

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 4964 (S.C. Ct. App. filed 4/25/2012)
09-GS-10-01373.

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AUG 23 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ALFRED ADAMS,

PETITIONER

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Alfred Adams,

Appellant.

Appeal From Charleston County
J.C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 4964
Heard February 14, 2012 – Filed April 25, 2012

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

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and Assistant Attorney General Deborah R.J. Shupe,
all of Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

THOMAS, J.: Alfred Adams appeals his conviction for trafficking cocaine. He argues the trial court erred in refusing to suppress drugs found on his person during a traffic stop. We affirm.

FACTS AND PROCEDURAL HISTORY

In July 2008, the North Charleston Police Department (the Department) learned that Adams was involved in a shooting and attempted robbery associated with a drug deal. Based on further investigation, the Department believed Adams was a drug dealer whose source of supply was in Atlanta, Georgia. The Department consequently installed a tracking device¹ on Adams's vehicle while the vehicle was parked in a public parking garage. The Department did not seek a warrant or judicial order before installing the device.

Five days later, the Department learned from the device that Adams's vehicle traveled to Atlanta, remained in that area for less than an hour, and began returning toward Charleston on Interstate 26.² Around 11:55 p.m., the Department contacted Sergeant Timothy Blair, who was accompanied by his drug dog and sitting in his cruiser at a rest area off of the interstate. The Department instructed Sergeant Blair to "be on the lookout" for the vehicle and stop it if it violated any traffic laws. As Sergeant Blair entered the interstate, he spotted the vehicle and observed it change lanes twice without using a turn signal. Sergeant Blair initiated a traffic stop at 11:57 p.m., and the vehicle pulled into a gas station.

Sergeant Blair approached the driver's side of the vehicle without his drug dog. Adams was driving, and Sergeant Blair advised him of the

¹ The tracking device was the size of a pack of cigarettes, ran on its own battery, and sent information detailing its position to the Department via satellite. The Department installed the device by magnetically attaching it to the vehicle's undercarriage. The device did not provide any information other than the vehicle's location.

² The Department did not learn this information from any other source.

violations. At that time, Adams "was acting very nervous. He had his hands down below where [Sergeant Blair] couldn't see them." Sergeant Blair asked Adams to keep his hands visible and noticed another vehicle turn into the gas station as he initiated the stop. Sergeant Blair was worried the second vehicle was a "trail vehicle" because the driver was watching the traffic stop, acting "kind of panicky, looking back and forth," and "fidgeting with his jacket." Sergeant Blair requested backup out of concern for his safety.

Officer James Greenawalt arrived approximately three minutes later. He removed Adams from the vehicle and began a license check. Meanwhile, Sergeant Blair used his dog to conduct a perimeter sniff of the vehicle. During this period, Adams repeatedly attempted to talk to the officers, and his eyes "were looking in other directions like trying to make a way for escape." The dog alerted at the driver's door and then on the driver's seat and center console.³

After the dog alerted, Officer Greenawalt began to pat down Adams for weapons. In doing so, he felt a "jagged, round object" in Adams's groin area that his training and experience led him to believe was drugs. He placed Adams in handcuffs and retrieved the item, which was 141.62 grams of packaged cocaine. The license check was not complete when the dog alerted and ensuing pat-down occurred. The drugs were found a little less than 8 minutes after Adams was pulled over. Adams was never issued a citation for the traffic violations.

A Charleston County grand jury indicted Adams for trafficking cocaine. During pretrial motions, Adams moved to suppress the drugs, alleging the Department failed to obtain a warrant or court order before installing the tracking device pursuant to the Fourth Amendment and section 17-30-140 of the South Carolina Code (Supp. 2011). The trial court agreed that the Department violated the statute. However, the court held the violation did not warrant suppression of the evidence without a corresponding constitutional violation. Relying on United States v. Knotts, 460 U.S. 276 (1983), the court held that the use of the tracking device was

³ The first alert occurred five to six minutes after Adams was pulled over.

not a search. Moreover, the court held the traffic stop, pat-down, and retrieval of the drugs did not violate Adams's Fourth Amendment rights. Thus, the court found no constitutional violation occurred, and the motion to suppress was denied.

