll see
4 you back at 9:30 in the morning. Thank you very much.

5 (Jury exits the courtroom. Dismissed for the
6 evening).

7 Anything?

8 MR. HARBIN: Judge, just a housekeeping
9 matter. If she could get all of her personal belongings
10 out and leave the bag with the court. I know you've
11 already ruled on her bond, I at least want to put on the
12 record that I got in touch with her bondsmen and they are
13 willing to stay on the bond throughout the entire trial.
14 She has medication that she needs to take and can I
15 arrange somehow --

16 THE COURT: Well, under the supervisor of the
17 -- get somebody to -- well, Caroline, you can watch what
18 she takes. The only thing that's in evidence is the
19 actual bag and we want to get everything else out. You
20 need to get something to put it in, Mr. Harbin.

21 MR. HARBIN: Yes, sir.

22 THE COURT: That's not what I was referring
23 to. Are there any motions?

24 MR. HOLLOWAY: None from the State, Your
25 Honor.

State versus Parker

1 MR. HARBIN: None from us, Judge, although we
2 renew our previous motions.

3 THE COURT: Same rulings. Do you want to
4 talk about the charge? Got anything in particular you
5 want, Mr. Holloway?

6 MR. HOLLOWAY: Your Honor, I think your
7 standard charge would be sufficient.

8 MR. HARBIN: A mere presence charge.

9 THE COURT: Circumstantial evidence?

10 MR. HOLLOWAY: Yes, sir.

11 THE COURT: Hand of one, hand of all.

12 MR. HARBIN: Judge, to be honest with you,
13 I'm not terrible read on that but isn't that more of an
14 action charge, hand of one, hand of all. You already have
15 a constructive possession which is essentially the
16 explicit version of hand of one, hand of all.

17 THE COURT: You think about it over night and
18 I will to. The definition of actual constructive
19 possession that I've got also contains the mere presence.
20 Anything else y'all can think of. Do you want something
21 on expert witnesses?

22 MR. WARDER: No, sir.

23 MR. HARBIN: No, sir.

24 THE COURT: The existence of the cocaine is
25 not in dispute.

State versus Parker

1 MR. WARDER: No, sir.

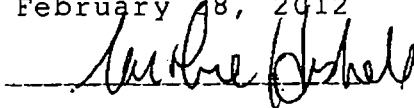
2 THE COURT: Well, okay. See y'all back at
3 9:30.

4 ---END OF TRANSCRIPT RECORD FOR DAY 1---

5
6 I, the undersigned Caroline Hiskell, Official
7 Court Reporter for the Thirteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate, and complete transcript of
10 record of all the proceedings had and evidence introduced
11 in the trial of the captioned case, relative to appeal, in
12 the Circuit Court of Greenville County, South Carolina on
13 the 23rd day of June, 2011.

14 I do further certified that I am neither of
15 kin, counsel, nor interest to any party hereto.

16
17
18 February 28, 2012

19 

20 Caroline Hiskell
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25

State versus Parker

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-DR-23-4963
4)
5)
6 State of South Carolina) TRANSCRIPT OF RECORD
7 vs)
8)
9 Orlando Parker)
10 -----)

Day 2 - June 24, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD MILLER, Judge

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

RYAN HOLLOWAY, Esquire
Assistant Solicitor
Attorney for the State

CHASE HARBIN, Esquire
Attorney for Defendant

RICHARD WARDER, Esquire
Attorney for Defendant Parker

Caroline Hiskell
Circuit Court Reporter

State versus Parker

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I N D E X

(There was no exhibits or witnesses presented.)

State versus Parker

P R O C E E D I N G S

THE BAILIFF: Al rise, the Honorable Edward Miller presiding.

THE COURT: Thank you. Please be seated.

Ms. Alexander, I have been told that the people that you left your medication with did not deliver it to the jail. We can not locate them. Are you okay?

DEFENDANT ALEXANDER: Yes, sir.

THE COURT: Anything else before we start?

MR. HOLLOWAY: The State is ready.

MR. HARBIN: Is this the appropriate time to discuss charges?

THE COURT: Yeah.

MR. HARBIN: I know you had mentioned the possibility of charging hand of ---

THE COURT: I'm not going to charge that.

MR. HARBIN: Then I'm done. Are you going to charge mere presence?

THE COURT: Yeah, that's part of the constructive possession.

State versus Parker

1 Mr. Alexander, if you have a physical issue,
2 would you please notify your counsel and he'll let me know
3 and we'll resolve it.

4 MR. HARBIN: If there is a time and they
5 appear, could she take her medicine here? I don't know if
6 that's appropriate or not.

7 THE COURT: Yeah! Okay. Let's get started.
8 Hold them. Here they are.

9 (Jury re-enters the courtroom).

10 All right, ladies and gentlemen, welcome
11 back. Again I thank you for your patience. I'm not
12 always the best judge of time and logistics, so if you're
13 upset a little bit, please be upset with me and we are as
14 I told you yesterday have completed the first two parts of
15 the trial and we are just about to embark on the third
16 part. And as I told you yesterday, I guess, the third
17 part will be the closing arguments of the attorneys.

18 So y'all have done everything I've asked you
19 to do throughout the course of the trial and paid close
20 attention and I ask you to continue to do that through the
21 closing arguments of these fine attorneys. Thank you very
22 much.

23 Mr. Harbin.

24 MR. HARBIN: Thank you, Judge, if it please
25 the Court.

State versus Parker

1 Ladies and gentlemen, I appreciate the
2 attention y'all paid. Sometimes it's a little tedious and
3 a little bit boring than you'd like. Sometimes the same
4 questions and officers answering the same question and you
5 might think he's already told me that. That's just the
6 process of our doing our job and the police officers doing
7 theirs.

8 It does take some doing to actually keep your
9 eyes open and keep your focus on somebody and we
10 appreciate that.

11 As you recall in my opening statements I
12 asked you to try and keep in mind not only what is being
13 told to you but is not being told to you. I am not
14 insinuated that anyone is keeping anything from you but
15 simply that some evidences does not exist. That's the
16 important because the State, in this case, has the burden
17 of proof. We don't have to prove things that do or don't
18 exist, the State simply has to present evidence to you and
19 at the end of this they have to present enough evidence
20 for you to effect beyond a reasonable doubt and any doubt
21 you have reason to assign to.

22 Let's talk about what evidence was offered
23 and that came be summed up on the opening. I know some
24 were longer than others, but this couple is driving down
25 the road, they get stopped for a traffic violation. The

State versus Parker

1 officer finds marijuana. They eventually find marijuana
2 on my client. She admits it. She hands it over. She is
3 charged with simple possession of marijuana and pleads
4 guilty to it. It's a small simple possession of marijuana
5 charge.

6 Subsequent to that, they use what's called
7 probable cause. Not terribly important how they got there
8 one way or the other but they did. They are allowed to
9 search the car and they found hidden in the speaker box in
10 the very back of the Jeep Cherokee a large amount of
11 cocaine. It's a big chunk of drugs hidden in a
12 compartment. That is essentially the State's case.

13 If you think about it and as it boils down,
14 that's the State's case because there's no statements.
15 There nobody that said Mr. Parker knows about it or I know
16 that Ms. Alexander knows about it. There's no outside
17 evidence that indicates anything other than the drugs were
18 there. So the State is hoping that you say it's his car
19 so it's got to be his so that's essentially all the
20 evidence they have right now. Of course, that's all the
21 evidence they have against Ms. Alexander.

22 Let's talk about what's not there
23 specifically; fingerprints. We talked a little bit about
24 fingerprints but we never heard anything about
25 fingerprints. Fingerprints are great unless they are not

State versus Parker

1 fingerprints in which case we got no evidence. What did
2 they fingerprint? I think they said they fingerprinted
3 this. And by the way if I forget something, y'all use
4 your memory and not mine. My recollection is they tried
5 the fingerprints from stuff that was found inside the
6 speaker box and was unsuccessful.

7 But I wonder why they didn't test the actual
8 speaker box. If you're putting something in there, you'll
9 liable to touch some. They could just try and see what
10 happens. Inside the speaker box you may forget to wipe
11 the fingerprints off of it. The car, you probably touched
12 some parts of the car. They never said they even tried to
13 do that.

14 This is a serious deal here. Somebody is
15 being accused of trafficking a huge amount of drugs but it
16 seems like they only did a very minimal amount of
17 investigation and then they're asking you to convict based
18 on just it's their car so it must be theirs.

19 Pictures, they took a couple of pictures and
20 you'll get to see them. They took a picture of the Jeep
21 Cherokee and it's probably about as helpful as a picture
22 of any random Jeep Cherokee. And they show you the
23 speaker box that's dismantled, but it does really tell you
24 anything about all the stuff they talked about, the
25 screws, and this and that and the other. Why not take a

State versus Parker

1 picture of the screws they found in the floor board if
2 that's what they did. It just seems to make sense.

3 Pictures of the book bag. We don't need a
4 picture of the book bag because we got the book bag.
5 Police made a big deal about Ms. Alexander only taking a
6 book bag on a weekend trip. I asked Ms. Alexander exactly
7 that question. She said, I can pack everything I need in
8 my book bag. You saw it yesterday and it was packed full
9 of her stuff. It's not packed now, but you can imagine
10 yourself how much can fit in there, a couple of shorts,
11 couple pairs of underwear, and whatever else you need, and
12 that's your weekend trip. They're not wanting to go to a
13 ballroom, just a couple of tank tops and shorts. That's
14 all you need.

15 The implication I think was they were lying
16 about what they were doing in Atlanta so they didn't have
17 the clothes. But, you know what, you know what's missing,
18 the inventory from the car. We heard the solicitor ask
19 the police I believe, and I think it was Officer Blair,
20 about inventory protocol, right. It was kind of boring
21 but after you get through the boring part why not get to
22 some of the meat. What was the inventory? What was in
23 the jeep. I think we heard something about dirty clothes
24 that Ms. Alexander referenced, dirty clothes in the
25 picture of the car. It was a bag of dirty clothes, I

State versus Parker

1 guess, but nobody told us what it was. If they're going
2 to imply that they're lying about a trip and the evidence
3 of the lie was the lack of clothes, why not tell us what's
4 in the jeep. That would answer that question pretty
5 easily.

6 The story that was given by Mr. Parker and
7 Ms. Alexander is that he's visiting his son. Why not find
8 out if his son actually exists in Atlanta? The burden is
9 on the State here. We have two folks saying they were
10 going to visit his son. Y'all have nothing but to believe
11 that because the State offered nothing.

12 They said they stayed in a hotel. Check and
13 see if they stayed in a hotel, right? It's pretty easy.
14 Hotels have to document stuff. There's a ledger in every
15 hotel. You could find it out very easily. Ask a
16 question.

17 What questions did we hear them ask? Did
18 they ever refuse to cooperate at any point ever? Ask a
19 question. Where did you get the speaker box, Mr. Parker?
20 Ask a question. The only people that asked questions,
21 this is very interesting, the only people that asked
22 questions are people that aren't here, the DEA, the
23 federal government asked a whole bunch of questions. And
24 then what did they do? They didn't take the case. The
25 only people that bothered to investigate decided they

State versus Parker

1 didn't want the case. It would have been interesting to
2 know, do you think.

3 Now, you got to remember this is the State's
4 burden. I'm just pointing out what they didn't do.
5 That's my job.

6 I believe it was Officer Blair that was
7 fairly detailed in the description of how he approached
8 the car and spoke to Ms. Alexander and spoke to Mr. Parker
9 and eventually it got around to -- again, this is my
10 recollection and you can use your own recollection -- he
11 seemed to imply that because Ms. Alexander had a small
12 amount of marijuana that he was immediately suspicious
13 that he would find a large amount of drugs in the car, and
14 I thought that was a gross over simplification and just an
15 overstatement. I means if you smoke a cigarette, are you
16 going to smoke crack? That's very big logical leap there.
17 If you smoke marijuana, are you going to smoke crack.

18 Simple possession of marijuana is a
19 misdemeanor thing and then you have trafficking cocaine
20 and you're supposed to believe that that's somehow
21 related. I find it important that Ms. Alexander when
22 asked if she had the marijuana, she did what, perhaps, a
23 lot of people do deny. And then somebody says we know you
24 got the marijuana and then she gave it up. And then she
25 pled guilty to it. She didn't fight it, she pled guilty.

State versus Parker

1 And she admitted she smoked marijuana. She didn't say I
2 was holding it for someone else, she said I smoke
3 marijuana.

4 The logical connection is not that because
5 you smoke marijuana that you carry cocaine. I don't think
6 that's an appropriate assumption to make.

7 I've touched upon the fact that they didn't
8 try to figure out if the police know or the it's the
9 indication that these folks didn't know it was in the
10 speaker box. What's the next logical thing to do if
11 you're an investigator? Figure out where the speaker box
12 came from because if you figure out the speaker box came
13 from HH Gregg, Mr. Parker purchased it, then maybe you've
14 started to narrow the search a little bit. He had access
15 to the speaker box.

16 Mr. Warder, I believe, asked his client who
17 had access to the car, who drove the car. This is a
18 pretty good question to know. It's not Mr. Warder's
19 burden to carry but that would have been a great question
20 for an investigator to ask. The State narrowed the
21 questions to ask because their theory is it's his car,
22 it's his drugs. Under that theory, you've got to kind of
23 narrow it down to who else did or did not have access to
24 that vehicle.

25 Simple things were not done that could help

State versus Parker

1 you in your decision.

2 The DEA did not take the case on and I find
3 that curious. You can draw your own conclusions from that
4 but I find it particularly curious that not only did they
5 not take the case and the State did not offer anyone to
6 interview them for you to hear. Maybe something
7 interesting happened in that interview, I have no idea,
8 but there was no documents, no recording, no statements,
9 no witnesses of any kind from that meeting.

10 Officer Blair had a particular quote and I
11 wrote it down, "with drugs comes guns." It's a very
12 simple, very blunt statement, "with drugs comes guns."
13 And then I asked him, if you remember, did you find you
14 any guns in the car and he said, no. If you follow that
15 logical, well what are you saying. I think the statement
16 that I made is with a large of amount of drugs like this,
17 these kinds of folks carry guns. These kinds of folks
18 that carry cocaine, carry guns. What is the logical
19 conclusion of that? If you don't have a gun, then maybe
20 you're not the person who's carrying this cocaine. This
21 lends a little credence to what our clients are saying.

22 I also find it curious that the implication
23 of the State's case is that someone, presumably Mr. Parker
24 and/or Ms. Alexander has carefully hidden this cocaine in
25 a speaker box, put the screws back and did a pretty good

State versus Parker

1 job of hiding it, right? So they're smart enough to do
2 all of this and concerned enough with concealing this
3 cocaine but then they get in the car and smoke pot. And
4 every know -- well, maybe not everybody knows -- but it
5 has a very strong smell. It doesn't go away soon. The
6 police officer could smell it from a mile away.

7 Why would you smoke pot probable cause?

8 That's would gave him probable cause. Absent that pot,
9 they would have gotten a ticket for speeding and moved on.
10 So if these people are so smart and so industrious as to
11 buy this drugs and hide them and then go and smoke pot in
12 the car and give the officers every reason they need to go
13 search and find this. It doesn't make any sense. Even if
14 they're smart or not, are they smart enough to hide this,
15 then they're smart enough not to smoke pot, right.

16 The one thing I didn't mention is that my --
17 my guess, and this is my guess and you'll get to talk
18 about this when you go back to the jury room -- my guess
19 is the State is going to expect you to think that
20 Mr. Parker if one of them is guilty, Mr. Parker is guilty
21 and by association she's guilty, right. That may be their
22 case. I represent Ms. Alexander. I don't represent
23 Mr. Parker and I would say that in my client's defense
24 that if one of them is guilty, it's not going to be
25 Ms. Alexander because she's the one that didn't have

State versus Parker

1 control of the car. It wasn't her car, it wasn't in her
2 family's name, she didn't drive, and she was left by
3 herself for a whole day. Not suggesting that the State
4 has evidence to convict Mr. Parker, they certainly don't.

5 At the end of the day I think that the State
6 doesn't have anything accept that they found drugs in the
7 car. That's it. That's all they have. I don't think
8 under our system of justice, that's enough.

9 The document that you'll take back with into
10 the jury room is called an indictment. It's just a paper
11 that has the charges on it and it will give you the exact
12 language of what you have to figure out if either one of
13 these folks are guilty. You have to ask yourself did
14 Ms. Alexander knowingly sell or manufacture or deliver or
15 bring into the State of South Carolina these drugs? Did
16 she provide financial assistance or otherwise aid, abet,
17 attempt or conspire to sell, manufacture, deliver or bring
18 into the State?

19 What did they offer of any sort that
20 Ms. Alexander satisfies this indictment? This is very
21 specific language and I don't think that anything that
22 came from the stand has offered anything to satisfy this.

23 Finally, because I don't want to go too long,
24 I want to discuss the burden of proof and the judge will
25 tell you specifically and you listen to the judge if

State versus Parker

1 anything I say doesn't match up with his, our system of
2 justice, not just criminal, has several different burdens
3 of proof and you can imagine one is more stronger than the
4 other. You start off with reasonable suspicion which is
5 what the officers would have to have before the other.

6 Once you want to search something, you have
7 to have probable cause and that's a little bit higher than
8 reasonable suspicion. The next level of evidence in our
9 system is called preponderance of the evidence, which just
10 means that you're more certain or not. And the next level
11 would be clear and convincing. You're clearly convinced
12 of something and then after that, higher than that, which
13 is what we're doing today, is beyond all reasonable doubt.
14 So I would ask you when you go into the jury room to take
15 a look at this indictment when discussing this case.

16 When you go over this case ask yourself, did
17 they offer any proof that Ms. Alexander did any of this,
18 and if there is any proof of this, and I'm not sure there
19 is, you say well, is it possible? Sure it's possible
20 because there were actually drugs in the car. Is it
21 probable? I'm not sure. And when I say probable, was it
22 probable for Ms. Alexander? I'm not sure at probable and
23 convict on probable cause, I'm not so sure you have that.
24 Are you more certain than you're not? I'm not sure you
25 can be in this particular circumstance if you're being

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1 honest with the facts and the evidence that's been
2 presented to y'all.

3 Are you clearly convinced that Ms. Alexander
4 did any of this? I think the honest answer would be no.
5 And then after that beyond a reasonable doubt? Clearly
6 not.

7 The bottom line is that y'all haven't been
8 given enough evidence. I understand that this is a lot of
9 drugs and that the natural reaction of a good citizen is
10 to want to do something about the drugs that were found in
11 the car, but we don't put people in jail and we don't
12 convict them for things that we think might have happened.
13 We have to be darn sure and we don't have any doubt in our
14 mind. I don't think the State has made its case.

15 I don't want you to go back into the jury
16 room and think that you have to find them guilty or else
17 you're saying the police officers didn't do their job or
18 that you have to acquit because they didn't. It doesn't
19 work that way. The police officers are simply doing their
20 job and sometimes there isn't enough evidence, but our
21 society says that our citizens get the benefit of our
22 judicial system. So you're not commenting of a police
23 officer or the motives or the ill-will of a prosecutor or
24 a police officer if you choose to acquit, which I think is
25 the correct verdict in this case.

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1 I appreciate your attention. Thank you very
2 much.

3 THE COURT: Mr. Warder.

4 MR. WARDER: Thank you, Your Honor.

5 I got the position of being sandwiched
6 between two other lawyers but I'll make a deal with you.
7 If you'll listen to me, I'll try and be brief. This is a
8 case that what you're supposed to decide is who, if
9 anyone, possessed these drugs. I'll start off by saying
10 that it could easily be that no one in this courtroom
11 possessed them.

12 You're asked to decide if the State has
13 proven beyond a reasonable doubt that one of the people
14 charged possessed these drugs. It is well defined that
15 the State has not proven anybody possessed them beyond a
16 reasonable doubt. You are asked to find that without any
17 testimony as to when the drugs were placed in the car and
18 that's important because did they start off in
19 Philadelphia? Was the car being driven back and the car
20 stopped? Were they placed in there in a week, a month,
21 ten days ago?