Adams was found guilty and sentenced to twenty-five years' imprisonment and a \$50,000 fine. This appeal followed.

ISSUE ON APPEAL

Did the trial court err in denying Adams's motion to suppress?

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (citation and internal quotation marks omitted). In Fourth Amendment search and seizure cases, "an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error." Id. (citation and internal quotation marks omitted).

ANALYSIS

Adams argues the trial court erred in denying his motion to suppress because the drugs were obtained in violation of his Fourth Amendment rights.⁴ Specifically, he maintains the Department's use of the tracking

⁴ Adams also argues the drugs should be suppressed because the Department failed to obtain a prior judicial order pursuant to section 17-30-140 in installing the tracking device and monitoring Adams's vehicle. In light of our finding that the Department failed to obtain a warrant necessitated by the Fourth Amendment, however, we do not address this argument. See State v. Bostick, 392 S.C. 134, 139 n.4, 708 S.E.2d 774, 776 n.4 (2011) (holding that

device constituted an unlawful search because the Department did not obtain a prior warrant.⁵ We agree that the Department conducted an unlawful search by installing the tracking device on Adams's vehicle and monitoring the vehicle's movements without obtaining a prior warrant. However, this unlawful search did not require suppression of the drugs.

I. The Fourth Amendment and Tracking Device

"The Fourth Amendment provides in relevant part that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'" United States v. Jones, 132 S.Ct. 945, 949 (2012) (alteration in quotation). "[S]earches and seizures conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." Minnesota v. Dickerson, 508 U.S. 366, 372 (1993) (internal quotation marks omitted).

In United States v. Jones, the United States Supreme Court held that "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'" 132 S.Ct. at 949. The Court characterized the government's conduct as the "physical[] occup[ation of] private property for the purpose of obtaining information." Id. The Court reasoned, "such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." Id.

Here, the tracking device was installed while Adams's vehicle was parked in a public parking garage, and the device was used to monitor the

if one issue is dispositive of another, the court need not address the other issue).

⁵ The State contends Adams does not raise a Fourth Amendment argument on appeal. However, a review of Adams's appellate materials makes clear that he does.

vehicle's movements while it was on public streets and highways. Under Jones, the Department's installation of the device on Adams's vehicle and use of that device to monitor the vehicle's movements constituted a "search."⁶ Therefore, the Department's failure to obtain a warrant made that search unreasonable and resulted in a violation of Adams's constitutional rights.⁷ Nevertheless, we must still determine whether that violation required suppression of the drugs seized from Adams's person. For the reasons below, we find it did not.

II. The Exclusionary Rule and Adams's Traffic Violations

Although the installation of the tracking device on Adams's vehicle and monitoring of the vehicle's movements without a prior warrant constituted an unlawful search, the State argues as an additional sustaining ground that the exclusionary rule does not require suppression of the drugs found on Adams's person. The State maintains Adams's traffic violations were intervening criminal acts sufficient to cure the taint arising from unlawfully installing the device and monitoring the vehicle.⁸ We agree.

⁶ The device in this appeal operated identically to the device in Jones. See Jones, 132 S.Ct. at 948 (stating that its device was installed on the vehicle's undercarriage, used batteries, and transmitted information via satellite).

⁷ The State does not contend an exigency existed to foreclose the need to obtain a warrant while placing the device on the vehicle and monitoring the vehicle's movements.

⁸ As a second additional sustaining ground, the State claims suppression is not required because the Department used the tracking device in good-faith reliance upon United States v. Knotts, which the State contends Jones later overruled. See Davis v. United States, 131 S.Ct. 2419, 2434 (2011) (providing that the exclusionary rule does not apply "when the police conduct a search in objectively reasonable reliance on binding appellate precedent" that was later overruled). We need not address this argument because we find the drugs were obtained after intervening illegal acts and during a lawful traffic stop and pat-down search. See Bostick, 392 S.C. at 139 n.4, 708

The exclusionary rule prohibits the admission of evidence that is the fruit of an unlawful search. Specifically, it prohibits the admission of evidence (1) directly acquired during an unlawful search and (2) later discovered and derivative of the unlawful search.⁹ Murray v. United States, 487 U.S. 533, 536-37 (1988); see also Wong Sun v. United States, 371 U.S. 471, 488 (1963). However, under our case law the exclusionary rule does not apply to evidence obtained during a search or seizure conducted pursuant to an "intervening illegal act." State v. Nelson, 336 S.C. 186, 194, 519 S.E.2d 786, 790 (1999); see also In re Jeremiah W., 361 S.C. 620, 624-25, 606 S.E.2d 766, 768 (2004).

In State v. Nelson, a police officer driving behind the defendant flashed his high beams to get the defendant's attention without intending to initiate a traffic stop. 336 S.C. at 189, 519 S.E.2d at 787. The defendant then ran a stop sign and sped through a neighborhood, and the officer initiated a traffic stop, with which the defendant complied. Id. When the officer approached the defendant's vehicle, he smelled alcohol and the defendant refused to participate in a field sobriety test. Id. The defendant was arrested for driving under the influence. Id. Our supreme court held that even if the officer acted unlawfully in initially attempting to get the defendant's attention, the evidence seized as a result of the subsequent traffic stop was admissible because the intervening traffic violations "constituted new and distinct crimes for which [the officer] had probable cause to stop [the d]efendant." Id. at 194-95, 519 S.E.2d at 790.

In this case, Sergeant Blair witnessed Adams commit two traffic violations before initiating the traffic stop. See S.C. Code Ann. § 56-5-

S.E.2d at 776 n.4 (holding that if one issue is dispositive of another, the court need not address the other issue).

⁹ Here, the movement of Adams's vehicle was the "direct evidence" obtained as a result of the unlawful search—the Department's installation of the device and monitoring of the vehicle. In contrast, the drugs subsequently seized from Adams's person constitute evidence derivative of the unlawful search.

2150(a)-(b) (2006) (providing that a driver must use his turn signal to indicate the lane change he intends to make); S.C. Code Ann. § 56-5-6190 (2006) ("It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this State declared to be a felony."). Thus, the trail of taint arising from the Department's unlawful search was broken, and the intervening illegal act exception permitted admission of the drugs so long as they were lawfully obtained during the stop.

III. The Resulting Search and Seizure

Adams contends the traffic stop and pat-down were unlawful because they were a mere pretext for a drug search. We disagree.

A traffic stop initiated pursuant to a traffic violation creating probable cause is not "rendered invalid by the fact that it was a mere pretext for a narcotics search." State v. Corley, 383 S.C. 232, 241, 679 S.E.2d 187, 191-92 (Ct. App. 2009) (internal quotation marks omitted), affirmed as modified by 392 S.C. 125, 708 S.E.2d 217 (2011); see also Whren v. United States, 517 U.S. 806, 813 (1996). A police officer's "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Corley, 383 S.C. at 241, 679 S.E.2d at 192 (internal quotation marks omitted); see also Whren, 517 U.S. at 813. Therefore, Sergeant Blair's and Officer Greenawalt's prior intentions and knowledge of Adams's involvement with drugs did not prevent the officers from conducting a lawful traffic stop and pat-down. A person stopped by the police in such a situation is protected from abuse of their rights by our Fourth Amendment framework.

a. The Traffic Stop

Evidence in the record supports the trial court's finding that the traffic stop was conducted consistently with Adams's Fourth Amendment rights.

"Temporary detention of individuals by the police during an automobile stop constitutes a 'seizure' of an individual within the meaning of the Fourth Amendment." State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006). However, "[t]he decision to stop an automobile is reasonable

where the police have probable cause to believe that a traffic violation has occurred." Id.

During a lawful traffic stop, an officer may "request a driver's license and vehicle registration, run a computer check, and issue a citation." State v. Jones, 364 S.C. 51, 57, 610 S.E.2d 846, 849 (Ct. App. 2005) (internal quotation marks omitted). The officer may also order the driver to exit the vehicle. Id.; State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002); see also Pennsylvania v. Mimms, 434 U.S. 106, 110-11 (1977).

A lawful traffic stop can become unlawful if it exceeds the scope or duration necessary to complete its mission. State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005); see also Illinois v. Caballes, 543 U.S. 405, 407 (2005). An extension is permitted only if (1) the encounter becomes consensual or (2) the officer has at least a reasonable, articulable suspicion of other illegal activity. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. If an officer uses a drug dog to sniff the exterior of a defendant's car during a lawful traffic stop, the sniff does not make the traffic stop unlawful, even without any evidence of drug activity, so long as the sniff does not extend the length of the stop beyond that time necessary to complete the stop's purpose. Caballes, 543 U.S. at 407-09.