22 There is no testimony when or where the car
23 was or how long the drugs had been there. And the State
24 has not offered any testimony to prove any of that, but
25 they're asking you to decide that question. The answer

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1 would be different if it had been a month as opposed to
2 two hours. If it had been placed in Philadelphia, your
3 answer would be different than if it had been placed there
4 in Atlanta or some place in between.

5 It could have been in storage waiting to be
6 used by somebody in Philadelphia or waiting to be used by
7 somebody that was going to Philadelphia or going to
8 Atlanta.

9 Possession requires more than just having a
10 car. By way of analogy and illustration I'll tell you a
11 short story that we can extrapolate the principles and
12 apply it to this case. Supposed with me that there was a
13 couple vacationing, a grand mother and a mother
14 vacationing in Georgia or one of there wonderful islands.
15 And after a week down there, they were returning to South
16 Carolina with three other children. They had been down
17 there on vacation.

18 And they come up the highway, 85, and parked
19 under one of those underpasses there was a South Carolina
20 patrol officer who happened to have with him a Georgia
21 Wildlife officer. And they noticed that that difference
22 between the space of the cars was four car lengths as
23 opposed to ten car lengths and so they pull the car over.
24 The officer approaches it and he says do you have any
25 money or guns or illegal wildlife that you're transporting

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1 in the car and The driver says no. They go over and they
2 go over and ask the passenger and the passenger says, no.

3 And then the wildlife officer notices that
4 the family's laundry bag is knotted in a bunch of knots.
5 There's a square knot and a granny knot and a bow tied in
6 it and he thinks that's suspicious. So he goes to search
7 the laundry bag. And as he starts going through it, he
8 finds a pop tart box.

9 In the pop tart box is a wonderful green
10 frog. And they charge grand mom with transporting
11 wildlife. Do you really think that case made any sense?
12 We can conclude that grand mom probably didn't put the
13 frog in there. What if they testified that grand mom
14 screamed when they pulled the frog out and the mother
15 turns white? Would that indicate that they knew the frog
16 there.

17 In that case an illegal transportation of
18 wildlife indicates how silly it is to blame the driver for
19 everything is in the car and Your Honor will charge you
20 that possession is not being in a car, being the driver of
21 a car. Possession is the ability to exercise dominion and
22 control over something and you can only exercise dominion
23 and control over things you know are there.

24 In other words, if placed under a vehicle is
25 a magnetic box that contains a gun and you drive that car

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1 and you drive that car on vacation and you never know that
2 box is there, you don't possess the gun. And the same if
3 the box was put under a bag or the same is concealed in
4 the radio. Unless you know it's there, you can't possess
5 it and you can't exercise dominion and control over it and
6 that's what this case is about.

7 Now, the question becomes why would anybody
8 place it in a car that my client was driving? How could
9 happen, why would that happen? Well, obviously nobody
10 knows all the reasons, but someone could have put it in
11 there just to store it. That could have been a storage
12 department from somebody in Philadelphia. They didn't
13 just lay it on the seat of the car, they put in there. It
14 didn't have anything to do with my client. He just took
15 the car and borrowed it to go on a trip.

16 Another reason somebody could have put in
17 there is to transport it. They knew someone was going one
18 way or another and they needed to get someone to transport
19 it, someone who didn't know the drugs were there. It
20 could be a mistake, put in the wrong car. They could have
21 put the speaker box in the wrong car or they could be more
22 sinister. It could be put in there and the police were
23 notified to set somebody up.

24 Now, as crazy as it sounds I think that's
25 what the evidence might show. In this case, it strikes me

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1 as very strange that there's a Georgia officer here on a
2 car that came from Georgia sitting with a city policeman
3 out on the interstate with no real explanation. It's kind
4 of this supervisor told me to get in the car and go and
5 that's what I did.

6 I submit to you that there are an awful lot
7 of times that people get in trouble with the law and they
8 get out of trouble by making a case by setting someone up.
9 And it's standard and common for the police to say, well,
10 your charges can go away if you get us somebody else or
11 some one else bad. And sometimes those people tell on
12 somebody bad and sometimes they arrange for an innocent
13 person to look bad.

14 Now, I feel like that's what happened in this
15 case. Not only do I have the unexplained strange Georgia
16 officer working with a city policeman patrolling a stretch
17 of highway usually done by the highway patrol, it appears
18 to me that they went out there for a drug case. Because
19 in the car they had Nero, the drug dog, out there and it
20 said drug dog on the thing and almost instantly they had
21 the other officer out there. It looks to me like they
22 were looking for a car to stop.

23 And I think they were looking for a
24 particular car. The testimony of one of the officers said
25 they got behind it. Remember my client's testimony that

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1 they drove up beside it and looked at him, slowed up and
2 dropped back, got in behind him and turned on the lights.
3 Sounds to me what they looked to make sure there was
4 someone matching the description of someone, a black man.
5 They gave a description of the black car and they were
6 checking that out before they got in behind them. Now,
7 that's a disputed fact because they deny it.

8 Now, when my client got out of the car, the
9 testimony of both the defendants were they immediately
10 handcuffed him. I submit they immediately handcuffed him
11 because they knew or had been told that the drugs were
12 there. They deny it, but the conduct speaks different.

13 They go to search for the drugs and they have
14 this trained drug dog that can locate and find drugs and
15 you would think they would put the dog to locate the
16 drugs, they didn't do that. They have this drug detective
17 out there and they don't use it and the only explanation
18 is they knew where they were going to look. Somebody had
19 told them and I submit to you that that someone planted
20 those drugs to get somebody out of trouble or for one of
21 the more sinister reasons.

22 It makes no sense of how a drug search would
23 be conducted if you had the dog sitting there. In fact,
24 under their version, they had already found the marijuana
25 and wanted to know where a big quantity of marijuana would

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1 be. Wouldn't a dog have been the answer? He don't even
2 sniff. They don't use him and there's no explanation that
3 I can think of for that.

4 Remember Detective Armstrong took off the
5 wrapper and there was no fingerprints and no one ever
6 mentions it again. I submit to you that the only
7 fingerprint that they found on it must not have supported
8 this case that their making and we never hear about it.
9 No one says there wasn't none or anything.

10 Now, I submit to you that these officers know
11 that knowledge is the most important thing and so to make
12 knowledge when it doesn't exist, they describe my client
13 as profusely sweating on that March day to the point that
14 the water was ringing out. Instead taking pictures of the
15 car, why didn't they take pictures of that. They have
16 time for a trophy shot if that existed. I submit to you
17 that profuse sweating is not the reaction of someone
18 standing on the side of the highway afraid they would be
19 accused of committing a crime.

20 But I'm afraid it gets worse, they tell you
21 that the other co-defendant who was with him had the dry
22 heaves? Have you ever seen anybody have the dry heaves
23 out of fear. Now, in all your experience have you ever?
24 I'm far older than you and I don't believe I've ever seen
25 it. That's how they're trying to fill the gab because

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1 there is no indication that these people knew. There's
2 absolutely none.

3 This case has been debated and evaluated and
4 they wanted to give it to the feds and when they did, they
5 said no. And they seen the same thing that we just talked
6 about and I submit to you that's the reason the feds
7 didn't touch it, wouldn't touch it.

8 Now, I want to talk to you just briefly about
9 the law. Of course His Honor has told you in his opening
10 statement about the presumption of innocence and the
11 presumption of innocence gives rise to the State's burden
12 of proof. The Constitution mentions the presumption of
13 innocence and from that comes the burden of proving guilty
14 beyond all reasonable doubt.

15 Now, reasonable doubt is a great deal of what
16 it says. It's a doubt that would make you hesitate to
17 act, and juror seeking the honest to truth would hesitate
18 to act. That's a nice definition of reasonable doubt.
19 Certainly it doesn't include every possible doubt. It
20 doesn't tell you not to be doubt about everything. There
21 are some people that still doubt the world is round. They
22 still think it's flat and they do today. There are people
23 who argue that the Twin Towers weren't brought down by a
24 plane at all, there was some conspiracy.

25 So there is doubt but reasonable doubt is

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1 doubt that has a real reason. In this case evidence must
2 be so powerful that it remains no reasonable doubt. And
3 reasonable doubt we usually don't talk about and the
4 english system they talk about proven and unproven cases
5 and guilty being a proven case and innocent being a
6 non proven case. This is not a proven case, a case the
7 State has failed to prove beyond a reasonable doubt that
8 my client had knowledge or ever possessed it or even
9 knowing it was there.

10 They provided no testimony on the only things
11 that would give you more insight, outside of somebody who
12 saw when it was put in there, when it was put in, how long
13 it had been in there and where it had been.

14 I have a chart that shows where we're going
15 with reasonable doubt. You've been told it take
16 articulate suspicion for a police officer to stop a car or
17 get a warrant. It takes probable cause to get a warrant
18 to search or a warrant to arrest. It takes a
19 preponderance of the evidence to sue you and take your
20 money. It takes clear and convincing evidence to get
21 punitive damages, and it takes proof beyond a reasonable
22 doubt to convict somebody of a crime.

23 And that's not that there is some doubt
24 whether you think maybe they did it or perhaps they did it
25 or you suspect they did it or they're possible, probably

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1 or likely guilty, it has to be proven beyond a reasonable
2 doubt and that's the most power proof beyond anything.
3 And that's what the State must do to prove knowledge. The
4 must prove each and every element beyond a reasonable
5 doubt. And they have no testimony, no reason for you to
6 believe that these people knew it was there and no reason
7 that these people placed it there.

8 I submit to you that in this case, the fair,
9 the proper and the just verdict is the verdict is not
10 guilty because the State failed to prove guilty beyond a
11 reasonable doubt. No defendant is ever required to prove
12 his innocence and sometimes it is impossible because if he
13 never knew that was there, he could never prove that. But
14 the burden is on the defendant, it's on the State.

15 It's not like grand mom whose grandson had
16 put a frog in the bag, the State has to prove that he knew
17 the cocaine was there and they have not done that.

18 Thank you, very much.

19 MR. HOLLOWAY: Thank you, Your Honor. When
20 you're caught red-handed, when you're driving along and a
21 lot of cocaine is found, the police are there, the blue
22 lights are going, what excuses do you have? What do you
23 have at your disposal to say, hey, I'm innocent? What
24 they've shown you are conspiracy theories and sinister
25 plots. Other people planted the cocaine in my car, the

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1 police planted it, the whole nine yards. It is just a
2 symptom of their desperation to get out of trouble.

3 From the very beginning of this stop, these
4 two defendant showed that they were completely
5 untrustworthy. Even yesterday when they were on the
6 stand, their explanations and their stories conflicted,
7 they confused each other and they showed they are
8 untrustworthy to believe. They can't be trusted, they
9 can't be believed.

10 The role of the jury in any trial is to see
11 two viewpoints and essentially the defense has their joint
12 viewpoint and the State has our viewpoint and so
13 throughout the trial you've heard the evidence. You've
14 heard evidence from both trials, actually, and so the role
15 of the jury is who is telling the truth. Who is
16 trustworthy. You have, of course, police officers and
17 then you have these two defendants and their stories.
18 Their stories just don't make sense.

19 First of all, no one on this plant is going
20 to leave two thousand grams of cocaine in a car and forget
21 about it and store it. This represents a lot of drugs and
22 nobody who has that and has purchased it is going to trust
23 anybody else to store it. It's illegal, obviously, in
24 every state in the country. Nobody is going to store it
25 and just leave it there. That makes no sense whatsoever.

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1 So when it was put in there is when they put it in there.
2 Whether it's Pittsburgh or Atlanta -- we suspect probably
3 Atlanta. They live in Pittsburgh and they went down to
4 Atlanta on a business trip for lack of a better way to
5 describe it.

6 Sure he might have visited with his son to
7 make a real vacation out of this whole trip, but
8 Ms. Alexander say this on the stand and correct me if I'm
9 wrong but they packed all of their belongings they would
10 need on the trip in this bag right here along with this
11 plastic bag with dirty clothes in it. That's all for a
12 three-day trip. That is it.

13 She says she alone put all of her toiletries,
14 her clothes, for this three-day trip, maybe four, in this
15 backpack. That makes no sense, absolutely no sense
16 whatsoever. They violated the law.

17 She got on the stand -- I couldn't believe it
18 -- she got on the stand yesterday and said they were
19 smoking marijuana on the interstate. Not only are they
20 injecting cocaine into interstate commerce, they are also
21 smoking marijuana in a vehicle on the interstate with
22 other drivers. Along with seeing an accident on the
23 roadway, they are also injecting danger there for
24 themselves and others for another accident by getting
25 themselves high. That proves that they are untrustworthy.

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1 He lied. Mr. Parker -- essentially it turns
2 a traffic stop into what this is today, a trial. He lied
3 to the officer. The officer asked him if there are any
4 other drugs in the car. You're caught and your first
5 reaction is, especially if you've been smoking marijuana,
6 is lie and that's what he did. He lied. When he saw the
7 police weren't going to go away and write him a ticket, he
8 said she's got marijuana and that's all we've got.
9 Seriously, that's all we've got and that's what he was
10 saying.

11 It's sort of like I'm -- if I'm caught it's
12 better to be caught to marijuana than this amount of
13 cocaine so maybe I can squeeze out of this with just a
14 ticket and an arrest warrant for marijuana hoping that
15 will end it, hoping thinking the jeep is going to be towed
16 away and no one will find or think to look inside the
17 speaker box.

18 By the way, he said he purchased that speaker
19 box from a man on the street and who is dead now he said
20 yesterday. But a year-and-a-half from the time of his
21 arrest to last summer to that man died he asked him maybe
22 once what about this cocaine, and the guy said that's
23 silly. None of that makes sense. Where he bought the
24 speaker box on the street, assuming that person has the
25 intelligence of a pen, then maybe that person left two

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1 thousand grams of cocaine in a speaker box. That doesn't
2 make sense. That is a lot of cocaine and not even a man
3 on the street that's selling a speaker box to a random guy
4 on the street is going to leave that amount of cocaine in
5 there.

6 Unless he sold him the cocaine and he was
7 transporting it down there, sold some, and then brought it
8 back, we don't know. The point is that they both knew
9 what they were doing when they got in that car. They were
10 both transporting this cocaine on interstate travel and
11 that is the very definition of trafficking in substance.
12 Spreading it, transporting it, selling it, manufacturing
13 it, this is what trafficking really is.

14 We're not saying that he's Tony Montana or
15 Michael Corleone. What we're saying is he took cocaine an
16 he put it into interstate travel and now he's trying to
17 get out of it by posing to you, a reasonable jury, these
18 conspiracy theories, these sinister plots, to hide the
19 simple fact that they were transporting this cocaine back
20 to where they were coming from.

21 If they had some going down to Atlanta, maybe
22 they sold some and were bringing it back, who knows. The
23 fact is they had two thousand grams of cocaine in the car.
24 And they're explanations can not be trusted at all. It's
25 not reasonable.

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1 Reasonable doubt is the State's burden but
2 that is not the end of the story. It's not oh, beyond a
3 reasonable doubt, oh, not enough. We can bring out 12
4 charts, it still doesn't hide the fact that they were
5 transporting cocaine from Atlanta back to Pittsburgh, not
6 at all.

7 They keep bringing up the DEA. Nobody knows
8 why the DEA didn't take the case. Maybe they thought the
9 officers did a fine job and there's no need for them to do
10 any further investigation. There's this theory out there
11 in this country right now about keeping the feds out and
12 now they want to turn it against the State. The fact is
13 the DEA didn't take the case, no explanation needed. They
14 may have put a seal of approval on their investigation.
15 When it's obvious who did what, why bring the feds in?
16 More desperation on their part to get out of trouble.

17 They brought up the fact why didn't they
18 bring the drug dog out? Well, you have two seasoned
19 officers, you smell marijuana, why need to bring a dog
20 out? They said, well, maybe they already knew where the
21 cocaine already was from some tipster. They don't have
22 the tipster there. They have subpoena power.

23 In this case, the officer smelled the
24 marijuana and the wooden screws and they followed the wood
25 screws and the multi tool back to the speaker box. It was

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1 like a yellow brick road for these officers and the screws
2 led to their contraband. And that's the simple
3 explanation in this case.

4 The judge will instruct you on the law as to
5 actual an constructive possession. I'll give you a simple
6 example. The pen I'm holding in my hand I'm in actual
7 possession obviously. If I put my pen back on the table
8 and go to the restroom, that's still my pen. No one else
9 has a right to take that pen. The car I have in the
10 garage, I'm still in constructive possession of my car.

11 Constructive possession can be proven with
12 surrounding circumstances and what are the circumstances?
13 Number one, it's in the car he's driving and that's
14 obvious, and number two, listen to their lies, listen to
15 their explanation that do not make sense. Both of them
16 are actively trying to get out of this trouble. Both of
17 them are in equal trouble here.

18 Their behavior on the scene, well, he wasn't
19 sweating profusely on the scene. Well, can he be trusted
20 when he says that. A seasoned officer says they were, but
21 you are the judges of the facts and you decide that.
22 Secondly, dry heave, when you're afraid or scared, people
23 react in different ways. Some people cry, some people get
24 mad, some people just act strangely, she began to dry
25 heave. She began to almost throw up because she knew the

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1 jig was up and they both did.

2 No conspiracy theory, no sinister plots can
3 get them out of it. They're both guilty of trafficking in
4 two thousand grams of cocaine. Thank you.

5 THE COURT: All right, ladies and gentlemen
6 of the jury, during this trial you and I have certain
7 duties to perform. As the trial Judge, it's my
8 responsibility to preside over the trial of the case and
9 rule on the admissibility of the evidence that's offered
10 during the trial.

11 It's also my duty to charge you the law
12 applicable to the case and it is your duty as jurors to
13 accept and apply the law as I have now state it to you.
14 If you think you have any ideas as to what the law is or
15 what the law should be and it's different from what I now
16 tell you, you have sworn an oath to set aside your own
17 opinion and apply the law precisely as I state it.

18 I would also again remind you that in every
19 case tried in this court before the jury, the jury is the
20 sole and exclusive judge of the facts. The trial judge
21 can not comment on or make any statement about the facts
22 of the case, so please don't think by anything I may have
23 said or done throughout the course of the trial that I
24 have an opinion. You all are the sole judges of the
25 facts.

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1 I again instruct you that the fact that the
2 defendants were arrested, charged and indicted in the
3 case, is not evidence of guilt nor does it create any
4 assumptions or inference of guilt. These documents are
5 simply the formal written instruments which contain the
6 charge made against any defendant and they serve as the
7 formal documents by which the case, every case is
8 processed and brought into court.

9 Now, necessarily as judges of the facts, you
10 must determine the credibility or believability of the
11 witnesses who have testified, and it becomes your duty as
12 jurors to evaluate the evidence and determine which
13 evidence convinces you it is true. And in determining the
14 believability of the witnesses, you may believe one over
15 several or several over one.

16 You may believe a part of the testimony of
17 the witness and reject the remaining part. You may
18 believe the testimony of a witness in its entirety or
19 reject that same testimony in its entirety. You can
20 consider whether a witness has an interest in the result
21 of the trial, whether the witness was prejudiced towards
22 either the State or the defense, the opportunity for a
23 witness to have seen the matters and things about which
24 the witness has testified and the way that a witness acts
25 on a witness stand and what we call a witnesses demeanor.

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1 Ladies and gentlemen, there are two separate
2 indictments in this case and although they allege the same
3 offense arising out of the same incident, you must judge
4 each indictment on its own merits and you must judge each
5 case and each defendant on its own merits.

6 I would also tell you that the defendants
7 have pled not guilty to these indictments and that plea
8 puts the burden on the State to prove the defendants
9 guilty. A person charged with a criminal offense in South
10 Carolina is never required to prove themselves innocent
11 and I charge you that it is a cardinal and an important
12 rule of the law that a defendant will always be presumed
13 innocent for a crime for which an indictment is issued
14 unless guilt has been proven by evidence satisfying of
15 guilty beyond a reasonable doubt.