Here, Sergeant Blair had probable cause to stop Adams's vehicle because he witnessed Adams commit two traffic violations. The officers acted reasonably in instructing Adams to step out of the vehicle while they waited for a license and registration report. Sergeant Blair was also permitted to walk his drug dog around the vehicle while waiting for the completion of Adams's license and registration check. The first alert occurred a mere five to six minutes after the traffic stop began, and no evidence in the record indicates the drug sniff extended the duration of the stop.¹⁰ Consequently, the officers' conduct up to that point was within constitutional bounds. Whether the drugs were admissible depends upon whether the resulting pat-down complied with Adams's Fourth Amendment rights.

¹⁰ In fact, Adams does not contend the stop's duration was unlawfully extended.

b. The Pat-down

Evidence in the record supports the trial court's finding that the pat-down of Adams and retrieval of the drugs complied with his Fourth Amendment rights.

An officer conducting a lawful traffic stop may conduct a pat-down search for weapons if the officer "has reason to believe the person is armed and dangerous." State v. Smith, 329 S.C. 550, 556, 495 S.E.2d 798, 801 (Ct. App. 1998). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry v. Ohio, 392 U.S. 1, 27 (1968).

"The purpose of [a pat-down] search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence." Dickerson, 508 U.S. at 373. Therefore, a Terry "protective search—permitted without a warrant and on the basis of reasonable suspicion less than probable cause—must be strictly 'limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.'" Id. (quoting Terry, 392 U.S. at 26). "If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under Terry and its fruits will be suppressed." Id.

Under the plain feel doctrine, an officer may seize an item felt during a lawful pat-down search for weapons if the item's contour or mass makes its incriminating character immediately apparent. Dickerson, 508 U.S. at 375-77; State v. Abrams, 322 S.C. 286, 288-89, 471 S.E.2d 716, 717-18 (Ct. App. 1996). If that character is not immediately apparent, any manipulation of the item constitutes a further, unlawful search and the item will be suppressed. Dickerson, 508 U.S. at 375-77.

In Minnesota v. Dickerson, the United States Supreme Court held that evidence obtained during a pat-down for weapons was inadmissible. During the pat-down, a police officer testified he "felt a lump, a small lump [He] examined it with [his] fingers and it slid and it felt to be a lump of crack

cocaine in cellophane." 508 U.S. at 369. The Supreme Court deferred to the state supreme court's interpretation of the record, which provided that the police's own testimony belied "any notion that [the police] immediately recognized the lump as crack cocaine. Rather, . . . the officer determined that the lump was contraband only after squeezing, sliding and otherwise manipulating the contents of the defendant's pocket—a pocket which the officer already knew contained no weapon." *Id.* at 378 (internal quotation marks omitted). The Supreme Court thus held that, although the police lawfully initiated the pat-down, "the officer's continued exploration of the [defendant's] pocket after having concluded that it contained no weapon" was a further search, unsupported by the concern for weapons. *Id.*

In *State v. Abrams*, this court held evidence seized during a pat-down was inadmissible. 322 S.C. at 287-89, 471 S.E.2d at 717-18. The officer testified that he felt a "hard instrument" that was "tube like" and "about the size of a shotgun shell." *Id.* Moreover, the officer explained that he thought the object "could have been 'an instrument used to transport contraband' when he 'found out that there were no weapons on [the defendant's] person.'" *Id.* Thus, the court determined the evidence's incriminating character was not immediately apparent and "[a]ny further search was impermissible" because the officer did not believe the evidence was contraband until after he concluded the defendant was unarmed. *Id.*

In contrast, this court in *State v. Smith* held evidence obtained during a pat-down was admissible. 329 S.C. at 561, 495 S.E.2d at 804. Unlike in *Abrams*, the officer immediately determined the evidence was drugs during the initial pat-down search; even though he did squeeze the evidence further, the officer's "testimony indicate[d] he determined the object was contraband as soon as he felt it," and the "identification of the substance did not require additional squeezing or manipulation." *Id.* at 560-61, 495 S.E.2d at 803-04.

Here, evidence in the record supports the finding that Officer Greenawalt had reason to believe Adams was armed and dangerous to conduct a pat-down for weapons. Adams exhibited suspicious behavior, and the dog alerted for drugs before the pat-down began. *See State v. Banda*, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) ("This Court has recognized that because of the indisputable nexus between drugs and guns, where an officer

has reasonable suspicion that drugs are present in a vehicle lawfully stopped, there is an appropriate level of suspicion of criminal activity and apprehension of danger to justify a frisk of both the driver and the passenger in the absence of other factors alleviating the officer's safety concerns." (internal quotation marks omitted)); see also Terry, 392 U.S. at 30 (holding that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous," he may conduct a pat-down for weapons).

Evidence in the record also supports the finding that Officer Greenawalt immediately recognized the identity of the item. He felt a "jagged, round object" in Adams's groin area while conducting the pat-down search, and his training and experience led him to believe the object was drugs. The record does not indicate he determined the evidence's identity because of further manipulation of the object or that he determined Adams was unarmed before concluding the evidence was drugs. In light of our standard of review, therefore, the trial court properly denied the motion to suppress.

CONCLUSION

For the aforementioned reasons, we affirm the trial court's denial of Adams's motion to suppress.

AFFIRMED.

WILLIAMS and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ALFRED ADAMS,

APPELLANT

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 4964

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR appellant petitions this Court for rehearing as it has overlooked and misapprehended the following points:

1. In Wong Sun v. United States, 371 U. S. 471, 83 S. Ct. 407 (1963) the United States Supreme Court wrote that the test for excludability under the Fourth Amendment to the United States Constitution is whether the evidence "has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." 371 U.S. at 488, 83 S.Ct. at 417.
2. In Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254 (1975) the Court said there are

several factors that have to be looked at is determining if the taint has been purged from the illegal act. One has to look at the time between the illegal arrest, search, or seizure and the subsequent evidence sought to be suppressed, “the presence of intervening circumstances,” and, “particularly, the **purpose and flagrancy of the official misconduct.**” 422 U.S. at 603-604, 95 S.Ct. 2261-2262. In Brown there was a two hour lapse after an illegal arrest where the defendant gave a confession after Miranda warnings were given. The Court found no intervening event of any significance and the Fifth Amendment Miranda warnings did not purge the taint of the illegal arrest. 422 U.S. at 604, 95 S.Ct. at 2262. The Court noted that if “Miranda warnings, by themselves were held to attenuate the taint of an unconstitutional arrest... the effect of the exclusionary rule would be substantially diluted. 422 U.S. at 602, 95 S.Ct. at 2261. Brown’s illegal arrest was seen as continuing up to the time his statement was taken.

3. In appellant’s case the illegal search was the placing of the GPS device on appellant’s car and its continued use to monitor the vehicle. United States v. Jones, ____ U.S. ____, 132 S.Ct. 945, 949 (2012). This was a Fourth Amendment violation as well as a violation of state law under S.C. Code §17-30-140 which sets forth the requirements for the placement of tracking devices.

4. The instant opinion does not recognize the precedent set forth in Wong Sun and Brown and can not show any evidence of substance that dissipates or attenuates the taint of the State’s continued illegal search of appellant. Even the trial judge in this case told the solicitor if they were going to use electronics they needed a warrant. (ROA p. 94, line 23 – p. 95, line 9). Significantly, the trial judge also noted that the police could never have gotten behind appellant to get a traffic violation if they did not have the illegal tracking device. (ROA p. 96, lines 23-25).

5. Instead of taking the trial judge’s lead that this whole case was an unconstitutional

search, this Court attempts to assert that appellant created a new and distinct criminal act by positing two allegedly distinct traffic violations. The first violation was failing to use his turn signal in making a lane change under S.C. Code §56-5-2150(a)-(b) (2006). This de minimis matter is in fact strong circumstantial evidence appellant was going to be stopped and searched no matter what. The second violation this Court uses to underpin in the decision is not one. It merely classifies appellant's crime as a misdemeanor under S.C. Code § 56-5-6190 (2006).