16 Now, a reasonable doubt is the kind of doubt
17 which would cause a reasonable person to hesitate to act.
18 Reasonable doubt may arise from the evidence which is in a
19 case or from the lack or absence of evidence in a case and
20 you the jury must determine whether or not reasonable
21 doubt exists as to the guilty of each of these defendants.

22 The State has the burden of each and every
23 element of a crime beyond a reasonable doubt and any
24 reasonable doubt that you may have in your deliberations
25 should be resolved in favor of the defendants.

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1 Now, there are two types of evidence that's
2 generally presented during a trial, direct and
3 circumstantial evidence. Direct evidence is the testimony
4 of a person who claims to have actual knowledge of a fact
5 such as an eyewitness. It is evidence which immediately
6 establishes the main fact sought to be proved.
7 Circumstantial evidence is proof of a chain of facts and
8 circumstances indicating the existence of a fact. It is
9 evidence which immediately establishes collateral facts
10 from which the main facts may be inferred.

11 Circumstantial evidence is based on
12 inference, not on personal knowledge or observation and
13 the law makes absolutely no distinction between the weight
14 and value to be given to either direct or circumstantial
15 evidence.

16 Now, ladies and gentlemen, each defendant is
17 charged with trafficking in cocaine greater than 400
18 grams. The State must prove as to each individual
19 defendant must prove beyond a reasonable doubt that the
20 defendant knowingly sold, manufacture, cultivated,
21 delivered, purchased, brought into the State, provided
22 financial assistance or otherwise aided, abetted,
23 attempted, or conspired to sell, manufacture, cultivate,
24 deliver, purchase or bring into the State or was knowingly
25 in actual or constructive possession or knowingly

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1 attempted to become in actual or constructive possession
2 of the cocaine, and the State must also prove beyond a
3 reasonable doubt that the amount of cocaine was 400 grams
4 or more.

5 Now, to prove possession, the State must
6 prove beyond a reasonable doubt that the defendant had
7 both the power and the intent to control the disposition
8 or use of the cocaine, and possession may be either actual
9 or constructive.

10 Actual possession means that the cocaine was
11 in the actual physical custody of the defendant.

12 Constructive possession means that the defendant had
13 dominion and control or the right to exercise domain and
14 control over either the cocaine itself or the property on
15 which the cocaine was found.

16 Proof of constructive possession requires a
17 showing that the defendant had dominion and control over
18 either the drugs or the premises where the drugs were
19 found and a showing that the defendant had knowledge of
20 the presence of the drugs.

21 I would tell you that mere presence at the
22 scene where drugs are found is not enough to prove
23 possession nor is mere presence enough to prove knowledge
24 of the presence of the drug. Proof of actual knowledge of
25 the presence of the cocaine is strong evidence of the

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1 defendant's intent to control its disposition or use and a
2 defendant's knowledge and possession may be inferred when
3 a substance is found on the property under the defendant's
4 control.

5 However, this inference is simply an
6 evidentiary fact to be taken into consider by you along
7 with all the other evidence in the case and be given the
8 weight you decide it should have. I would also tell you
9 that two or more persons may have joint possession of a
10 drug.

11 Now, ladies and gentlemen, I have prepared
12 two verdict forms one for each defendant and as I've told
13 you before they must each be considered individually and
14 each case must stand on its own merits. There are two
15 possible verdicts that you may reach in each of these
16 cases as indicated on the verdict form and that is guilty
17 or not guilty. There is no significance whatsoever in the
18 order in which I state those, one has to go first.

19 I would tell you that all 12 of you must
20 agree on your verdict. It must be a unanimous verdict.
21 It can not be based on sympathy, passion, prejudice,
22 emotion or any other consideration that is not in evidence
23 in the case. You have no friends to reward and you have
24 no enemies to punish.

25 Madam fore lady, we're going to excuse you

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1 back to the jury room in just a second. I need to go over
2 my charge on the law with the attorneys to make sure I
3 didn't mistake something or omit something.

4 When the verdict forms come back to you along
5 with all the evidence in the case, you may begin your
6 deliberations. Until that time please withhold your
7 deliberations. I promise you it will not be long. So at
8 this time, ladies and gentlemen, I will excuse you to your
9 jury room.

10 The alternate I, I would ask to stay in the
11 courtroom.

12 Is there any exception or objection to the
13 charge?

14 MR. HOLLOWAY: None, Your Honor.

15 MR. WARDER: None.

16 MR. HARBIN: Nothing from Ms. Alexander.

17 THE COURT: Thank you.

18 Ms. Comfort, I hate this part. You sat
19 through the whole thing and paid just as close attention
20 and just as qualified as all the others but only 12 can
21 deliberate. I'm sorry you won't get that opportunity to
22 finish this race, so to speak.

23 You're finish for the week. Thank you for
24 your service. You're free to talk about it or you don't
25 have to talk about it with anybody. Anybody bothers you

State versus Parker

1 about it, you let us know and we can take care of that
2 because we don't want you to suffer any kind of
3 embarrassment or intimidation or harassment or anything
4 and I look forward to seeing you at Home Depot.

5 Make sure the evidence is all there and let
6 them get started.

7 (Whereupon, the jury began their
8 deliberations at p.m.)

9 Okay. We have some questions.

10 (Jury questions marked as Court Exhibits

11 "What are their occupations?"

12 Second: "What amount of drugs do the DEA get
13 involved."

14 Third: "How often does Mr. Parker visit his
15 son?"

16 Fourth question: "Where is the amp? Was it
17 functional?"

18 Fifth question: "Did Ms. Alexander have a
19 license?"

20 Sixth question: "What is the street value of
21 the drugs." Signed by the fore person.

22 I can not answer any of these questions. I
23 guess we'll bring them back in and I'll just address it or
24 I can just write on here and tell them that all the
25 evidence has been presented.

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1 I rather do that with less interruption to
2 them and just let them continue.

3 THE COURT: Anything from the State?

4 MR. HOLLOWAY: That's fine with the State.

5 MR. HARBIN: We agree with that.

6 (Jury questions marked as Court's Exhibit No.
7 2 for identification.)

8 THE COURT: Madam, fore lady, I understand
9 you have reached a verdict.

10 FOREPERSON: That's correct.

11 THE COURT: Why don't you hand it to the
12 bailiff for me.

13 Madam Clerk, please publish the verdict.

14 THE CLERK: Your Honor, in the case of
15 2011-GS-23-6587, the State versus Shantana Lynn Alexander,
16 as to the charge of trafficking cocaine greater than 400
17 grams, we the jury find the defendant not guilty.

18 In the case of 2010-GS-23-6279, the State
19 versus Orlando Parker as to the charge of trafficking
20 cocaine greater than 400 grams, we the jury find the
21 defendant guilty.

22 These are signed by our fore person, Sallisha
23 Dendy-Jones. If you agree these are the verdicts you
24 reached in your deliberation room, please raise your right
25 hand.

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1 (Jury collectively complies).

2 THE COURT: Anything further of the jury?

3 MR. HOLLOWAY: Nothing from the State.

4 MR. HARBIN: Nothing from Ms. Alexander.

5 MR. WARDER: No, sir.

6 THE COURT: Ladies and gentlemen of the jury,
7 thank you very much for your service. I hope I didn't
8 make a liar out of myself. I hope you all found this to
9 be a rewarding satisfying experience. I hope that this is
10 something you can look back on with pride because you
11 performed a vital civic function and you all have
12 participated in our justice system.

13 It's Thursday midday. We don't have anything
14 else to do for you so you're done for the week. Y'all can
15 talk about the case now if you want to. If you don't want
16 to, you don't have to. If somebody bothers you about the
17 case, just let the Clerk's Office know and we'll fix that
18 because we don't want y'all to suffer any embarrassment or
19 be bothered.

20 With that, you all have a very pleasant
21 weekend. Thank you again.

22 (Jury exits the courtroom).

23 Any motions?

24 MR. WARDER: Your Honor, I move for the new
25 trial based upon the objections made.

State versus Parker

1 THE COURT: I'll deny those motions and we'll
2 inform Mr. Parker that he's got 10 days to file a notice
3 of intent to appeal if he wishes to do so.

4 DEFENDANT PARKER: How do I do that? Through
5 my lawyer?

6 THE COURT: Yes. He'll explain it to you.
7 Y'all come on around. Got the sentencing
8 sheet?

9 MR. HOLLOWAY: Yes, sir.

10 THE COURT: Before we do that, is there any
11 reason why we should hold Ms. Alexander's backpack if
12 there is an appeal? Y'all think about it and just let me
13 know. We better just leave it in there. We don't want
14 there to be any question.

15 Mr. Holloway, is there any jail credit?

16 MR. HOLLOWAY: I believe he bonded out pretty
17 quickly.

18 MR. WARDER: Twenty-one days my client says,
19 Your Honor.

20 THE COURT: Mr. Holloway, do you have a prior
21 criminal history?

22 MR. HOLLOWAY: Yes, sir. This is all in
23 Pennsylvania; 1990 he has a flurry of about eight
24 different counts of violations of their drug act that's
25 described in NCIC and that's back in 1990. 1991,

State versus Parker

1 harassment, also he is convicted of violating their drug
2 act at that time as well. That's also 1993 as well, 1991
3 it looks like a DUS conviction; 1992, again, two counts of
4 violating their drug act in Pennsylvania; 1993, again
5 eight counts of violating their drug statute; 2000, three
6 counts of violating their drug statutes.

7 THE COURT: Is that accurate, Mr. Parker?

8 DEFENDANT PARKER: He didn't say any details,
9 but I have multiple drug convictions.

10 THE COURT: Is there anything else you want
11 to present?

12 MR. HOLLOWAY: No, sir, I think the trial
13 pretty much said it all.

14 THE COURT: Mr. Warder, what do you want to
15 tell me?

16 MR. WARDER: Your Honor, the statutory
17 minimum is 25 years and the maximum is 30 years and
18 certainly I would hope we could get a minimum sentence on
19 this. It's not much time between the two, but my client
20 is 41 years old and he'll be 66 by the time he'd be out on
21 a minimum sentence. Certainly that seems to me to be
22 plenty of punishment.

23 THE COURT: I don't know. This is a huge
24 amount of drugs. What do you want to tell me, Mr. Parker?

25 DEFENDANT PARKER: Just beg for mercy, I

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1 guess.

2 THE COURT: You had an opportunity to resolve
3 this. Two kilograms of cocaine is an awful lot of drugs.
4 What is the street value is on that?

5 MR. HOLLOWAY: I've heard between two hundred
6 thousand and maybe upwards of one million, I really don't
7 know. It depends on the purity of the cocaine and it
8 depends on how they cut it that's what I've been told.

9 THE COURT: What's the cost of that to buy a
10 kilogram of cocaine?

11 MR. HOLLOWAY: I don't know, Judge.

12 MR. WARDER: About ten, twelve thousand
13 dollars.

14 MR. HOLLOWAY: About thirty-two thousand
15 dollars that's being confirmed by several members of law
16 enforcement in the courtroom.

17 THE COURT: That's an awful lot of money.
18 This is a serious case and it's not a case that calls out
19 for the minimum. I'm going to give him 30 years. Good
20 luck.

21 MR. HOLLOWAY: Thank you, Your Honor.

22 ---END OF TRANSCRIPT RECORD---

23

24

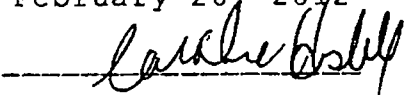
25

State versus Parker

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 23rd day of June, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 February 28, 2012

14 
15 Caroline Hiskell
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
Edward W. Miller, Circuit Court Judge

Case No.: 2009-GS-23-6279

State of South Carolina, ... Respondent,

v.

Orlando Parker, ... Appellant.

BRIEF OF APPELLANT

J. Falkner Wilkes, (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in refusing to suppress evidence resulting from the search of the Applicant's vehicle?
2. Did the trial court err in refusing to suppress statements made by the defendants?
3. Was the arrest of Alexander an unlawful arrest where the officer initially detaining her was a Georgia deputy acting without proper authority in South Carolina?
4. Was discovery of the marijuana on the Appellant's co-defendant inadmissible as fruit of the poisonous tree?
5. Does the search in this case constitute an unreasonable invasion of the Appellant's privacy under the South Carolina Constitution?

STATEMENT OF THE CASE

Orlando Parker was indicted by grand jury in Greenville County on April 13, 2010 for the offense of Trafficking in cocaine, 400 grams or more. Parker's co-defendant Shantana Lynn Alexander was also tried on the same charge. The trial proceeded before a jury in the Court of General Sessions for Greenville County on June 23rd and 24th of 2011, the Honorable Edward Miller, presiding.

Appellant was represented at trial by counsel, Richard H. Warder. Alexander was represented by Chase Harbin. The State was represented by Ryan Holloway, of the Office of the Solicitor for Greenville County. The Appellant was found guilty and sentenced to a period of a thirty years. Alexander was found not guilty. The Appellant is currently in the custody of the South Carolina Department of Corrections. Notice of appeal was timely filed. J. Falkner Wilkes has been substituted as counsel for the Appellant and represents on appeal before this Court.

STATEMENT OF FACTS

After the jury was sworn the Defense made motion to suppress evidence resulting from a warrantless search of Parker's vehicle following a traffic stop on Interstate 85 in Greenville County. R. 26. The court took testimony at the suppression hearing and subsequently denied the defense motion to suppress.

Officer Chi Blair testified that he was on patrol within Greenville City limits on Interstate 85, March 12, 2009. R. 27. Blair testified that Deputy Broce from Butts County Georgia was a passenger in the patrol car. R. 28. Blair testified that they were "doing a task force for criminal enforcement." R. 28, l. 11-13. Blair denied having knowledge of any kind of written jurisdictional contracts or agreements in relation to having Georgia deputies present. R. 28. Blair stated that all of the assignments were taken care of through administration. 28.

Blair testified that there was no in-car camera in his vehicle. R. 28. Blair also stated that the camera had not been installed "at that time". R. 1-2.

At 4:06 p.m. Blair was sitting on the side of the interstate watching traffic flowing northbound on I-85. R. 29. Blair testified that he observed a black jeep that was in the middle lane traveling in traffic at an "extreme high rate of speed." t. 29, l. 9. The black jeep was behind another vehicle "a little bit closer than I like, especially on 85." t. 29, l. 9-10. Blair pulled out on the interstate and "paced" the

black jeep at 68 to 70 m.p.h. for approximately a mile. R. 29, l. 14. Blair testified that although most people slow down when they see a patrol car, the black jeep did not slow down. R. 29. Blair turned on his "emergency equipment" to pull the jeep over. R. 29, l. 14-15. The jeep pulled over just past the I-85 and I-385 interchange at about mile marker 52. R. 29. The point where the black jeep was pulled over was outside of the Greenville City limits. R. 29.

Blair got out of his patrol car and approached the passenger side of the black jeep. R. 29. He noticed Ms. Alexander sitting in the passenger seat. R. 30. He immediately asked the driver, Orlando Parker, to step back to the back of the vehicle with his identification, the registration for the vehicle, and the insurance information. R. 30.

When questioned at trial why he had Parker step from the jeep Blair responded that he "liked to get people out of the car and get them to the back for their safety. R. 30. (His extended answer didn't seem to make much sense as to why getting someone out of the car was safer than leaving them sitting in their car. He did however say that "we're" in a safer position which could be referring to himself.)

Blair testified that when Parker met him at the back of the car Parker didn't have any of the things Blair had asked him to get. R. 31. When asked again Parker

informed Blair that he didn't have a license. R. 31. Blair claimed that when he first approached the car he noticed the smell of burnt marijuana. R. 31.

While Blair was questioning Parker at his patrol car Broce, the Georgia deputy, had approached the jeep and was watching Alexander, who was still in the passenger's seat of the jeep. R. 31. Blair said that he went through a whole "litany of questions" with Parker and was able to verify that Parker's license was suspended. R. 32.

When Blair brought Parker to the back of the car, Blair testified that Parker was not free to leave while being questioned at the front of the patrol car. 47. Parker testified that Blair placed handcuffs on him when he was initially ordered out of the car. Blair testified that they were placed on Parker later at the front of the patrol vehicle. R. 33, l. 11-12. After resolving the issues regarding the driving offenses, Blair continued questioning Parker about the presence of marijuana in the car. R. 47, l. 5-7. After repeatedly being questioned, Parker responded that his girlfriend, Alexander, had hidden the marijuana on her body. R. 32. At trial Blair admitted that Parker was never advised of his rights pursuant to Miranda.

Based solely on Parker's statement, Blair notified Deputy Broce that Alexander had the marijuana on her. R. 33. Broce then ordered Alexander out of the car and took her to the police car where he made her stand with Parker, who

was already in handcuffs. 33. Blair informed Alexander that Parker had told him that she had marijuana and that she was trying to hide it. R. 33. Blair told Alexander that she needed to just "go ahead and give it up to us." R. 33, l. 17-18. In response Alexander pulled out a small bag of marijuana from her pants and was told to place it on the hood of the patrol car. R. 34. Alexander was then placed in handcuffs. R. 34. A third officer took over custody of Parker and Alexander. R. 37.

Blair admitted that some defendants are simply given tickets for simple possession of marijuana. R. 35. Blair claimed that Appellant and Parker were arrested so they could be taken to be fingerprinted to "make sure they are who they say they are." R. 35, l. 3-11. According to Blair's testimony however, he verified Parker's identity and license status by police radio. 32. Blair also testified that "We were later able to find identification on both of them." t. 35. Blair admitted that Alexander had her identification, which he thought might have been her driver's license. R. 105.

Blair testified that he and Broce decided to search the vehicle. Blair admitted that he could have sought a search warrant for Parker's car, but chose not to. 55. Blair testified that initially, they found nothing out of the ordinary in their search. Upon reaching the floor of the backseat they found several screws. Blair

testified that the screws appeared to match the screws in the speaker boxes located in the back of the car. R. 37. Blair testified that this made them think that Parker and Alexander may have "secreted some more narcotics somewhere." R. 38, l. 1-9. Broce then unscrewed the speakers using the multi-tool that he had found in the center console of Parker's car. R. 40. Blair went back and spoke with Parker while Broce took the remaining screws out of the speaker boxes and removed the speakers. R. 41. Once the speakers were removed, two packages of cocaine were located taped inside the speaker box were removed. R. 41-42.

At the suppression hearing the State offered a document representing the department's general policy as to the towing of vehicles. R. 35. Blair testified that the vehicle was ultimately towed because both Alexander and Parker didn't have driver's licenses and the owner of the vehicle (Parker's mother) lived in Pennsylvania. Blair testified that according to policy, they can not leave a unattended vehicle on the highway. R. 36. According to Blair this policy also provides for the inventory of the vehicle. R. 36; Ct. Ex. 1 at R.229.

ARGUMENT

Scope of Review

On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error. See State v. Kmngratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459 (2002). However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence. *Id.*

I. THE COURT ERRED IN FAILING TO SUPPRESS EVIDENCE FOUND IN VEHICLE PARKER WAS DRIVING?

A) Evidence found was obtained as a direct result of a violation of Miranda.

A suspect is "in custody" for Miranda purposes if the suspect has been formally arrested or if he is questioned under circumstances in which his freedom of action is curtailed "of the degree associated with a formal arrest." Stansbury, 114 S.Ct. at 1529 (*quoting California v. Beheler*, 463 U.S. 1121, 1125 (1983) (*per curiam*)).

In the present case Parker was immediately ordered from the vehicle. At that time, officer Blair testified that he smelled the order of "burnt marijuana". Parker

and Alexander testified that Blair handcuffed Parker immediately upon exiting the vehicle. While Blair testified that he did not immediately handcuff Parker, it is clear that Parker was not free to leave during the interrogation at the front of the police car. Parker had been asked all of the questions pertaining to his driving without a license before Blair questioned him further about there being marijuana in the car.