6. This Court further misapplies the new and distinct criminal violation doctrine. Furthermore, it is even uncertain if the United States Supreme Court even subscribes to this doctrine as it is enunciated by this Court. This Court cites State v. Nelson, 336 S.C. 186, 519 S.E. 2d 786 (1990) and In re Jeremiah, 361 S.C. 620, 606 S.E. 2d 766 (2004) for its precedent for this proposition. But those cases, and the cases they cite, stand for the proposition that a new and distinct criminal violation is one that is in response to the illegal conduct of the police. There has been no evidence presented in this case that appellant's "illegal" lane change was in response to the illegal conduct of the police. Examples of which this Court cites from In re Jeremiah are:

Accord United States v. Waupekenay, 973 F.2d 1533 (10th Cir 1992) (although police entered suspect's home illegally, suspect commenced new illegal activity when he aimed semi-automatic rifle at police); State v. Windus, 207 Ariz. 328, 86 P.3d 384 (App. 2004) (although officers unlawfully entered defendant's yard, officers did not exploit their unlawful entry to provoke defendant's new distinct criminal conduct consisting of an aggravated assault and resisting arrest); Clark v. United States, 755 A.2d 1026 (D.C. 2000) (even if defendant was under unlawful arrest when he threatened police officer with bodily harm, evidence of that crime would not be suppressed as "fruit of the poisonous tree," as the commission of the threat was an intervening act that purged any taint associated with the unlawful arrest); State v. Miskimins, 435 N.W.2d 217 (S.D. 1989) (where defendant's response to unlawful action by police itself a new, distinct criminal act, there are sound policy reasons for not suppressing this evidence). See also U.S. v. Sprinkle 106 F.3d 613 (4th Cir. 1997) (defendant fired gun at police after illegal stop); U. S.

v. Nooks, 446 F.2d 1283 (5th Cir. 1971) (defendant fled at over 100 MPH and fired several shots at police).

7. The evidence in this case was seized because of the exploitation of the illegal search. There were no sufficient intervening circumstances to attenuate the taint of the illegal search. The police conduct was a flagrant abuse of power. Under this Court's interpretation of the Fourth Amendment and the exclusionary rule the police could put an illegal GPS device on any vehicle and not be sanctioned if they wait for a lane change where a turn signal is not used. The exclusionary rule, is not to be thwarted in such a way. Miranda warnings did not purge the taint of an illegal arrest in Brown. A failure to signal lane change should not purge the taint of the illegal search and continued monitoring of appellant.

CONCLUSION

Appellant's rehearing should be granted.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

This 9th day of May, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED ADAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, this 9th day of May, 2012.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 9th day
of May, 2012.

Julicia K. Berry (L.S.)

Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The South Carolina Court of Appeals

The State, Respondent,

v.

Alfred Adams, Appellant.

Appellate Case No. 2010-151626

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SG. OFFICE OF
APPELLATE DEFENSE

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded. Hence, there is no basis for granting a rehearing, and it is ordered that the Petition for Rehearing be denied.

H. B. Lee J.

Paula W. Brown J.

Salley W. Elliott J.

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FILED

July 28, 2012

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

S.C. Supreme Court

THE STATE,

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V.

ALFRED ADAMS,

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 09-GS-10-1373
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Alfred Adams,	)	
	)	
Defendant.	)	
	)	

January 27, 2010
Charleston, South Carolina

B E F O R E:

HONORABLE J.C. BUDDY NICHOLSON, JR., Judge.

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

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Reported by: Brenda C. Cooley
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Circuit Court Reporter

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P R O C E E D I N G S

(WHEREUPON, State's Exhibits 1 through 3 are marked for identification purposes.

THE COURT: I believe there are defense motions for suppression. Is that correct?

MRS. RANEY: Your Honor, I do have a motion.

THE COURT: Is it in writing or is it oral?

MRS. RANEY: It is oral.

THE COURT: Oral?

MRS. RANEY: Yes, sir.

THE COURT: I'll be glad to hear you.

MRS. RANEY: At this point, I would ask that the State, uh, meet its burden by proving compliance with sections of the Fourth Amendment. There was a warrant in this case. I believe that the State must put up evidence that there was an exception to that requirement.

THE COURT: You are saying there is no exception to the warrant that was searched?

MRS. RANEY: Yes, sir.

THE COURT: Okay.

MRS. RANEY: I would also ask that the witnesses be sequestered from the suppression hearing.

THE COURT: Are they in the courtroom?

1 **MR. SAVAGE:** They right here, Your Honor.
2 Yes, sir.

3 **THE COURT:** You want to sequester them from
4 the motion hearing and the trial? You want them
5 all out? He said he didn't have but two. There
6 are six sitting back there.

7 **MRS. RANEY:** I would like to have them all
8 sequestered.

9 **THE COURT:** You want them all sequestered?

10 **MRS. RANEY:** Yes, sir.

11 **MR. SAVAGE:** Your Honor, I'm assuming the
12 investigating officer can stay.

13 **THE COURT:** He can stay. Everybody else
14 leave the courtroom. We'll come get you.

15 **MR. SAVAGE:** Would you like to have opening
16 or anything before?

17 **THE COURT:** If both of you want to have a
18 short opening, I'll be glad to hear you. If you
19 don't, that's fine. Whatever you want to do.
20 You are entitled either one.

21 **MRS. RANEY:** I don't have anything at this
22 point.

23 **THE COURT:** Okay.

24 **MR. SAVAGE:** Your Honor, I would like to
25 give a brief opening, if I could, just to kind of

1 lay the foundation.

2 **THE COURT:** That's fine.

3 **MR. RIESEN:** Briefly, Your Honor, back on
4 July 10th of 2009, the Defendant was involved in
5 an attempted armed robbery and a shooting at in
6 North Charleston in which about \$30,000 was taken
7 in a drug deal gone bad. Around this time, the
8 Defendant -- a CI approached them and said that
9 the Defendant was involved with trafficking
10 drugs. They then ran a RAP and saw that he had
11 been convicted of a trafficking and served a 25-
12 year sentence.

13 So based on that, they then met with the CI
14 and made at least three buys from the Defendant
15 over that time, one of which was 30 grams of
16 cocaine, another was 28 grams of cocaine, another
17 was four grams of heroin. The agreement was he
18 would front drugs and they would repay him after
19 they sold it.

20 Based on this, the police department put a,
21 installed a, not installed, placed a tracking
22 device on his vehicle. And, uh, it's actually on
23 his wife's vehicle who they would get the drugs
24 from but it was set up by the Defendant. It was
25 set up in a public place, in a parking garage

1 near MUSC.

2 Five days later, the police noticed that he
3 had gone out of state to Atlanta for less than an
4 hour and was coming back. They had learned from
5 their CI that that's where he was getting the
6 drugs from as well as from New York. Based on
7 that, the contacting sergeant, who you are going
8 to hear from today who was the arresting officer
9 is going to say that this guy was suspected of
10 drug dealing, he's going to be coming down I-26.
11 If he makes any traffic violation, we want you to
12 stop him.

13 He was positioned at Exit 203, Your Honor,
14 which is the last exit here on I-26, exit towards
15 Charleston. He observed the car and he turned on
16 his camera. All of this was recorded. You will
17 see a video that has it. He pulled in behind
18 him. The Defendant swerved off the center line
19 without using his blinker. The car behind him
20 had to brake. Then he quickly exited Highway 78
21 and had another traffic violation which you will
22 see. Based on that, he was stopped for a lawful
23 traffic violation right across the street from
24 Charleston Southern on Highway 78.

25 The officer had his K-9 with him. When he

1 stopped him within the normal procedure, asked
2 for, uh, his license, identification,
3 registration. He noted in his report he was
4 acting very nervous. You could hear on the
5 recording where he says, Please place your hands
6 on your steering wheel. There was also a
7 suspicious vehicle nearby, and he called for
8 backup.

9 Backup arrived within two minutes. They
10 asked him to step out of the car to perform an
11 NCIC check. At that time, -- that's Officer
12 Greenawalt, who you will hear from as well --
13 stepped him out of the car. He took his dog and
14 did a perimeter sniff and alerted, which you will
15 see on the video, to the driver's side doorway,
16 uh, driver's side door. Based on that and the
17 fact that the Defendant had been informed on
18 three occasions to place his hands on the hood
19 and was making some sort of movement, a pat down
20 was done and 141 grams of cocaine was found in
21 his boxers or his longjohns.