The procedural safeguards prescribed by Miranda apply "only where there has been such a restriction on a person's freedom as to render him 'in custody.'" Stansbury, 511 U.S. at 322 (*quoting Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*per curiam*)). A person is "in custody" for purposes of Miranda either if the person has been arrested or if his freedom of action has been curtailed to a degree associated with arrest. *Id.*; Berkemer v. McCarty, 468 U.S. 420, 440 (1984); Leshuk, 65 F.3d at 1108.

To determine whether a defendant was in custody for purposes of Miranda, courts are to determine "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." Thompson v. Keohane, 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995) (*footnote omitted*). In other words, "[a]n individual is in custody when, under the

totality of the circumstances, a suspect's freedom from action is curtailed to a degree associated with formal arrest." United States v. Colonna, 511 F.3d 431, 435 (4th Cir. 2007).

At the time Parker was questioned by Blair about marijuana being in the car, Blair had not only detained him, but clearly determined that Parker would be arrested for the driving offenses. Despite having verified Parker's identity and license status by radio, and having Alexander's driver's license, Blair testified that because Parker had no "ID package" here in South Carolina he wanted to have their fingerprints taken. Parker clearly was not going to be released with just citations. It would be clear to Parker that he was being arrested and that he was in custody at that time he was being questioned.

Alexander, although not in handcuffs at the time, was also in police custody when questioned. When the Georgia deputy seized Alexander by ordering her out of the car and taking her into custody, and back to the police car where she was interrogated, she had not been advised of her rights pursuant to Miranda. She was brought back to the police car and made to stand with Parker, who was already in handcuffs. It would have been clear to Alexander that she was also in custody at that time she was interrogated about the marijuana.

Although the circumstances of each case must certainly influence a

determination of whether a suspect is "in custody" for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. Mathiason, *supra*, at 495. California v. Beheler, 463 U.S. 1121 (1983).

Blair testified that Parker was not free to leave at the time he was questioned. Blair testified that Parker had already admitted that his license was suspended and was being further questioned as to where the marijuana was in the car. It is clear that Blair had already made a determination that he would arrest Parker at the time Parker was questioned.

Blair testified that although he would normally just write a ticket for marijuana and allow people to leave, he needed to have Alexander and Parker fingerprinted because he didn't know who they were. Yet Blair admitted at trial that he had verified Parker's identity and license status by radio and, that Alexander had produced her identification which he testified, could have been her driver's license.

Just as with Parker, by the time Alexander was questioned, she was also clearly in police custody. At the time of questioning both Alexander and Parker's freedom of movement had been curtailed to the degree associated with arrest. Statements made by Parker regarding the marijuana, as well as Alexander's non-

verbal actions and responses, were all obtained in violation of their respective rights under Miranda.

Improperly obtained statements that result from interrogation by officers are subject to suppression. A person is "interrogated" for Miranda purposes not only when police expressly question him, but also when the police use any words or actions (other than those normally attendant to arrest and custody) that they should know are reasonably likely to elicit an incriminating response. See Innis, 446 U.S. at 301, 100 S.Ct. 1682. However, "since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response." *Id.* at 301-02, 100 S.Ct. 1682. There can be no doubt that Officer Blair's questions in this case were clearly intended to obtain an incriminating response. As to Alexander, incriminating responses include non-verbal acts in response to police questions.

Statements obtained from a defendant during custodial interrogation are presumptively compelled in violation of the Fifth Amendment, unless the Government shows that law enforcement officers adequately informed the defendant of his Miranda rights and obtained a waiver of those rights. United

States v. Cardwell, 433 F.3d 378, 388-89 (4th Cir. 2005). Blair admitted at trial that Parker was never advised of his Miranda rights. Parker's statements that Alexander had, or was trying to hide the marijuana, was therefore illegally obtained.

"The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by exploitation of that illegality." *citing* Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Indisputably, suppression of evidence obtained during illegal police conduct provides the usual remedy for Fourth Amendment violations. *See* Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Courts will also suppress evidence that is the indirect product of the illegal police activity as "fruit of the poisonous tree." *See* Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

The critical inquiry is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. United States, 371 U. S. 471, 487-488 (1963). In the present case, the non-Mirandized questioning of Parker directly to

the un-Mirandized questioning of Alexander and the discovery of the marijuana. The discovery of the marijuana on Alexander, or that Alexander was hiding the marijuana, then lead immediately to the search of the vehicle. As a result, evidence found as a result of the search based on Parker's statements, or Alexander's responses, constitute fruit of the poisonous tree and should therefore be excluded.

B. The Police Lacked Probable Cause to Search the Vehicle Parker Was Driving.

The burden of establishing the existence of circumstances constituting an exception to the general prohibition against warrantless searches is upon the State v. Weaver, 361 S.C. at 81, 602 S.E.2d at 790.

Although the Appellant contends that the evidence of the marijuana should be suppressed, even if it were not, the facts still do not support probable cause to search the vehicle. At trial Blair admitted that "a lot of folks when they give up a little bit of weed or a little bit of marijuana just get that ticket and go on about their business." R. 96, 1. 22-R. 97, 1. 3. As a result, there had to be additional facts that would give rises to probable cause.

In attempt to establish a basis for the search, Blair testified: "all of the information that they've given me, where they were coming from, how long they

stayed there, where they're going, their behavior, a lot of folks when they give up a little bit of weed or a little bit of marijuana just to get that ticket and go on about their business. Right now, I've got a cause to search the vehicle, so I'm going to search the vehicle." R. 96. L. 22-R. 97, l. 3. Contrary to his testimony, the facts simply don't support anything out of the ordinary *prior to the initiation of the search.*

Despite a whole litany of questions and conversations Blair was unable to point out in his testimony anything extraordinary prior to the search. He discovered that the vehicle was registered to Parker's mother. 94. Both Alexander and Parker lived in Pittsburgh. 94. The registration and the license tag and all of the information relating to where they lived and the vehicle seemed to be truthful to Blair. 94. Parker admitted that he did not have a license. 92. Parker further explained that he was on his way home to Pennsylvania after returning from Atlanta where he was visiting his son. 97. Blair was able to verify Parker's identity and license status by radio and he had Alexander's driver's license. Up to the point of the search, there are no facts to distinguish Parker from any other person that Blair would have given a written a ticket and allowed them to leave. Admittedly, if given a ticket and allowed to leave Parker could not have driven without a license, but that fact does not have any effect on the issue of probable cause to search the

vehicle.

Blair's justification of finding a backpack that he didn't believe to be big enough for a couple of days stay out of town, was found during the search. 129. Blair's observations that Parker was sweating or that Alexander appeared to be about to throw up all occurred after the search began. Those facts therefore can not contribute to probable cause which had to exist before the officers began to search Parker's car. By Blair's own testimony, the possession of such a small amount of marijuana alone, would normally result in a ticket with the subjects then being allowed to leave. Absent other facts existing prior to the initiation of the search, there lacked probable cause to search Parker's car.

C. The Search of the Vehicle Exceeds the Permissible Scope of an Inventory Search.

The search in this case was not initiated as an inventory search. Nor does an inventory search cover a search where parts of the car are disassembled. Although Blair testified briefly as to a general policy and mentioned the word inventory once, there was no evidence offered that an inventory search was conducted. There was no evidence that either officer was recording any of the results of the search or otherwise complying with the requirements of a proper inventory search. Ct.

~~Ex. 1. Blair's comments that the search of the front didn't reveal anything that~~

raised his eyebrows or made them suspicious is a clear indication of the evidentiary nature of the search. The search was clearly intended for the purpose of finding evidence rather than to secure and protect the contents of the car.

An inventory search is a routine administrative procedure designed to effect three distinct purposes: protection of the owner's property which may be stored in the vehicle; protection of the police against claims of lost, stolen or vandalized property; and protection of the police from potential danger. South Dakota v.

Opperman, 428 U.S. 364, 369, 96 S.Ct. 3092, 3097, 49 L.Ed.2d 1000 (1975).

When the police acquire temporary custody of a vehicle, a warrantless inventory search of the vehicle does not offend Fourth Amendment principles so long as the search is made pursuant to "standard police procedures" and for the purpose of "protecting the car and its contents." *Id.* at 372, 373, 96 S.Ct. at 3098, 3099. As such, standardized criteria must regulate inventory searches to ensure that they are not used as a "ruse for a general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1, 4, 110 S.Ct. 1632, 1635, 109 L.Ed.2d 1 (1990).

A proper inventory search is merely "an incidental administrative step following arrest and preceding incarceration," Illinois v. Lafayette, 462 U.S. 640, 644, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983), conducted to protect the arrestee from

theft of his possessions, to protect the police from false accusations of theft, and to remove dangerous items from the arrestee prior to his jailing, *id.* at 646, 103 S.Ct. 2605. Such inventory searches, however, must "be conducted according to standardized criteria." Colorado v. Bertine, 479 U.S. 367, 374 n. 6, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).

Such standardized criteria are often codified by a police department into a uniform inventory-search policy. For such a policy to be valid, it must curtail the discretion of the searching officer so as to prevent searches from becoming "a ruse for a general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1, 4, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990). Otherwise, the policy might devolve into "a purposeful and general means of discovering evidence of a crime." *Id.* (quoting Bertine, 479 U.S. at 376, 107 S.Ct. 738 (*Blackmun, J., concurring*)). Nevertheless, an inventory-search policy may leave the inspecting officer "sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself." *Id.*

Standardized search procedures must be "administered in good faith" for their attendant searches to satisfy the Fourth Amendment. Bertine, 479 U.S. at 374, 107 S.Ct. 738. That is, an inventory search conducted pursuant to

standardized procedures is valid "so long as the purpose of the inventory is . . . not to gather incriminating evidence against the owner." United States v. Brown, 787 F.2d 929, 932 (4th Cir.1986).

In this case, the disassembly of the speaker boxes using some sort of tool with a screw driver exceed the permissible scope of an inventory search. It was a search for "something out of the ordinary". It was a rummaging in order to discover incriminating evidence. The disassembly of parts of Parker's car simply can not qualify as acceptable "standard police procedure," as it fails to serve the purpose of "protecting the car and its contents" under any normal construction of those terms. United States v. Best, 135 F.3d 1223 (8th Cir. 1998).

D. The Search of the Vehicle Can Not be Justified as a Search Incident to Arrest.

The search in this case exceeded the scope of search allowed incident to arrest. When asked specifically about the procedure for the search, Blair testified that he started at the front and went to the back and searched everything. 97. The search was clearly one intended to find evidence, rather than one based on the officer's safety. If construed as a search incident to arrest, the search of Parker's car violated Parker's Fourth Amendment rights.

Blair testified that both Parker and Alexander were under arrest for simple

possession of marijuana at the time of the search. R. 34. Blair testified that he put Parker in handcuffs after he was ordered out of the car and taken to the front of the patrol car. R. 33. Broce then ordered Alexander out of the car and took her back to where Parker and Blair were standing at the front of Blair's patrol car. R. 33. Both Parker and Alexander were at the front of the patrol car when Blair questioned Alexander about the marijuana. R. 33. Immediately after Alexander pulled the small bag of marijuana from her pants, she was also placed in handcuffs. R. 34. With both Alexander and Parker under arrest for simple possession of marijuana, Broce and Blair decided to search the car. R. 37. Officer Reider arrived and took custody of Parker and Alexander while Broce and Blair searched the vehicle. R. 37. At the initiation of the search both occupants of the car were restrained at Blair's patrol car by the third officer.

Warrantless searches "are per se unreasonable," "subject only to a few specifically established and well delineated exceptions." Katz v. United States, 389 U. S. 347, 357. The exception for a search incident to a lawful arrest applies only to "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence." Chimel, 395 U. S., at 763. This Court applied that exception of the automobile context in Belton, the holding of which rested in large part on the assumption that articles inside a vehicle's passenger compartment

are "generally . . . within the area into which an arrestee might reach." Arizona v. Gant, 556 U. S. 332, (129 SC 1710, 1716 (II), 173 LE2d 485) (2009).

In Gant the Court held that the underlying basis of the search incident to arrest was removed once the driver and/or passengers had been removed from the vehicle and were no longer able to access the contents within that vehicle. At the time that Blair and the Georgia deputy decided to search Parker's car, both Parker and Alexander were at the patrol car in handcuffs and under the custody of a third officer. Neither Parker nor Alexander could possibly have accessed the car at that point. Applying the holding of Gant, a search incident to arrest is unsupported by the facts of this case. As a result, any evidence obtained through an inventory search is fruit of the poisonous tree and should have been suppressed.

E. Georgia Deputy Was Acting Without Proper Authority and Therefore Could Not Lawfully Search or Seize Appellant's Co-Defendant.

Deputy Broce testified that he was employed by Butts County, Georgia as a deputy sheriff. He testified that he was unaware of any written authorization granting him the power to act as a police officer within the State of South Carolina. The State produced no evidence that Broce met the general requirements of certification necessary to act as a law enforcement officer within South Carolina, or the City of Greenville. Section 23-23-40 of the South Carolina Code

of Law provides in part:

No law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the Law Enforcement Training Council...

Deputy Broce also testified that he was unaware of any written authorization granting him authority to act within South Carolina, Greenville County, or the City of Greenville. Section 23-1-210 of the South Carolina Code of Laws provides:

Temporary transfer or assignment of law enforcement officer; written agreement; compensation.

(A) Any municipal or county law enforcement officer may be transferred or assigned on a temporary basis to work in law enforcement within multijurisdictional task forces established for the mutual aid and benefit of the participating jurisdictions, or in any other municipality or county in this State under the conditions set forth in this section, and when so transferred or assigned shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred or assigned.

(B) Prior to any transfer or assignment as authorized in subsection (A), the concerned municipalities or counties shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred or assigned.

Although §23-1-210 provides for the temporary transfer of South Carolina officers within South Carolina, it does not appear to provide for the transfer of officers from other States to be transferred into South Carolina, even if for multi-jurisdictional task forces. Pursuant to §23-23-40, all law enforcement officers must

be certified by the Law Enforcement Training Council. The State offered no proof as to Broce's qualifications as a certified officer, nor did the State offer evidence of compliance with §23-1-210 as to a written agreement stating the conditions and terms of the temporary employment of officers. Absent proof of a valid written agreement to give him legal police authority, Broce could not act in any official law enforcement capacity. *See State v. Burgess*, 393 S.C. 396, 712 S.E.2d 1 (Ct.App. 2011).

Officer Blair told Broce that the Alexander had drugs on her person. It was deputy Broce that then seized Alexander by ordering her out of the car and effectuating her detention. Broce brought Alexander back to the front of the police car where she could see Parker in handcuffs. Although Alexander was not in handcuffs, she clearly had been taken into custody by Broce. Officer Blair's subsequent interrogation of Alexander led to the discovery of the marijuana on her person, and as a direct result, was immediately followed by a search of the vehicle. The marijuana, as well as the evidence found in the vehicle, are therefore fruits of the poisonous tree. As such, they were inadmissible and should have been suppressed.

F. THE SEARCH OF THE APPELLANT'S CAR CONSTITUTED AN UNREASONABLE INVASION OF HIS PRIVACY UNDER THE SOUTH CAROLINA CONSTITUTION.

The South Carolina Constitution provides a safeguard against unlawful searches and seizures. State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) (citing S.C. Const. art. I. § 10). The relationship between the two constitutions is significant because "[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." *Id.* (quoting State v. Easler, 327 S.C. 121, 131, n. 13, 489 S.E.2d 617, 625, n. 13 (1997)). Therefore, this Court may interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution. *Id.*

In addition to language that mirrors the Fourth Amendment, S.C. Const. art. 1 § 10 contains an express protection of the right to privacy: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and *unreasonable invasions of privacy* shall not be violated. . . ." State v. Forrester, *supra* (*emphasis added*). By articulating a specific prohibition against "unreasonable invasions of privacy," the people of South Carolina have indicated that searches and seizures that do not offend the

federal Constitution may still offend the South Carolina Constitution. *Id.*

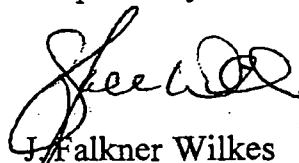
Accordingly, the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment. *Id.*

The focus in the state constitution is on whether the invasion of privacy is reasonable. State v. Weaver, 374 S.C. 313, 320-21, 649 S.E.2d 479, 483 (2007). In this case, lacking probable cause, the questioning of the Appellant, Alexander and subsequently, the Appellant's car, each violated the state constitution's requirement that the invasion of one's privacy be reasonable.

CONCLUSION

Based on the foregoing the conviction of the Appellant should be reversed.

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
Counsel for the Appellant

November 20, 2012.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
Edward W. Miller, Circuit Court Judge

Case No.: 2009-GS-23-6279

State of South Carolina, ... Respondent,

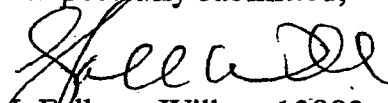
v.

Orlando Parker, ... Appellant.

MOTION

Appellant hereby moves this Court to relax the time and allow the filing of the Final Brief of the Appellant based on an oversight in the mailing process due to the Thanksgiving Holidays.

Respectfully submitted,



J. Falkner Wilkes, 12893

114 Whitsett Street

Greenville, SC 29601

(864) 282-1292

(864) 271-6035 facsimile

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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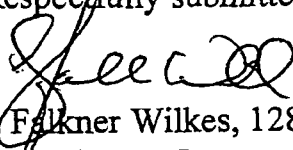
Orlando Parker, ... Appellant.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Brief of Appellant and a Motion to relax time on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 27th day of November, 2012, addressed as follows:

Christina Catoe
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Respectfully submitted,


J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
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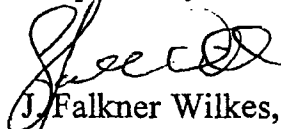
v.

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CERTIFICATE

I certify that the Appellant's Brief complies with Rule 211(b).

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

November 20, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
To Honorable Edward W. Walker, Circuit Court Judge
Appellate Case No. 2011-00050

STATE OF SOUTH CAROLINA

RESPONDENT

STATE OF SOUTH CAROLINA

RESPONDENT

ATTORNEY FOR RESPONDENT

WILLIAM WILSON

Attorney at Law

1234 Main Street, Suite 100

Greenville, SC 29601

Phone: (864) 123-4567

Fax: (864) 123-4568

E-mail: william.wilson@lawfirm.com

Web: www.williamwilson.com

South Carolina

Attorney at Law

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial court properly denied Appellant's suppression motion where officers had probable cause to search the entire vehicle under the automobile exception based upon the overwhelming smell of marijuana emanating from the vehicle and based upon the possession of a bag of marijuana by Appellant's passenger. Other issues raised on appeal are not preserved for review and are without merit in any event. Finally, assuming this Court rejects all of the State's other arguments, the case should be remanded to the trial judge for an evidentiary hearing to determine whether the inevitable discovery doctrine would preclude suppression.

STATEMENT OF THE CASE

Appellant was indicted in Greenville County in April 2010 for trafficking in cocaine, 400 grams or more. On June 23-24, 2011, he proceeded to trial, along with a co-defendant, before the Honorable Edward W. Miller and a jury. The jury found Appellant guilty as indicted, but found the co-defendant not guilty. Judge Miller imposed a sentence of thirty years. A timely notice of appeal was served and filed.

ARGUMENT

The trial court properly denied Appellant's suppression motion where officers had probable cause to search the entire vehicle under the automobile exception based upon the overwhelming smell of marijuana emanating from the vehicle and based upon the possession of a bag of marijuana by Appellant's passenger. Other issues raised on appeal are not preserved for review and are without merit in any event. Finally, assuming this Court rejects all of the State's other arguments, the case should be remanded to the trial judge for an evidentiary hearing to determine whether the inevitable discovery doctrine would preclude suppression.

Relevant Facts

Prior to commencement of trial, Appellant's counsel made the following motion:

"This is a warrantless search of an automobile and obviously we feel that there was no probable cause to search the car. They didn't have any right. The officer had no articulate suspicion of misconduct of illegal activity." (R. p. 27, lines 4-9). In response, the State called Officer Blair to establish the probable cause for the search. (R. p. 27). Officer Blair testified that on March 12, 2009, he and Deputy Broce from Butts County, Georgia, were on patrol on Interstate 85 in Greenville County. (R. p. 28). After observing a black Jeep exceeding the speed limit and traveling too close to the vehicle in front of it, he pulled the Jeep over. (R. p. 29). Officer Blair approached the Jeep and asked the driver, Appellant, to gather his identification, vehicle registration, and insurance information and meet him at the back of the vehicle. (R. p. 29).

Officer Blair stated that "the first thing that hit me was the smell of burnt marijuana." (R. p. 31, lines 14-15). Deputy Broce also noticed the smell of marijuana "as soon as the window cracked." (R. p. 126, lines 6-8). Officer Blair stated that "the smell of marijuana was just overwhelming and our initial thought at that point was we've got a whole load of marijuana in this vehicle." (R. p. 38, lines 17-20). He testified that

he immediately had suspicion of "a lot more" upon smelling the marijuana. (R. p. 51, lines 7-9; p. 53, lines 12-16). Although Officer Blair noticed this smell when he first approached the car - while Appellant was still sitting in the driver's seat - he did not immediately let Appellant know that he smelled marijuana because he did not want to "have to worry about a chase in the interstate." (R. p. 31, lines 14-18).

When Appellant stepped to the back of the vehicle, he did not have any papers with him. (R. p. 31). Appellant told Officer Blair that he did not have a license and later elaborated that his license was actually suspended. (R. p. 32, lines 3-8; p. 46, lines 19-21; p. 50, lines 12-24). Officer Blair then ran through a litany of routine, casual questions with Appellant, including where he was going and where he was coming from. (R. p. 32; p. 43, lines 10-11; p. 44, lines 7-10). Appellant was not in custody at this time and was not told that he was under arrest; however, he was not free to leave inasmuch as Officer Blair was conducting an investigative detention based upon his suspicions of crime. (R. p. 47, lines 3-10; p. 54, lines 17-20). Appellant stated that he had been visiting his son in Atlanta for a couple of days and was returning to his home in Pennsylvania. (R. p. 32, lines 17-20). Officer Blair also inquired as to whether there was any money or narcotics in the vehicle. (R. p. 32, lines 20-22). After Appellant denied that there were any narcotics in the vehicle, Officer Blair advised him that he could smell the marijuana in the car and asked him where it was. (R. p. 32, lines 9-11). Appellant stated that his girlfriend had it and was trying to hide it. (R. p. 32, lines 11-12). At that point, Officer Blair placed Appellant in handcuffs. (R. p. 33, lines 15-17).

Officer Blair then told Deputy Broce that Appellant's girlfriend had marijuana on her person and they asked her to exit the vehicle and join them outside the vehicles. (R.

p. 33, lines 18-21). Officer Blair explained to her that Appellant had informed him that she was trying to hide marijuana and that she needed to go ahead and hand it over. (R. p. 33, lines 21-23). The girlfriend looked at Appellant and Appellant told her to give it to Officer Blair. (R. p. 33-34). She turned away from the interstate, opened up her pants, and pulled out a small clear plastic bag of what appeared to be marijuana. (R. p. 34, lines 5-13). Officer Blair field-tested the substance and it came back positive for marijuana. (R. p. 34, lines 15-19). At that point, Appellant's girlfriend was also placed in handcuffs and arrested for simple possession of marijuana. (R. p. 34-35). No further questions were asked of either defendant. (R. p. 44; p. 48). Officer Blair stated that sometimes defendants are merely given tickets for simple possession of marijuana, but in this case, he decided to arrest Appellant and his girlfriend. (R. p. 35, lines 5-16). He also stated that, since both occupants were going to jail and the owner of the vehicle lived in Pennsylvania, he ultimately had to have the Jeep towed and placed into a storage facility in compliance with the police department's towing policy. (R. p. 36-37).

Officer Blair testified he had "cause to search the vehicle" after the marijuana was turned over. (R. p. 97, lines 7-8). Officer Blair radioed for another officer to come to the scene, since he now had two defendants in custody and needed someone to watch the vehicles while the Jeep was searched. (R. p. 34-35). Once Officer Reider arrived, Officer Blair and Deputy Broce searched the Jeep. (R. p. 37, lines 7-8). Officer Blair testified that the Jeep was nice and clean inside and that nothing initially appeared abnormal. (R. p. 37, lines 8-10). They first noticed a new-looking multi-tool in the center console, although this did not raise any suspicions at first. (R. p. 37, lines 10-13; p. 128, line 23 – p. 129, line 1). Next he noticed several wood screws on the floorboard

in the back seat area which seemed out of place for such a clean vehicle. (R. p. 37, lines 16-19). When he moved to the back of the vehicle and opened up the hatch, he noticed a speaker box on the back deck of the cargo area. (R. p. 37-38). He also noticed a lone screw lying next to the speaker box that was the same as the screws littered across the back seat floorboard area. (R. p. 38, lines 2-5). Further, the screws that were holding the speakers in the box were the same as the screws found on the back floorboard and in the cargo area, and there were a few empty screw holes on the speaker box where screws should have been. (R. p. 39, lines 14-18). It appeared to Officer Blair that "somebody was trying to put them in a hurry and weren't able to get them all in there, dropped one in back, left some in the front." (R. p. 39, lines 22-25). At that point, Officer Blair developed a belief that Appellant and his girlfriend had hidden more narcotics in the speaker box. (R. p. 38, lines 6-14).

The officers then began to remove the speakers from the speaker box. (R. p. 40). They removed the screws from each speaker using the multi-tool they found in the center console of the Jeep. (R. p. 40, lines 5-12). As they were doing this, Officer Blair noticed that Appellant became so sweaty that he appeared to be crying, and Appellant's girlfriend began dry-heaving on the side of the road. (R. p. 41, lines 2-23). Once the officers got the speakers out, they located two brick-like packages taped to the back of the speaker box. (R. p. 42, lines 4-12). The packages were removed, and one of them was cut open and it field tested positive for cocaine. (R. p. 42, lines 20-23).

At the conclusion of the pre-trial hearing testimony, counsel for the co-defendant conceded that officers had probable cause to search the interior of Appellant's vehicle after finding the marijuana. (R. p. 68, lines 2-12). However, he argued that the

cases of New York v. Belton¹ and Arizona v. Gant² limit a “search incident to arrest” to the passenger compartment of the vehicle. (R. p. 12-18). He argued that in Appellant’s car, the place where the drugs were found was over four feet away from the front of the vehicle, and that neither of the car’s occupants could have accessed that area from the front seat. (R. p. 68, line 19 – p. 69, line 7; p. 69, line 20 – p. 70, line 11). He also argued that the “container” in which the drugs were found was locked or sealed because of the screws on it, and that made the search outside the scope of New York v. Belton and Arizona v. Gant. (R. p. 69, lines 8-16; p. 74, line 9 – p. 75, line 2). Finally, co-counsel argued that Officer Blair could have easily obtained a search warrant from a magistrate before searching the vehicle. (R. p. 69, lines 17-24; p. 75, lines 3-20).

Counsel for Appellant then presented a brief argument, adding that the law is clear that officers can search the passenger compartment but arguing that officers would need to obtain a warrant to disassemble a part of the car after the defendants were in custody. (R. p. 70, lines 13-25). He also contended that there was “no reason” the officers could not have taken all of the facts they had to a magistrate before entering that part of the vehicle. (R. p. 70, lines 21-25). Appellant’s counsel concluded by stating that he joined in co-counsel’s motion. (R. p. 71, line 1).

The solicitor pointed out that “there is plenty of case law” indicating that the smell of marijuana creates probable cause to search the vehicle. (R. p. 71, lines 3-7). He stated that alone gave officers the right to search the speaker box in the cargo area. (R. p. 71, lines 8-13). He also argued that, in addition to the smell of marijuana, officers also knew that Appellant’s girlfriend was in possession of a bag of marijuana and that

¹ 453 U.S. 454 (1981).

² 556 U.S. 332 (2009).

Appellant was aware of this. (R. p. 72, lines 10-18). He stated that these two things in combination gave rise to a reasonable belief that there was more marijuana in the car. (R. p. 72, lines 14-18). The solicitor also noted that the case of Davis v. United States,³ published just the week before, provides a “safety net” for officers who rely in good faith upon the law of New York v. Belton when conducting searches incident to arrests.

The trial judge pointed out that, notwithstanding Arizona v. Gant and the “search incident to arrest” cases, Wyoming v. Houghton⁴ stands for the principle that “probable cause justifies the search of a lawfully stopped vehicle and justifies the search of every part of the vehicle and its contents that may conceal the object of the search. The rule applies to all containers in the car without qualification as to ownership and without a showing of individualized probable cause for each container.” (R. p. 76, lines 9-20). The judge stated that he would finish reading the cases presented to him, but that he was “not inclined to grant [the defense’s] motion to suppress.” (R. p. 76, lines 21-22). There were no further arguments made, and, after a break, the judge stated that the motion to suppress was “denied.” (R. p. 76, line 22 – p. 78, line 1). Later, during trial, the drugs were admitted “subject to all previous objections.” (R. p. 141, lines 1-6).

Officers Had Probable Cause to Search Appellant’s Entire Vehicle

Standard of Review and Applicable Law

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court’s findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will

³ 131 S.Ct. 2419 (2011).

⁴ 526 U.S. 295 (1999).

review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."'). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm if there is any evidence supporting the trial court's ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV. Any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). The well-settled rule is warrantless searches are unreasonable *per se* unless they fall under an exception to the Fourth Amendment's warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978).

South Carolina courts have recognized several exceptions to the warrant requirement, including the automobile exception. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981). The automobile exception is based on: (1) the ready mobility of automobiles along with the potential that evidence may be lost or removed before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles. State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986). Under the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based on probable cause alone. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App.

1995). "If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." Weaver, 374 S.C. at 320, 649 S.E.2d at 482. Furthermore, the rationale for the search does not disappear even after the vehicle is immobilized or taken into police custody. State v. Moore, 377 S.C. 299, 310, 659 S.E.2d 256, 262 (Ct. App. 2008).

If probable cause exists supporting the search of a lawfully stopped automobile, the search can be extended to every part of the vehicle and all of its contents potentially containing the object of the search. Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see also Wyoming v. Houghton, 526 U.S. 295, 302 (1999) ("When there is probable cause to search for contraband in a car, it is reasonable for police officers . . . to examine packages and containers without a showing of individualized probable cause for each one."). "The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause." U.S. v. Ross, 456 U.S. 798, 823 (1982). "The scope of a warrantless search of an automobile is defined by the object of the search and the places in which there is probable cause to believe that it may be found." State v. Perez, 311 S.C. 542, 546, 430 S.E.2d 503, 505 (1993).

Probable cause is "a justifiable determination, based upon the totality of the circumstances and in view of all the evidence available to law enforcement officials at the time of the search, that there exists a practical, nontechnical probability that a crime is being committed or has been committed and incriminating evidence is involved." Bultron, 318 S.C. at 332, 457 S.E.2d at 621. "Probable cause may be found somewhere between suspicion and sufficient evidence to convict." State v. Blassingame, 338 S.C.

240, 250, 525 S.E.2d 535, 540 (Ct. App. 1999). Obviously, the probable cause standard does not require absolute certainty. In re Care and Treatment of Brown v. State, 372 S.C. 611, 619, 643 S.E.2d 118, 122 (Ct. App. 2007).

Discussion

In this case, officers had probable cause to search Appellant's vehicle based on the overpowering smell of marijuana emanating from the vehicle and based upon the corroborating fact that the passenger of the car, Appellant's girlfriend, was found to be in actual possession of marijuana.⁵ (See R. p. 31-34; p. 38; p. 53-54; p. 126-28). See Johnson v. U.S., 333 U.S. 10, 13 (1948) (the unmistakable odor of a particular drug "might very well be found to be evidence of a most persuasive character" sufficient to constitute probable cause for a search); U.S. v. Johns, 469 U.S. 478, 482 (1985) ("After the officers came closer and detected the distinct odor of marihuana, they had probable cause to believe that the vehicles contained contraband."); State v. Lane, 271 S.C. 68, 72, 245 S.E.2d 114, 116 (1978) ("From the record it is evident that the odor emanating from the packages alone was a sufficient basis to establish probable cause as to their contents when it is considered that an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana."); State v. Morris, 395 S.C. 600, 610, 720 S.E.2d 468, 473 (Ct. App. 2011) (concluding that officers had probable cause to search anywhere in the vehicle that marijuana could be located, including the trunk, where officers observed hollowed-out blunts and loose tobacco in the car and smelled an odor of marijuana emanating from the vehicle); U.S. v. Haley, 669 F.2d 201, 202-204

⁵ Appellant argues - for the first time on appeal - that the fact that defendants are sometimes given tickets for simple possession of marijuana, rather than being arrested, elevates the level of facts required to establish probable cause. (See Brief of Appellant, p. 14). This assertion is without basis in fact or law. The fact that the police may sometimes give tickets for possession of marijuana is irrelevant.

(4th Cir. 1982) (in a case where a vehicle was lawfully stopped for speeding, and officers then smelled marijuana inside the vehicle, the Fourth Circuit held that “[s]ufficient probable cause arises when the officer smells marijuana inside the vehicle” and reversed the district court’s suppression of the drugs), *cert. denied*, 457 U.S. 1117 (1982); U.S. v. Scheetz, 293 F.3d 175, 184 (4th Cir. 2002) (“Once the car was properly stopped and the narcotics officers smelled marijuana, the narcotics officers properly conducted a [warrantless] search of the car.”) (citation omitted); U.S. v. Ford, 401 F. App’x. 852, 854 (4th Cir. 2010) (“The Fourth Amendment permits a warrantless search of a vehicle and any containers or compartments found within it, where probable cause exists to search the vehicle. This court has held that the odor of marijuana, without more, emanating from a properly-stopped vehicle, may provide the requisite probable cause to support the warrantless search of both the vehicle and the baggage therein.”) (citations omitted); U.S. v. Reed, 882 F.2d 147, 149 (5th Cir. 1989) (“More importantly, [the officer] detected the distinct odor of burnt marijuana, and this in itself would have justified the subsequent search of Reed’s vehicle.”); U.S. v. Loucks, 806 F.2d 208 (10th Cir. 1986) (officer had probable cause to search the entire vehicle for marijuana, including the trunk; the fact that in the interior of the automobile he found marijuana, or evidence thereof, did not require him to terminate the search); U.S. v. Caves, 890 F.2d 87, 91 (8th Cir. 1989) (“Although the odor of burnt marijuana on the driver alone is undoubtedly less probative of the existence of unused marijuana in the automobile than would be the odor of unburnt marijuana emanating from both the driver and the vehicle, we are unable to conclude that the odor of burnt marijuana on Caves’s breath and person, when considered in the context of the circumstances confronting the trooper, was insufficient to establish probable cause

for the search of the automobile.”); U.S. v. Davis, 569 F.3d 813, 817-18 (8th Cir. 2009) (“If there had been any doubt about whether the smell of smoldering cannabis constituted probable cause to search the vehicle, such doubt was obviated by the discovery of a bag of marijuana in Davis’s pocket. Consequently, Officer Howard was permitted to search Davis’s vehicle without a warrant under the automobile exception.”); U.S. v. Jackson, 167 F. App’x 812, 813 (D.C. Cir. 2005) (“[T]he smell of burnt marijuana emanating from the vehicle provided probable cause to justify the agents’ search of the vehicle [the defendant] was driving.”); State v. Smith, 192 N.C. App. 690, 694, 666 S.E.2d 191, 194 (N.C. Ct. App. 2008) (finding an officer’s detection of the odor of marijuana established probable cause to search even in a situation where no drugs were ever recovered); State v. Folk, 238 Ga. App. 206, 208, 521 S.E.2d 194, 198 (Ga. Ct. App. 1999) (holding an officer’s detection of the odor of burning marijuana alone constituted probable cause for a warrantless vehicle search); State v. Betz, 815 So. 2d 627, 633 (Fla. 2002) (“Our conclusion here aligns this Court with a number of our sister jurisdictions in which courts have concluded that the smell of burnt marijuana, in combination with other circumstances, leads to law enforcement officers’ possession of probable cause to search the entirety of a motor vehicle.”); Wilson v. State, 174 Md. App. 434, 921 A.2d 881 (Md. Ct. Spec. App. 2007) (holding that the odor of burnt marijuana emanating from the passenger compartment of a vehicle, by itself, establishes probable cause to search the vehicle’s trunk under the automobile exception to the warrant requirement of the Fourth Amendment); State v. Zamora, 114 Ariz. 75, 77, 559 P.2d 195, 197 (Ariz. Ct. App. 1976) (finding an officer’s detection of the faint odor of marijuana during a traffic stop, unverified by the other officers at the scene, provided probable cause to search the entire

vehicle and trunk); People v. Kazmierczak, 461 Mich. 411, 416, 605 N.W.2d 667, 669 (Mich. 2000) (“Like the majority of courts in other states and jurisdictions, we are persuaded that detection of the odor of either fresh marijuana or marijuana smoke, standing alone, provides probable cause for a warrantless search.”); Cowan v. Mississippi Bureau of Narcotics, 2 So.3d 759, 766 (Miss. Ct. App. 2009) (finding an officer had probable cause to search after smelling marijuana upon opening a passenger door); Minnick v. United States, 607 A.2d 519, 525 (D.C.1992) (“The question for this court is an easy one: did [detectives] have probable cause to believe that drugs were to be found inside [the defendant's] car? The odor of PCP noticed by both detectives provides a clear answer to that question. This court has repeatedly found probable cause to search an automobile based, at least in part, on an officer's recognition of the smell of drugs.... While none of our earlier cases involved a situation in which the distinctive smell of a drug alone provided police officers with probable cause to search, we have no difficulty reaching that conclusion here.”); see also Andrea Levinson Ben-Yosef, Annotation, Validity of Warrantless Search of Motor Vehicle Based on Odor of Marijuana – Federal Cases, 188 A.L.R. Fed. 487 (2003) (“The majority of courts have found that the odor of marijuana *alone* supplies probable cause for a warrantless search.”) (emphasis added).

“Search Incident to Arrest” is Not Applicable

The defense conceded at trial that officers had probable cause to search the car; however, the defense disputed the scope of the search, arguing that under a *search incident to arrest*, the officers were limited to searching the “passenger compartment” of the vehicle, which the defense contended did not include the speaker box in the cargo area of the Jeep. (R. p. 68-75). As explained above, the search of Appellant’s vehicle

was a probable cause-based search. The cases of New York v. Belton, 453 U.S. 454 (1981), Arizona v. Gant, 556 U.S. 332 (2009), and Davis v. U.S., 131 S.Ct. 2419 (2011), are all search incident to arrest cases. The reasoning of these cases simply does not apply to the probable cause search conducted in this case.