22 That's basically the facts as we will present
23 them. We are not quite sure what exceptions she
24 is referring to, but we'll address, A, the mobile
25 tracking device side of the warrant which we

1 believe did not require, there is a statute that
2 talks about, I believe, uh, 17-31-40, but it also
3 said it had to be in compliance with the United
4 States Supreme Court. We will provide case law
5 that says that as long as it's done in public and
6 not on private property, a warrant is not
7 required. And as for the dog sniff ---

8 **THE COURT:** You talking about placing a
9 tracing device?

10 **MR. RIESEN:** Yeah, placing it, and the
11 monitoring was on a public highway. Now, as for
12 the dog in the second part, it's our argument
13 that United States versus Caballes would be
14 controlling precedent. It's a Supreme Court
15 case. I have a South Carolina case I'll cite as
16 well. It says there's no Fourth Amendment
17 protection to a dog sniff. Really, the question
18 goes to the prolonged detention. In this case,
19 we'll provide testimony of his whole stop.

20 **THE COURT:** The primary traffic stop was
21 just the significant evidence to go to the second
22 stage of the stop?

23 **MR. SAVAGE:** Yeah. First of all, he had a
24 lawful traffic stop based on traffic violation
25 which you will see on the video.

1 **THE COURT:** I understand what you are saying
2 about the tracking device, but what does a
3 tracking device have to do with the second stage
4 or second stop?

5 **MR. SAVAGE:** The only reason I'm bringing up
6 the tracking device for my, in my prior
7 discussions with her, I thought she was going to
8 make part of her argument -- I don't know for
9 sure what it was, but I was going to lay the
10 foundation and I was telling you why the warrant
11 was there. There was probable cause to stop him
12 based on his history, the drug dealing and
13 everything else as well as a legitimate stop for
14 traffic violation.

15 Once he was stopped, they are allowed to do a
16 perimeter sniff. For one, it's not a search.
17 Number two, he was acting nervous. The two
18 officers will testify that he's acting nervous.
19 They had to tell him to place his hands -- you
20 will hear that on the video. The stop was
21 completely reasonable for a traffic violation.
22 Subjective intentions or pretextual, whatever you
23 want to say has nothing to do with it. The case
24 law says it is reasonable as long as there is a
25 reason for the stop. The stop was lawful. You

1 will see it on the video.

2 **THE COURT:** Okay.

3 **MR. SAVAGE:** All right. The State calls
4 Sergeant -- I'm sorry. Let me take that back. I
5 think we need to do the SLED agent first so they
6 can go back to Columbia.

7 **THE COURT:** Anything you want to say on the
8 motion?

9 **MRS. RANEY:** Not at this time. I would just
10 like to argue the law after.

11 **THE COURT:** Okay. That's fine. However you
12 want to do it.

13 **MRS. RANEY:** Thank you.

14 **THE COURT:** Call your first witness.

15 **MR. SAVAGE:** The State calls Alex Teachy.

16 **THE COURT:** Did they handcuff him in this
17 one?

18 **MR. SAVAGE:** Yes, he was handcuffed, Your
19 Honor, after he was arrested.

20 **THE COURT:** We're talking about another
21 case.

22 **MR. SAVAGE:** Oh, okay.

23 **THE COURT:** All right.

24 **ALEXANDRIA TEACHY**

25 having first been sworn, testifies as follows:

1 **THE CLERK:** Please be seated. Ma'am, for
2 the record, please state your full name and spell
3 your last.

4 **THE WITNESS:** Alexandria Teachy, T-E-A-C-H-Y.

5 **DIRECT EXAMINATION**

6 **BY MR. SAVAGE:**

7 **Q** Where do you work?

8 **A** North Charleston Police Department.

9 **Q** And how long have you worked at the North
10 Charleston Police Department?

11 **A** Five years, eight months.

12 **Q** Could you please briefly describe your duties
13 at the North Charleston Police Department.

14 **A** Evidence off the street. We process it as
15 far as making sure the paperwork is correct and
16 everything matches as far as the case number and, uh,
17 make sure it is packaged properly and store it for
18 court.

19 **Q** Were you working for the