Regardless of the scope of a *search incident to arrest*, the law is clear that, upon acquiring probable cause that drugs are in a vehicle, officers may search the entire vehicle, including any parts of the vehicle that may contain the suspected drugs. See, e.g., Wyoming v. Houghton, 526 U.S. 295, 301 (1999) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”) (quoting U.S. v. Ross, 456 U.S. 798, 825 (1982)); State v. Peters, 271 S.C. 498, 248 S.E.2d 475 (1978) (where officers had probable cause for a warrantless search of vehicle for marijuana, they could properly search the trunk of the vehicle and open a locked suitcase inside the trunk); State v. Perez, 311 S.C. 542, 430 S.E.2d 503 (1993) (where police had probable cause for a warrantless search of vehicle for marijuana, it was proper to search a briefcase found inside the vehicle because the briefcase could contain a portion of the marijuana); State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995) (“One exception to the Fourth Amendment exclusionary rule, commonly known as the automobile exception, allows law enforcement officials to conduct a search of an automobile based on probable cause alone due to the lessened expectation of privacy in motor vehicles traveling on public highways. Therefore, under the automobile exception, if probable cause exists to justify the warrantless search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its content that may conceal the object of the search.”) (citation

omitted); U.S. v. Carbajal-Iriarte, 586 F.3d 795, 802-803 (10th Cir. 2009) (where officers had probable cause to search defendant's van based upon a drug dog alert, they could properly cut open the upholstery to look for drugs); U.S. v. Jackson, 548 F.Supp.2d 1314 (M.D. Fla. 2008) (where officers had probable cause to search defendant's vehicle for drugs, they could properly search the vehicle the next day after they were able to obtain appropriate tools needed to disassemble the vehicle to locate drugs in a hidden compartment underneath a speaker located in the rear passenger section); U.S. v. Harmon, 785 F.Supp.2d 1146, 1175-77 (D.N.M.,2011) (where officer had probable cause to search vehicle for drugs, he could properly cut into the spare tire in the trunk to look for drugs); see also Michigan v. Thomas, 458 U.S. 259 (1982); Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. U.S., 267 U.S. 132 (1925).

Accordingly, officers could properly search the speaker box in Appellant's cargo area – particularly where screws were missing from the speaker box; these screws were strewn about the vehicle; and a new-looking multi-tool was found in the center console – since they had probable cause to believe that drugs were in the vehicle and since the speaker box could have contained the drugs. See, e.g., In re Brown, 372 S.C. at 619-20, 643 S.E.2d at 122-23 (pointing out that probable cause does not require a showing that the belief be correct or more likely true than false; indeed, “[t]he very term itself, “probable cause,” does not import absolute certainty”) (citation omitted); see also *infra*, p. 13-14.

Alleged Miranda Violation

Appellant now argues on appeal that the drugs were found as a direct result of a Miranda violation. However, this argument was not made to the trial court below. (See

R. p. 27-78). Therefore, the issue is not preserved for appellate review. See, e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (“For an issue to be properly preserved it has to be raised to and ruled on by the trial court.”) (emphasis added) (citation omitted); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); State v. Whitten, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007) (“[W]e are limited in this instance by appellate rules that allow us to consider only the precise question that was before the trial judge and that was ruled upon by him or her.”).

In any event, as discussed above, officers had probable cause to search the vehicle before Appellant even made any statements based upon the overpowering smell of marijuana emanating from the vehicle. (See R. p. 31-34; p. 38; p. 53-54; p. 126-28; see cases cited *infra*, p. 14-17). Therefore, any Miranda violation occurring later could not serve as a basis for suppression of the drugs.

Furthermore, it is well-settled that “routine traffic stops do not constitute ‘custodial interrogation’ for purposes of the Miranda rule.” State v. Peele, 298 S.C. 63, 65-66, 378 S.E.2d 254, 255-56 (1989) (citing Berkemer v. McCarty, 468 U.S. 420 (1984) and Pennsylvania v. Bruder, 488 U.S. 9 (1988)); State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009) (even though a motorist in a routine traffic stop may be detained and is not free to leave, such a motorist is not “in custody” for Miranda purposes) (citation omitted), *aff’d as modified on other grounds by State v. Corley*, 392 S.C. 125, 708 S.E.2d 217 (2011). There was nothing unusual about Appellant’s traffic stop to bring it outside of the scope of a routine traffic stop at the time Appellant divulged that his girlfriend had marijuana, particularly where at that time

Appellant had been having “casual” and “routine” conversation with the officer, had not been handcuffed, and had not been told he was under arrest. (See R. p. 27-57). See Peele, 298 S.C. at 64, 378 S.E.2d at 255 (defendant’s freedom was not curtailed to the degree associated with a formal arrest even where he was detained while the officer required him to perform several field sobriety tests including reciting the alphabet and counting from one to ten); Corley, 383 S.C. at 243, 679 S.E.2d at 193 (“We disagree with Corley’s assertion that this situation could not be considered a routine traffic stop because the real reason for the stop was for him to be questioned regarding possible drug activity. Our courts make no distinction based upon the subjective intentions of an officer in making a traffic stop, and evidence that the police were more interested in apprehending a drug target does not factor into a probable cause analysis in an otherwise valid stop.”). Therefore, since Miranda did not apply, the drugs were not the fruit of any Miranda violation.

Finally, even assuming Miranda did apply, and even if Appellant’s voluntary statements were elicited in violation of Miranda, the drugs themselves would not be suppressed because of a Miranda violation. See U.S. v. Patane, 542 U.S. 630 (2004) (failure to give a suspect the warnings prescribed by Miranda does not require suppression of the physical fruits of the suspect’s unwarned but voluntary statements). Therefore, this argument is without merit.

Inventory Search

Appellant also argues that the search of his vehicle was not an inventory search and that disassembly of the speaker boxes exceeded the scope of a permissible inventory search. This argument was not made below and is not preserved for review. (See R. p.

27-78). See, e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (“For an issue to be properly preserved it has to be raised to and ruled on by the trial court.”) (emphasis added) (citation omitted); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); State v. Whitten, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007) (“[W]e are limited in this instance by appellate rules that allow us to consider only the precise question that was before the trial judge and that was ruled upon by him or her.”).

In any event, the search of Appellant’s vehicle was not an inventory search; rather, as discussed above, the search was a probable cause-based search for evidence of more drugs in the vehicle. (See *infra*, p. 14-19). Therefore, whether the search exceeded the scope of an inventory search is irrelevant.

The Georgia Deputy’s Involvement

Appellant contends that the drugs were found as a result of Appellant’s girlfriend being “seized” by a Georgia deputy who had no authority to act in an official law enforcement capacity under South Carolina statutes and that the drugs should be suppressed on this basis. This argument was not made to the trial judge below and is therefore not preserved for appellate review. (See R. p. 27-78). See, e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (“For an issue to be properly preserved it has to be raised to and ruled on by the trial court.”) (emphasis added) (citation omitted); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); State v. Whitten, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007) (“[W]e are limited in this instance by appellate rules

that allow us to consider only the precise question that was before the trial judge and that was ruled upon by him or her.”).

In any event, first, Appellant has no standing to challenge the seizure of his girlfriend’s person. See Rakas v. Illinois, 439 U.S. 128, 134-35 (1978) (“Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.’ . . . A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed.”). Second, Appellant’s girlfriend was *already* seized the moment that the car stopped in response to Officer Blair’s blue lights. See Brendlin v. California, 551 U.S. 249 (2007) (rejecting the defendant/passenger’s argument that he was not seized until he was ordered out of the car and holding that passengers in cars are seized from the moment the car comes to a halt on the side of the road). Since Appellant’s girlfriend was already seized, Deputy Broce’s asking her to exit the vehicle and join the others outside (which he did at the behest of Officer Blair) did not constitute a seizure of her. (See R. p. 33, lines 17-20; p. 127, lines 21-24).

Furthermore, Appellant cites no authority supporting the proposition that a mere statutory violation by the Georgia deputy would require the extreme remedy of exclusion of drugs found later by a Greenville officer. (See Brief of Appellant, p. 21-23). In fact, to the contrary, South Carolina case law indicates that a violation of state statutes would not trigger the Fourth Amendment’s exclusionary rule. See Hutto v. State, 387 S.C. 244, 250, 692 S.E.2d 196, 199 (2010) (“[the statute in question] only creates a statutory privilege and does not implicate a constitutional right; therefore, the exclusionary rule

does not apply”); State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976) (exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations). Therefore, since the drugs cannot be suppressed based upon a violation of state statutes, Appellant’s argument on this point is without merit.

Unreasonable Invasion of Privacy under the S.C. Constitution

Finally, Appellant asserts for the first time on appeal that, “lacking probable cause, the questioning of Appellant, Alexander, and subsequently, the Appellant’s car, each violated the state constitution’s requirement that the invasion of one’s privacy be reasonable.” (See Brief of Appellant, p. 25). Since this argument was not made below, it is not preserved for review. See, e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (“For an issue to be properly preserved it has to be raised to and ruled on by the trial court.”) (emphasis added) (citation omitted); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); State v. Whitten, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007) (“[W]e are limited in this instance by appellate rules that allow us to consider only the precise question that was before the trial judge and that was ruled upon by him or her.”).

In any event, Appellant’s argument is limited to one sentence and cites no authority supporting his assertion that his state constitutional right to privacy was violated. (See Brief of Appellant, p. 25). See, e.g., State v. Hill, 394 S.C. 280, 297, 715 S.E.2d 368, 378 (Ct. App. 2011) (an issue will be deemed abandoned on appeal if it is argued in a short, conclusory statement without supporting authority). Further, as discussed in detail above, since officers unquestionably had probable cause to search the car based upon the smell and possession of marijuana, Appellant’s right to privacy was

not violated. State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007) (“Once the officers have probable cause to search a vehicle, the state constitution's requirement that the invasion of one's privacy be reasonable will be met.”).

The Inevitable Discovery Doctrine May Preclude Suppression

Even if this Court rejects all of the above arguments, the inevitable discovery doctrine likely precludes suppression of the drugs. The inevitable discovery doctrine has been adopted as an exception to the exclusionary rule. Nix v. Williams, 467 U.S. 431, 444 (1984). “As explained by the Nix Court, ‘if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings.’” State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix at 447). “Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial.” Nix at 446. Thus, while the exclusionary rule is designed to ensure the prosecution will not be placed in a better position than it would have been without an illegal search or some police misconduct, the inevitable discovery doctrine ensures the prosecution is not placed in a worse position simply because of some earlier police error or misconduct. Id. at 443.

In this case, the trial judge needed not make a ruling regarding the inevitable discovery doctrine because he found that the officers had probable cause to search the vehicle. (See R. p. 76). Nevertheless, it is clear from the record that the vehicle was towed pursuant to department policy. (R. p. 36-37; p. 229-36). Further testimony would likely establish that an inventory search would have revealed the drugs in due course.

Therefore, assuming this Court rejects all of the State's other arguments, this Court should remand the case for further testimony to be taken and a ruling made regarding whether or not the inevitable discovery doctrine applies and precludes suppression of the drugs. See State v. Jenkins, 727 S.E.2d 761, 767-69 (Ct. App. 2012) (remanding case for an evidentiary hearing as to whether the inevitable discovery doctrine applies; also noting that since the trial court denied the defendant's suppression motion on the basis that the search was legal, the State needed not present evidence in support of the inevitable discovery doctrine and the trial court needed not make a ruling on that issue).

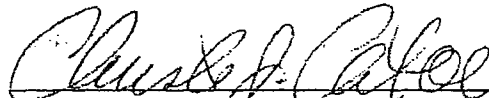
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



CHRISTINA J. CATOE
SC Bar No. 73562

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

November 26, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2011-194990

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

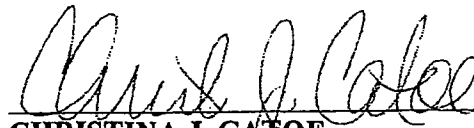
v.

ORLANDO PARKER,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

November 26, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2011-194990

THE STATE OF SOUTH CAROLINA,

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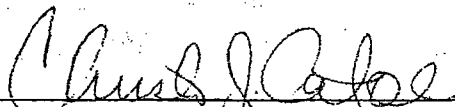
v.

ORLANDO PARKER,

APPELLANT.

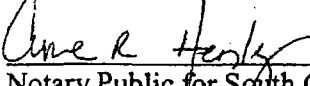
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **J. Falkner Wilkes**, 114 Whitsett Street, Greenville, South Carolina, 29601, this 26th day of November, 2012.


CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 26th day of November, 2012.


Notary Public for South Carolina.
My Commission Expires: 7/18/2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Orlando Parker, Appellant.

Appellate Case No. 2011-194990

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2013-UP-180
Heard April 9, 2013 – Filed May 8, 2013

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Christina J. Catoe, both of Columbia,
for Respondent.

PER CURIAM: Orlando Parker appeals his conviction for trafficking in cocaine.
We affirm pursuant to Rule 220(b), SCACR, and the following authorities:
Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984) (noting "the usual traffic stop

is more analogous to a so-called 'Terry'¹ stop' . . . than to a formal arrest" and stating "the similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*"²), *quoted in State v. Corley*, 383 S.C. 232, 243-44, 679 S.E.2d 187, 193 (Ct. App. 2009); *United States v. Ross*, 456 U.S. 798, 825 (1982) ("If probable cause justifies the [warrantless] search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."), *quoted in State v. Morris*, 395 S.C. 600, 610, 720 S.E.2d 468, 472-73 (Ct. App. 2011); *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978) ("Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.") (quoting *Alderman v. United States*, 394 U.S. 165, 174 (1969)); *State v. Lane*, 271 S.C. 68, 71-72, 245 S.E.2d 114, 116 (1978) (finding the odor emanating from a package was a sufficient basis to establish probable cause for its search and seizure and further explaining that "an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana"); *State v. Morris*, 395 S.C. 600, 608, 720 S.E.2d 468, 471-72 (Ct. App. 2011) (affirming the trial court's determination that reasonable suspicion existed to extend the duration and scope of a traffic stop for "a reasonable investigation of drug activity" based on testimony by a police officer that he smelled marijuana as he approached the rental car the defendant was driving and learned the defendant was not an authorized driver when he requested the defendant's license and registration); *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010) ("The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal."). Our decision to affirm Parker's conviction obviates a decision on the State's argument that if we were to find any of the issues Parker has raised on appeal have merit, the matter should be remanded to the trial court for a determination of whether an inventory search would have resulted in the inevitable discovery of the contraband that Parker sought to exclude at trial. *See State v. Rivera*, Op. No. 27220 (S.C. Sup. Ct. filed Feb. 13, 2013) (Shearouse Adv. Sh. No. 7 at 43, 65) (declining to reach certain issues because the resolution of a prior issue on appeal was dispositive of the appeal).

¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1839
www.sccourts.org

July 30, 2013

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Parker, Orlando
Lower Court Case No. 2009GS2306279
Appellate Case No. 2011-194990

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

cc: J. Falkner Wilkes
Christina J. Catoe

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)ORLANDO PARKER 346628)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 04175

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL B. WICKINS

2013 AUG - 2 AM 10: 41

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION, 990 WISACKY HWY,
BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) SHATANA ALEXANDER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-23-06279: TRAFFICKING IN COCAINE
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JUNE 23, 2011 30 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE COURTS OF APPEALS OF SOUTH CAROLINA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. THE COURT OF APPEALS AFFIRMED CONVICTION
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 8, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ~~THE~~ RULE 220(b), SCACR
- ii. STATE v. PORTER, 389 S.C. 273, 698 S.E. 2d 237, 242 (Ct. App. 2010)
- iii. See STATE v. RIVERA, OP. No. 27220 (S.C. Sup. Ct. filed Feb. 13, 2013)
(Shearouse Adv. Sh. No. 7 at 43, 65)
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENTS
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction: N/A
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. TRIAL AND SENTENCING: RICHARD WARDER, 15 PRIMEROSE ST, GREENVILLE, S.C. 29601
 ii. APPEAL: J. FALKNER WILKES, 114 WHITSETT ST, GREENVILLE S.C. 29601
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. WARDER; TRIAL
 ii. WARDER; SENTENCING
 iii. WILKES; APPEAL

19. State clearly the relief you seek in filing this application:

RELIEF FROM CONVICTION AND SENTENCE

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Orlando Parker, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Orlando Parker

SWORN to and subscribed before me this 3
day of July 2013.

Debra Surges (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ORLANDO PARKER, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Orlando Parker
Applicant

SWORN or affirmed to and subscribed before me this

3 day of July, 2013.

Debra Siles
Notary Public

My Commission Expires: 11-4-2015

ATTACHMENTS OF PAGE 3, QUESTIONS 10 AND 11
GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10.)

(A) APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS VIOLATED AS A RESULT OF TRIAL COUNSEL'S FAILURE TO RESEARCH AND INVESTIGATE THE FACTS OF THE CASE.

11.)

(A) TRIAL COUNSEL FAILED TO INVESTIGATE THE QUESTIONING BY THE D.E.A., WHICH VIOLATED STATE AND FEDERAL LAWS, TO FIND OUT THE APPLICANT'S CO-DEFENDANT GAVE STATEMENTS TO THE DEA. THAT WOULD HAVE HELPED THE APPLICANT'S DEFENCE. ALSO, TRIAL COUNSEL FAILED TO INVESTIGATE THE POLICE CAR WHICH WOULD HAVE REVEALED THE POLICE CAR WAS EQUIPT WITH A RADAR DETECTOR WHEN THE PROSECUTION BASED ITS LAWFUL STOP ARGUMENT ON THE PACING OF APPLICANT'S VEHICLE.

10.)

(B)... TRIAL COUNSEL'S FAILURE TO RESEARCH AND INVESTIGATE THE PROSECUTION'S WITNESSES.

11.)

(B) HAD TRIAL COUNSEL INVESTIGATED THE PROSECUTION'S WITNESSES, HE WOULD HAVE DISCOVERED THAT BUTTS COUNTY GEORGIA SHERIFF DEPUTY MICHEAL BROCE'S PRESENCE AND PARTICIPATION IN APPLICANT'S ARREST WAS UNAUTHORIZED AND VIOLATES SOUTH CAROLINA CODE OF LAW SECTIONS 23-1-210

(CONT.)

P. 2084

AND 23-23-40.

10.)

(C)... TRIAL COUNSEL'S FAILURE TO MAKE OBJECTIONS TO OUT OF STATE OFFICER NOT HAVING ANY PAPERWORK AUTHORIZING HIM TO ACT AS A LAW ENFORCEMENT AGENT IN THE STATE OF SOUTH CAROLINA.

11.)

(C) BOTH GREENVILLE CITY POLICE OFFICE CHI BLAIR AND BUTTS COUNTY GEORGIA SHERIFF DEPUTY MICHAEL BROCE TESTIFIED TO NEITHER OFFICER BEING AWARE OF ANY PAPERWORK AUTHORIZING BROCE TO ACT AS A LAW ENFORCEMENT AGENT IN SOUTH CAROLINA. STATE LAW PROHIBITS ANYONE FROM ENFORCING THE LAW WITHOUT BEING CERTIFIED BY THE TRAINING COUNSEL; SOUTH CAROLINA CODE OF LAW SECTION 23-23-40. THEY MUST ALSO BE IN COMPLIANCE WITH SOUTH CAROLINA CODE OF LAW SECTION 23-1-210 AS TO A WRITTEN AGREEMENT STATING THE CONDITIONS AND TERMS OF TEMPORARY OFFICERS. TRIAL COUNSEL SHOULD HAVE OBJECTED TO THE UNAUTHORIZED PARTICIPATION OF BROCE AND IF HE WAS OVERRULED, HE WOULD HAVE SAFEGUARDED THE ISSUE IN THE RECORD FOR APPEAL.

10.)

(D) APPLICANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA WAS VIOLATED WHEN THE COURT ADMITTED EVIDENCE REGARDING

(CONT.)

WITNESS' OPINIONS ABOUT THE DEFENDANTS' DEemeanOR BECAUSE THIS EVIDENCE WAS INADMISSABLE HEARSAY AND CHARACTER EVIDENCE.

11.)

(D) THE COURT IMPROPERLY ADMITTED TESTIMONY CONCERNING APPLICANT'S NONVERBAL BEHAVIOR. BLAIR STATED THAT "I THOUGHT HE WAS CRYING. HE SAID HE WASN'T BUT HE WAS SWEATING PROFUSELY" T. 99. WHEN TESTIFYING AS TO THE DEemeanOR OF APPLICANT WHEN THE DRUGS WERE ABOUT TO BE FOUND.

10.)

(E)... TRIAL COUNSEL'S FAILURE TO OBJECT TO INADMISSIBLE HEARSAY AND CHARACTER EVIDENCE TESTIMONY REGARDING APPLICANT'S DEemeanOR

11.)

(E) THESE STATEMENTS CONSTITUTE HEARSAY AND IMPROPER LAY OPINION AND INHERENTLY HARMED APPLICANT'S TRIAL; THEREFORE, TRIAL COUNSEL SHOULD HAVE OBJECTED TO THEIR ADMISSIBILITY, WHICH HE DID NOT DO. UNDER STATE AND FEDERAL LAW, NONE OF THESE STATEMENTS SHOULD HAVE BEEN ADMISSIBLE. A TRIAL COUNSEL'S FAILURE TO OBJECT TO IMPROPER HEARSAY TESTIMONY CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. THE COMMENTS AND STATEMENTS WERE NOT ADMISSIBLE, AND THUS THE FACT THAT THEY WERE ADMITTED CONSTITUTES ERROR. TRIAL COUNSEL SHOULD HAVE OBJECTED TO

(CONT.)

THE ADMISSIBILITY OF THESE STATEMENTS AND IF HE WAS OVERRULED, HE WOULD HAVE SAFEGUARDED THE ISSUES IN THE RECORD FOR APPEAL.

10.)

(F) TRIAL COUNSEL'S FAILURE TO ADVISE APPLICANT TO TESTIFY IN HIS DEFENSE.

11.)

(F) TRIAL COUNSEL DID NOT TELL APPLICANT HE WOULD TESTIFY AT TRIAL UNTIL DAY TWO(2) OF TRIAL, FIVE(5) MINUTES BEFORE TESTIFYING. TRIAL COUNSEL DID NOT PREPARE APPLICANT TO TESTIFY IN HIS DEFENSE, LEAVING HIM UNPREPARED FOR HIS OWN COUNSEL'S QUESTIONS AS WELL AS THE PROSECUTION'S.

10.)

(G)... TRIAL COUNSEL MADE HARMFUL STATEMENTS CONTRADICTORY TO APPLICANT'S TESTIMONY AND FACT IN CLOSING.

11.)

(G) IT WAS WELL DOCUMENTED AT TRIAL THAT APPLICANT WAS BORN AND RAISED IN PITTSBURGH PA., HOWEVER, TRIAL COUNSEL STATED FOUR(4) TIMES THAT APPLICANT WAS FROM PHILADELPHIA. HE ALSO STATED APPLICANT WAS COMING FROM MIAMI WHEN IT WAS ESTABLISHED APPLICANT WAS COMING FROM ATLANTA WHERE HIS SON LIVES. THESE STATEMENTS WERE HARMFUL IN A TRAFFICKING IN COCAINE CASE BECAUSE MIAMI IS ARGUABLY THE COCAINE CAPITAL OF THE U.S. AND PHILADELPHIA IS ALSO ANOTHER MAJOR COCAINE HUB.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Orlando Parker,)
S.C.D.C. No. 346628,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-4175

RETURN AND PARTIAL MOTION TO DISMISS

In response to the post-conviction relief application filed August 2, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the April 2010 term of General Sessions for trafficking cocaine (2009-GS-23-6279). Richard H. Warder, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On June 23, 2011, the Honorable Edward W. Miller sentenced the Applicant to thirty years imprisonment for trafficking cocaine, 400 or more grams.

A notice of appeal was filed at the South Carolina Court of Appeals. Jeffrey Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Parker, Op. No. 2013-UP-180 (S.C. Ct. App. filed May 8, 2013). The Court of Appeals denied the Applicant's subsequent petition for rehearing by order dated June 20, 2013. The Remittitur was sent on July 30, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to investigate:
 - i. Failed to investigate "the questioning by the D.E.A."
 - ii. Failed to investigate "the police car which would have revealed the police car was equipt with a radar detector when the prosecution based it's lawful stop arguement on the pacing of Applicant's vehicle."
 - b. Failed to research and investigate the State's witnesses:
 - i. The presence of the Georgia Deputy Sheriff Michael Broce "was unauthorized and violates South Carolina Code of Law Sections 23-1-210 and 23-23-40."
 - ii. Failed to object to Broce "not having any paperwork authorizing him to act as a law enforcement agent in the state of South Carolina."
 - c. Failed to object to "inadmissible hearsay and character evidence testimony regarding Applicant's demeanor."
 - d. Failed to prepare the Applicant to testify in his own defense.
 - e. "[M]ade harmful statements contradictory to Applicant's testimony and fact in closing."
2. Trial court error:
 - a. Trial court erred in admitting testimony about the Applicant's "nonverbal behavior."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent notes the Applicant has made an allegation of trial court error. This is not cognizable in a PCR action. Rather, this allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal and it should be summarily dismissed.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the Respondent requests: (1) that issues related to trial court error be summarily dismissed, (2) that a hearing be held solely upon the allegations of ineffective assistance of trial counsel, and (3) counsel appointed to represent the Applicant.

Respectfully submitted,

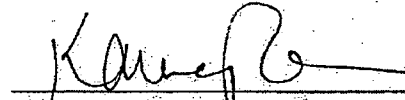
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 8, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-4175

ORLANDO PARKER, 346628)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

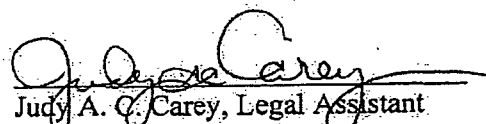
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Orlando Parker, 346628
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 8th day of April, 2014.


Judy A. Carey, Legal Assistant
For Respondent

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» > ○ < «

There were no exhibits.

Certificate of Reporter 29

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 MS. RATIGAN: Your Honor, the next case is
2 Orlando Parker vs. State of South Carolina. The
3 docket number 2013-CP-23-4175. Mr. Parker was
4 indicted for trafficking cocaine. He was represented
5 on that charge by Mr. Warder. The case was brought
6 to trial in June of 2011 before Judge Miller.
7 Mr. Parker was found guilty at that time. On
8 June 23rd of 2011, Judge Miller sentenced him to 30
9 years imprisonment for trafficking cocaine, 400 or
10 more grams. He did file an appeal, the Court of
11 Appeals, however, affirmed his conviction and
12 sentence in May of 2013. And The State is ready to
13 proceed.

14 THE COURT: Okay.

15 Mr. Johnson.

16 MR. JOHNSON: Yes, sir, Your Honor. We're here
17 today primarily for ineffective assistance of
18 counsel. I think, Your Honor, will see that we'll
19 present two issues with regards to the case. One is
20 a issue as alleged in my client's application as far
21 as the DEA. We're going to submit testimony both by
22 my client and Co-Defendant in this case, Shatana
23 Alexander, that she had previously admitted to the
24 DEA that falsely that the drugs were hers. But we do
25 believe that would have been a relevant point on

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 cross-examination.

2 Furthermore, there's a Georgia deputy involved.
3 My client has also listed as ineffective as far as
4 objection to his presence and his conduct in the case
5 with regards to failure to be authorized as a police
6 officer acting in the jurisdiction, Judge. So, those
7 are the two primary issues that we've narrowed it to
8 that we intend to present at this time.

9 THE COURT: Okay, you may proceed, sir.

10 MR. JOHNSON: Your Honor, I call
11 Mr. Orlando Parker.

12 THE CLERK: Place your left hand on the Bible,
13 raise your right hand.

14 ORLANDO PARKER, after being duly
15 sworn, testified as follows:

16 THE CLERK: Thank you. Please state your full
17 name for the record.

18 THE WITNESS: Orlando Parker.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. JOHNSON:

22 Q All right, Orlando, please say your name for the
23 Court one more time.

24 A Orlando Parker.

25 Q Orlando, where are you currently housed?

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 A Lee Correctional Institution.

2 Q What are you serving?

3 A Thirty years.

4 Q On what charges are you serving this 30 year
5 sentence?

6 A Trafficking cocaine over 400-grams.

7 Q And was this a guilty plea or was this from a
8 trial?

9 A Trial.

10 Q Do you remember the date of your trial?

11 A June 23rd, 2011.

12 Q Was it a one day trial, a two day trial?

13 A Two day trial.

14 Q And the jury found you guilty?

15 A Yes.

16 Q Who was your attorney?

17 A Richard Warder.

18 Q Did you have any co-defendants?

19 A Yes.

20 Q Who was your co-defendant?

21 A Shatana Alexander.

22 Q Did she have an attorney as well?

23 A Yes, sir.

24 Q Do you recall the name of her attorney?

25 A Chase Harbin.

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 Q Okay. Let's go back a little bit as far as the
2 history of the case is concerned. What was the date of
3 the incident?

4 A March 12th, 2009.

5 Q What was the date of your trial?

6 A June 23rd, 2011.

7 Q So roughly two years between the date of the
8 incident and the trial?

9 A Yes.

10 Q When did you hire Mr. Warder?

11 A November 2010.

12 Q Okay. So, from November 2010 to the date of
13 trial, Mr. Warder was your attorney?

14 A Yes.

15 Q Did you have the opportunity to sit down and
16 speak with him?

17 A Yes.

18 Q How many times, do you think?

19 A Well, I initially when I hired him I spoke to
20 him in person, the rest of the time was over the phone.
21 And the day before the trial I spoke to him in person.

22 Q Okay. Now, at what point was it decided that
23 you guys were going to trial?

24 A Well, I got a card in the mail in June of 2011
25 stating that I had to be at trial a couple of weeks later.

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 Q Up until that point in time had you and
2 Mr. Warder discussed the trial or?

3 A Not really, no. I told him -- the main reason
4 why I hired him was because the traffic stop, they said
5 there was no video or audio tape of the stop. And I just
6 couldn't believe that. I didn't understand how there
7 couldn't be any audio or video of the traffic stop on the
8 interstate. And I knew if there was a stop -- if there
9 was a video tape of the stop, I know they'd seen that I
10 didn't have any drugs, I was handcuffed, I wasn't read my
11 rights and such. I hired him because I wanted him to
12 subpoena the records from the car, the police car. And
13 the day I met him I told him that before I even paid him
14 money. I told him what I wanted him to do. I wanted him
15 to investigate the whole stop aspect of it. And he told
16 me he would. And basically never did. He never
17 subpoenaed the records for the car. He said that they --
18 [indiscernible] on the interstate. But I later -- I later
19 did records of the car, inventory of the car, the police
20 car, and it had a radar gun. And I couldn't understand
21 how could you could pay [verbatim] somebody if they're
22 speeding and you have a radar gun, why wouldn't you just
23 use the radar gun? Like I said, I asked him to subpoena
24 the records for the car.

25 Actually, at the trial, the date of the trial,

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 he told me he was going to get a continuance. So, I was
2 under the impression we weren't even going to go trial
3 that day. He asked the Judge on sidebar could he get a
4 continuance to subpoena the records for the car.

5 The Judge asked him why didn't he subpoena the
6 records? He told him he had this case for over eight
7 months, you had subpoena power, you should have subpoenaed
8 the records before.

9 Q Now, with regards to, I guess, the alleged
10 involvement of the DEA officer, was that confirmed during
11 trial?

12 A Yes. It was actually in the police report that
13 were taken to DEA Headquarters. They had a DEA liaison,
14 Trey Scardon. They reported they took us from the side of
15 the road to the DEA Headquarters. They questioned us for
16 about an hour. They questioned us separately. And told
17 him about that too. I told him that when we were there I
18 was under the impression that my co-defendant had claimed
19 responsibility for everything.

20 Q Okay. So, at some point you had a
21 conversation -- before trial you had a conversation with
22 Mr. Warder that your co-defendant either did or may have
23 claimed the drugs that were found in the vehicle?

24 A Yeah, I told him you need to investigate, get
25 some type of recording or statement from them. And

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 probably would help my case.

2 Q Now, to your knowledge; and after review of the
3 transcript, do you know if he ever made mention of the
4 co-defendant either trying to or attempting to claim the
5 drugs?

6 A No. There was no mention of anything at trial
7 as far as any statements -- the DEA wasn't actually --
8 there was no DEA officers present at the trial. The State
9 didn't call any, we didn't call any.

10 Q And you did -- and you just stated the name of
11 that DEA agent, is that correct?

12 A Yes, it's in the police report.

13 Q Okay. Now, with regards to the officers there,
14 do you remember from what jurisdictions they were from?
15 At the scene of the stop?

16 A Well, when everything -- everything --
17 everything that happened at the scene on I-85, up until my
18 trial date, I never knew that guy was from out of town. I
19 didn't know. The first time I became aware that he was
20 from out of state, when me and Mr. Warder was sitting at
21 the table and he got a witness list. On the police report
22 it's an acronym or his title was BCSO, Butts County
23 Sheriff's Office. I didn't know. I'm not from South
24 Carolina. So, I didn't know. But when we got the witness
25 list it was spelled out Butts County Georgia Sheriff's

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 Deputy.

2 I asked him, What's that?

3 He said, That's the first I heard of that.

4 And I couldn't understand how that could have
5 been, the first he had heard of it if it was in the police
6 report.

7 Q In your opinion, first of all, what's the
8 significance of that officer in reference to your
9 application for post-conviction relief ineffective
10 assistance of counsel, how do you take that to the
11 police[verbatim]?

12 A Well, during the whole search of the vehicle, he
13 was going to search the truck. He was the one who found
14 the drugs. The Greenville City police officer stood by
15 me. His testimony is a little different than what I'm
16 saying now but in reality, he stood by me while I was
17 handcuffed while the Butts County sheriff's deputy
18 searched the truck. He's the one that went inside the
19 speaker box, he's the one that pulled out the drugs, he
20 found the drugs. And come to find out later on that he
21 couldn't even be on the scene. He couldn't be in South
22 Carolina acting as a law enforcement agent.

23 Q Now, why do you say that?

24 A Because it's part of the code of laws. South
25 Carolina Code of Laws that he would have to jurisdiction

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 to even be in South Carolina.

2 Q Now, did you recite that code of laws in your
3 application for post-conviction relief?

4 A Yes.

5 Q If I were to approach you with a copy of the
6 related code of laws from South Carolina, would you be
7 able to illustrate to the Court what you mean?

8 A Yes.

9 MR. JOHNSON: Permission to approach, Judge?

10 THE COURT: Yes, sir.

11 BY MR. JOHNSON:

12 Q Are those the code of laws that you referenced
13 on your testimony?

14 A Yes. Section 23-23-40, Section 23-1-210.

15 Q Okay. Upon your reading of those statutes, why
16 do you believe that the officer from Georgia being here
17 would have been an issue if it had been raised at trial?

18 A Because it says that -- it says He -- He -- When
19 so transfer or [indiscernible] shall have all powers in
20 the jurisdiction that he's transferred in. It wasn't
21 transferring to another jurisdiction. He basically didn't
22 have any right to be there. It says that he has to have a
23 written agreement and he has to be certified by the South
24 Carolina training counsel to enforce the laws of South
25 Carolina.

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 Q And to your recollection of the trial and from
2 your review of the transcript, was such evidence ever
3 presented?

4 A They mentioned several times, they asked -- well
5 actually the solicitor asked them was there any paper work
6 that he knew of for him to be in South Carolina?

7 And he said, No.

8 He asked the Greenville City police officer,
9 they asked him several times.

10 And he said, No.

11 It was vaguely mentioned on cross-examination
12 and closing arguments about him not having the paper work
13 and not authorized to be in South Carolina but no one --
14 it wasn't argued. That's the response I got from the
15 Appellate Court. They said that it wasn't raised, it
16 wasn't objected to, it wasn't raised or argued. And for
17 it to be heard on appeal it had to be raised and argued at
18 trial.

19 Q So, the objection to the -- the objection on the
20 basis of that statute was never made?

21 A No.

22 Q Did you just -- did you recite one statute? Did
23 you just go over one or did you go over both statutes,
24 Mr. Parker?

25 A Well, one I can paraphrase it or I can quote

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 what I wrote on the thing. On my citation.

2 The citation requirement says, No law
3 enforcement officer, employee or appointed on or after
4 July 1st, 1989 by any public law enforcement agency in
5 this state is authorized to enforce the laws or ordinance
6 in this state or any political subdivision therefore
7 unless they have been certified and is qualified by the
8 law enforcement trafficking counseling. That's what I
9 quoted.

10 Q Yes, sir.

11 A That's 23-23-40, 23-1-210. It's for a temporary
12 transfer of assignment of law enforcement officers,
13 written agreement, conversation [verbatim], compensation.

14 Q We've now gone over the DEA Agent, Mr. Scardon,
15 and the fact that he wasn't subpoenaed and the fact
16 Ms. Alexander was not questioned in reference to the
17 statement. And we've also gone over the statute that you
18 quoted in your ineffective assistance of counsel
19 application. Is there anything else that you'd like to
20 tell the Court at this time in reference to ineffective
21 assistance of counsel?

22 A Yeah, I just want to say it was also mentioned
23 in my trial several times that I was never read my rights.

24 There was no objection on my part. At one point my
25 co-defendant's counsel conceded that the stop was

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 probably -- they had probable cause for the stop. And we
2 never -- we didn't -- my side didn't clarify that we
3 believe that there wasn't probable cause. We had a
4 Jackson vs. Denno pretrial hearing. Which is a Miranda
5 issue hearing. And at no point did we argue any Miranda
6 rights case law. Actually, my lawyer never cited one case
7 law the whole trial. During the Jackson vs. Denno
8 hearing, my co-defendant's counsel actually cited some
9 case law and he like piggybacked on to it. But most of
10 the case law he cited, none of it involved this matter in
11 the truck. And he didn't clarify that to the Court. And
12 I just -- that's basically about it.

13 Q So, you didn't think he prepared for your trial?

14 A Not at all.

15 MR. JOHNSON: Unless there's anything further, I
16 ask you to answer any questions Ms. Ratigan has.

17 THE WITNESS: Okay.

18 MS. RATIGAN: I don't have any questions for
19 this witness, Your Honor.

20 THE COURT: Okay, all right.

21 Thank you, sir. I appreciate you being here,
22 Mr. Parker, you may step down. Thanks for being
23 here.

24 Anything further from the Applicant?

25 MR. JOHNSON: I call Shatana Alexander.

ORLANDO PARKER-DIRECT BY MR. JOHNSON

1 THE CLERK: Place your left hand on the Bible,
2 raise your right hand.

3 SHATANA ALEXANDER, after being duly
4 sworn, testified as follows:

5 THE CLERK: Thank you, please state your name
6 for the record.

7 THE WITNESS: Shatana Alexander.

8 THE CLERK: Spell your first name.

9 THE WITNESS: S-H-A-T-A-N-A A-L-E-X-A-N-D-E-R.

10 THE CLERK: Thank you, be seated.

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q Ms. Alexander, let me ask you to state your name
14 to the Court one more time.

15 A Shatana Alexander.

16 Q Ms. Alexander, you were also put on trial with
17 Mr. Parker; is that correct?

18 A Yes.

19 Q And you were considered his co-defendant?

20 A Yes.

21 Q You were represented by whom?

22 A Chase, I don't remember his last name.

23 Q Chase Harbin?

24 A Yes, sir.

25 Q And as a result of the trial, what was the

SHATANA ALEXANDER-DIRECT BY MR. JOHNSON

1 verdict for you?

2 A Not guilty.

3 Q So, you were found not guilty of trafficking in
4 drugs?

5 A Yes.

6 Q Now, the testimony just presented by my client
7 in reference to a DEA agent, do you recall a DEA agent
8 being involved in your case?

9 A Yes.

10 Q Do you remember that person's name?

11 A No.

12 Q When did you speak to the DEA agent?

13 A The same day we was arrested. We went straight
14 from where we got arrested, straight to the DEA building.

15 Q Okay. At some point during your conversations
16 with the DEA agent, did you claim or otherwise deny
17 possession of any drugs?

18 A I claimed.

19 Q You claimed what?

20 A The possession of the drugs.

21 Q And that was to the DEA agent?

22 A Yes.

23 Q Now to be clear, were the drugs yours?

24 A No.

25 Q Did you testify that the drugs were yours?

SHATANA ALEXANDER-DIRECT BY MR. JOHNSON

1 A No.

2 Q At some point in time you did state to the DEA
3 that the drugs were yours?

4 A Yes.

5 Q And that was a statement that would have been
6 contrary to your interest?

7 A Yes.

8 Q As you recall, was a recording ever done that
9 you signed or anything to that nature?

10 A No.

11 Q In your recollection, were you ever questioned
12 about this at trial?

13 A No.

14 MR. JOHNSON: Your Honor, I have no further
15 questions for this witness at this time.

16 THE COURT: Yes, ma'am, any questions?

17 MS. RATIGAN: No questions for Ms. Alexander.

18 THE COURT: Thank you, ma'am, I appreciate your
19 being here.

20 All right, anything further?

21 MR. JOHNSON: That will be Applicant's case.

22 THE COURT: Yes, ma'am.

23 MS. RATIGAN: Thank you, Your Honor, we call

24 Mr. Warder.

25 THE CLERK: Place your left hand on the Bible,

SHATANA ALEXANDER-DIRECT BY MR. JOHNSON

1 raise your right.

2 RICHARD WARDER, after being duly
3 sworn, testified as follows:

4 THE CLERK: Thank you. Please state your full
5 name for the record.

6 THE WITNESS: Richard Warder.

7 THE CLERK: Thank you, you may be seated.

8 DIRECT EXAMINATION

9 BY MS. RATIGAN:

10 Q Mr. Warder, do you recall representing
11 Mr. Parker on this trafficking charge?

12 A Yes, I do.

13 Q Okay. Were you retained in this case or were
14 you appointed?

15 A I was retained.

16 Q Did you file the usual discovery motions?

17 A Yes, I did.

18 Q When you received those discovery materials were
19 you aware that your client had been taken to the DEA's
20 office after he had been arrested?

21 A I don't remember that but I don't know I was
22 aware of it. Today I don't remember whether he went to
23 the DEA office or not.

24 Q You just don't recall one way or the other?

25 A Yeah.

RICHARD WARDER-DIRECT BY MS. RATIGAN

1 Q Do you recall whether or not his Co-defendant,
2 Ms. Alexander, ever gave a statement to the DEA that the
3 drugs were hers?

4 A Don't recall that today. And I don't think that
5 I knew about that.

6 Q If you had been aware that she had given a
7 statement to the DEA that the drugs were hers but then was
8 going to testify at the trial that the drugs were not
9 hers, was that something that you would have questioned
10 her about?

11 A Yes, that would have been important. It would
12 have been an exculpatory statement by a Co-defendant who
13 could have, in fact, placed the drugs in the speaker box
14 in the car.

15 Q But your testimony today is you just don't
16 recall ever knowing that information about the DEA?

17 A No, I don't think so. I don't think that the
18 solicitor ever gave me that information. And don't think
19 my client gave me that information.

20 Q Now, regarding the issue of the officers that
21 were involved in the stop, were you aware after receiving
22 the discovery that two of those officers where from
23 Georgia?

24 A Yes.

25 Q Did you have any basis to object to their

RICHARD WARDER-DIRECT BY MS. RATIGAN

1 participation in the stop?

2 A Well, I don't think they took any active
3 participation. They were certainly raised in my mind a
4 suspicion that, in fact, somebody in Georgia had given the
5 officers some information that made them come up here and
6 make the focus on the car. The car was stopped because it
7 was speeding. It seems to me that that stop would have
8 been proper.

9 Q But at the time you were unaware of any motion
10 you could have made, any kind of objection that you could
11 have made to the Georgia officers participation?

12 A I didn't think there was any successful motion I
13 could make.

14 Q Now, Mr. Parker has also stated that he was
15 never read his rights. Do you recall that being an issue?

16 A No, I don't. I don't recall that. I'm sure we
17 looked into that. I would usually also look into if there
18 was going to be any statement at all with the client.

19 MS. RATIGAN: That's all I have, Your Honor.

20 THE COURT: Cross-examination?

21 MR. JOHNSON: Yes, sir, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Mr. Warder, in association with this case, I'm
25 going to ask you some questions about the preparation for

RICHARD WARDER-CROSS BY MR. JOHNSON

1 trial and see if you recall any of the answers. Do you
2 recall whether you interviewed any potential witnesses for
3 trial?

4 A Do I recall how many?

5 Q Whether you interviewed any potential witnesses
6 for trial?

7 A Interviewed Mr. Parker.

8 Q Well, in addition to Mr. Parker?

9 A No.

10 Q For example, did you try to speak to any of the
11 police officers in preparation for trial?

12 A I think we got the incident reports and
13 everything. I don't think I questioned them about whether
14 there was any fact that was inconsistent in the incident
15 report. They testified pretty consistently with
16 everything they said in the reports.

17 Q Okay. Specifically my question was, Did you
18 speak with them before trial and question them about
19 anything with regards to the report or anything of that
20 nature?

21 A No, I usually don't. And the reason for that is
22 if I have some issue I want to bring up and I think has
23 some significant value of surprising or catching the
24 witness offguard, it doesn't usually do anything to alert
25 them that that will be an issue at trial. And it makes it

RICHARD WARDER-CROSS BY MR. JOHNSON

1 harder to be successful sometimes not letting them know
2 what you're going to question.

3 Q Now, this is a drug case, correct?

4 A Yes.

5 Q Do you recall whether you filed a Rule 6
6 objection requiring them to do the -- because I'm asking
7 you a question I forget what it's called. The chain of
8 custody regarding the drugs?

9 A You saying get a independent test?

10 Q Well, Rule 6 objection?

11 A I'm sorry, ask the question again.

12 Q Do you recall whether you filed a Rule 6
13 objection -- a Rule 6 objection of Rules of Criminal
14 Procedure with regards to the chain of custody of the
15 drugs?

16 A I don't know. I don't think there was any
17 question on the chain of custody.

18 Q Do you recall whether you reviewed the paper
19 work regarding the chain?

20 A I'm sure we looked over how the chain existed.
21 And they proved it at trial in the same manner.

22 Q Now, the patrol car that pulled Mr. Parker and
23 Ms. Alexander over, do you recall whether or not there was
24 a in-car video?

25 A Do I recall if there was a video, is that the

RICHARD WARDER-CROSS BY MR. JOHNSON

1 question?

2 Q Yes, sir. Yes, sir.

3 A I do not recall whether or not there was a video
4 in this case. I don't think it was shown at trial. I
5 just don't recall.

6 Q Now, I believe your statement was earlier is
7 that you don't remember whether my client or Ms. Alexander
8 was interviewed by the DEA, is that correct?

9 A You're a little hard for me to understand
10 because you talk down to the table instead of me and I'm a
11 little hard of hearing.

12 Q My apologies. My apologies. Do you recall --
13 well, I believe in your testimony earlier today that you
14 don't remember whether or not my client told you or that
15 you learned that he and Ms. Alexander went to the DEA
16 office?

17 A Today I don't remember that exactly, no.

18 Q Okay.

19 A And it could have been either way. I honestly
20 don't know.

21 Q Now, do you recall whether there was a DEA
22 officer involved?

23 A I do know that the DEA who was something to do
24 with the government. Because I think, as I remember it as
25 it evolved, is that he thought that the government was

RICHARD WARDER-CROSS BY MR. JOHNSON

1 going to take over the case. And he talked to me that he
2 thought it would -- the federal people would take the
3 case.

4 Q Who thought that specifically?

5 A Pardon?

6 Q Who thought that?

7 A I think my client did.

8 Q Okay. So, the federal government at some point
9 was mentioned in conversations with you?

10 A They didn't have any conversation with me.

11 Q No, I'm talking about my client mentioned to you
12 that he thought that the federal -- that a federal agency
13 or the Federal Government was involved?

14 A Yes.

15 Q Okay. Now, isn't it true that in trial some of
16 the officers referenced, actually, that DEA was called?
17 And DEA responded to the scene, is that correct?

18 A I think it was.

19 Q Okay. And there was no -- you were not supplied
20 any DEA report or anything of that nature, is that true?

21 A Was not. In fact, I argued, I think -- we
22 argued some that the DEA must have looked at the case and
23 decided not to take it. Because of the weakness of it we
24 thought.

25 Q And if that was so -- so you have the state

RICHARD WARDER-CROSS BY MR. JOHNSON

1 officers, both Georgia or the state officer that testified
2 in court did do reports and -- that's correct? But the
3 DEA officer did not do reports?

4 A I don't think we had a DEA report.

5 Q Okay. And you didn't -- you didn't call or
6 contact DEA office and try to speak with that officer to
7 find out why the case was declined?

8 A No, I didn't call up and ask why they didn't
9 take the case.

10 Q Okay. And then if you called up and you would
11 have found out that Ms. Alexander, for example, had try to
12 claim the drugs, that would have been a factor you would
13 have used in trial?

14 A Well, it seems like right now that would be a
15 fact that we would want to bring out.

16 Q Now, you stated that you were aware that -- that
17 two of the officers were from Georgia?

18 A Yes.

19 Q Okay. And I believe that you didn't make any
20 objection to their involvement in the case with regards to
21 the trial, at least?

22 A I did not think that there was anything that
23 would prevent them from testifying.

24 Q Would you agree that if the statutes that my
25 client recited do, in fact, exists, that you may have some

RICHARD WARDER-CROSS BY MR. JOHNSON

1 grounds to make some objection to their involvement in the
2 case?

3 A A south Carolina officer stopped them, I think
4 that's as far as it has to go.

5 Q As you recall, who found the drugs?

6 A I don't remember who took the speaker box apart.

7 Q But if it was a Georgia officer who participated
8 or helped find the drugs, that could have been a issue
9 that you could have pursued if you had the grounds for an
10 objection?

11 A My defense was we didn't know the drugs were
12 there. But yeah, could have been. Could have been
13 something, yes.

14 Q Now, with regards to your defense, obviously a
15 suppression hearing that was taken outside the presence of
16 the jury, is that correct? The suppression?

17 A Yeah.

18 Q Okay. So any evidence that you would have
19 presented there wouldn't have necessarily interfered with
20 any defense that you would have presented?

21 A Yes.

22 Q Do you recall whether or not you researched any
23 of the case law in preparation for the trial?

24 A I don't recall at this time. We usually have --
25 if we have a question, look up what that question is.

RICHARD WARDER-CROSS BY MR. JOHNSON

1 MR. JOHNSON: Your Honor, I have no further
2 questions for the witness.

3 THE COURT: Any redirect?

4 MS. RATIGAN: No redirect, Your Honor. The
5 State would rest.

6 THE COURT: All right.

7 Mr. Warder, you may step down. Thank you, I
8 appreciate your being here.

9 MS. RATIGAN: Your Honor, again, we would call
10 no other witnesses. However, I'm completely
11 [indiscernible] on why I did not bring it with me,
12 but I would cite the case of State vs. Boswell
13 regarding the Georgia deputy issue. And that has to
14 deal with the idea of this written jurisdictional
15 agreement. Boswell basically says, You need those
16 agreements, in quotation marks, Foreign deputy goes
17 into a different jurisdiction and acts alone. That
18 case is a case where a Lexington County went into
19 Orangeburg without any kind of agreement. And
20 effected the search without involving Orangeburg at
21 all. That case cites numerous State and Federal
22 laws. And we would state that since they were
23 working as a team in a multi-jurisdictional task
24 force on 85, that these statutes don't come into play.
25 Again, Boswell spells all that out.

1 MR. JOHNSON: Can I have a brief chance to
2 respond, Judge?

3 THE COURT: Sure.

4 MR. JOHNSON: It seems like, I haven't read the
5 Boswell case, but it seems like the obvious
6 distinction is that if you have Orangeburg and
7 Lexington, that's still in the State of South
8 Carolina as opposed to Georgia. And like I say, I
9 haven't read the Boswell case but I would submit that
10 as -- but I would submit that as a different way of
11 looking at it, Judge.

12 THE COURT: Okay. Good enough. All right.
13 Well, I will take the matter under advisement. I
14 will consider the same in the context of the
15 testimony that's been presented today. And take the
16 opportunity to read the transcript of record as well.
17 All right.

18 MS. RATIGAN: Thank you, Your Honor.

19 THE COURT: Good luck to you, sir.

20 (WHEREUPON, the proceedings were concluded.)
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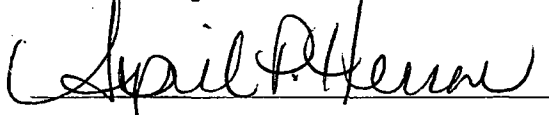
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of June, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 7, 2015



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Orlando Parker,)
S.C.D.C. No. 346628,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-4175

ORDER OF DISMISSAL

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 AUG 5 AM 9 55

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 2, 2013. The Respondent made its return and partial motion to dismiss on April 8, 2014. An evidentiary hearing into the matter was convened on June 18, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Shatana Alexander and the Applicant's trial counsel, Richard H. Warder, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return and partial motion to dismiss, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the April 2010 term of the Greenville County Grand Jury for Trafficking Cocaine (2009-GS-

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23-6279). He was represented by Richard H. Warder, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On June 23, 2011, the Honorable Edward W. Miller sentenced the Applicant to thirty years imprisonment for Trafficking Cocaine, 400 or more grams.

A notice of appeal was filed at the South Carolina Court of Appeals. Jeffrey Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Parker, Op. No. 2013-UP-180 (S.C. Ct. App. filed May 8, 2013). The Court of Appeals denied the Applicant's subsequent petition for rehearing by order dated June 20, 2013. The remittitur was sent on July 30, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to investigate:
 - i. Failed to investigate "the questioning by the D.E.A."
 - ii. Failed to investigate "the police car which would have revealed the police car was equipt with a radar detector when the prosecution based it's lawful stop arguement on the pacing of Applicant's vehicle."
 - b. Failed to research and investigate the State's witnesses:
 - i. The presence of the Georgia Deputy Sheriff Michael Broce "was unauthorized and violates South Carolina Code of Law Sections 23-1-210 and 23-23-40."
 - ii. Failed to object to Broce "not having any paperwork authorizing him to act as a law enforcement agent in the state of South Carolina."
 - c. Failed to object to "inadmissible hearsay and character evidence testimony regarding Applicant's demeanor."
 - d. Failed to prepare the Applicant to testify in his own defense.
 - e. "[M]ade harmful statements contradictory to Applicant's testimony and fact in closing."
2. Trial court error:
 - a. Trial court erred in admitting testimony about the Applicant's

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"nonverbal behavior."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel should have investigated the traffic stop and subpoenaed the records of the police car. The Applicant stated trial counsel should have

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obtained DEA records, as he and his co-defendant were taken to DEA headquarters after their arrest. The Applicant stated this would have revealed information trial counsel could have used to impeach his co-defendant. The Applicant stated deputies from Georgia were involved in the search and arrest, but did not have written authorization to act in South Carolina. The Applicant stated trial counsel should have argued that he was never read his Miranda¹ rights.

Sha-Tana Alexander, the Applicant's co-defendant, stated she and the Applicant were taken to DEA headquarters after they were arrested. Alexander stated she told them the drugs were hers (even though they were not), but that she was never asked about this at trial.

Trial counsel testified he was aware of the DEA's involvement, but could not recall if he knew the Applicant had gone to the DEA office. Trial counsel testified he did not believe he knew whether the co-defendant initially told the DEA the drugs were hers and that he would have questioned her about this. Trial counsel testified he was aware (from the discovery materials) that two of the arresting officers were from Georgia. Trial counsel testified he was not aware if they were active participants. Trial counsel testified he did not believe he could make a successful objection or motion based on some of the officers being from Georgia. Trial counsel testified he would have looked into the issue such as whether the Applicant was given his Miranda rights.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly investigate the events after the traffic stop. This Court finds that, while the Applicant argues trial counsel should have subpoenaed the police car's records (to determine if there was in-car audio or video) and the DEA records, the Applicant did not produce such records at the PCR hearing. As such, this Court cannot speculate as to whether these records would have

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

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assisted the defense case. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have impeached Alexander with a statement she had given to the DEA. While the Applicant and Alexander stated she originally told the DEA the drugs were hers, trial counsel testified he was unaware of this statement because he would have questioned her about it. This Court finds trial counsel's testimony is credible. This Court notes trial counsel is an experienced criminal defense attorney and certainly would have attempted to impeach a co-defendant in a joint trial with a prior statement claiming ownership of the drugs. This Court also notes Alexander was questioned at trial about the fact that she initially lied to the officer. (Trial transcript, pp.156-57). The jury, therefore, had this information before them in assessing her credibility. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."). Regardless, this Court finds the Applicant cannot prove prejudice because he failed to produce any records that such a statement had been given. See id. Further, the State presented overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to testimony from the Georgia law enforcement officers. The record is clear that two deputies from Butts County, Georgia were working with officers from the Greenville Police Department on the day in question. Each Georgia deputy was riding in a car with a Greenville

Officer. While Officer Blair (from Greenville) and Deputy Broce (from Georgia) were involved in the stop of the vehicle and initiated the search, Officers Estes and Reider (from Greenville) and another Georgia deputy were also involved in parts of the search and securement of evidence. While the Applicant argues S.C. Code Ann. § 23-1-210 and § 23-23-40 were violated, this Court find this argument is without merit. Officers from different jurisdictions are allowed to take part in joint operations. See State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) (City of Greenville officers executed a warrant in the county – but outside city limits – yet the Court found no jurisdictional defect as the warrant was properly obtained and Greenville County Sheriff deputies were present); Kirby v. Bento, 426 F.2d 258 (5th Cir. 1970) (officers from one Texas town executed a warrant in another but the Court found no jurisdictional violations due to the properly obtained warrant and presence of local law enforcement); cf. State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011) (finding Lexington County officers could not conduct a warrantless search and arrest in Calhoun County without the involvement, assistance, or presence of Calhoun County law enforcement officers). The Georgia deputies were not the instigators or primary investigators in this case. This Court notes, in fact, that this case could have been brought without the participation of the Georgia deputies. The Applicant cannot prevail upon his claim that the involvement of the Georgia deputies was unlawful or rendered his stop, search, and seizure inadmissible.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued he was never given Miranda warnings. This Court finds there would have been no arguable basis for trial counsel to have argued for suppression of the evidence due to a Miranda violation. The Applicant and his co-defendant were stopped on the interstate for speeding and following another vehicle too closely. (Trial transcript, p.89). After an officer asked the

Applicant about the marijuana smell emanating from the vehicle, he indicated his co-defendant had marijuana on her person. (Trial transcript, p.91; p.93; p.95; pp.126-27). The co-defendant removed a package of marijuana from the front of her pants and the Applicant and co-defendant were handcuffed and placed in custody. (Trial transcript, pp.95-96; pp.127-28). The officers searched the vehicle and ultimately found 1998.10 grams of cocaine in a speaker box in the trunk. (Trial transcript, pp.97-103; pp.128-30; p.139). There was no need for the Applicant to have been given Miranda warnings when his vehicle was stopped. See State v. Peele, 298 S.C. 63, 65-66, 378 S.E.2d 254, 255-56 (1989) (citation omitted) (“[R]outine traffic stops do not constitute custodial interrogation for purposes of the Miranda rule.”). The officers had probable cause to search the vehicle based upon the marijuana smell they detected during this routine traffic stop. As Miranda did not attach at this time, the cocaine cannot be viewed as the result of any Miranda violation. Regardless, even assuming arguendo Miranda did apply, the cocaine would not have been suppressed because of a Miranda violation. See United States v. Patane, 542 U.S. 630 (2004) (finding the failure to give a suspect Miranda warnings does not require suppression of the physical fruits of the suspect’s unwarned but voluntary statements).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1 day of April, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

G. V. L. L., South Carolina.

WITNESSES

Chi Blair

Greenville Police Department

3/12/2009

ARREST WARRANT NUMBER

M068707

ACTION OF GRAND JURY
TRUE BILL
Ann D. Jodorette
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

WIB

CC 6279

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2009

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THE STATE

VB.

ORLANDO PARKER

GUILTY

✓0281

Indictment for

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

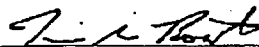
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on **APR 13 2010** the Grand Jurors of Greenville
County present upon their oath:

That ORLANDO PARKER did in Greenville County, on or about the 12th day of March, 2009, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 400 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR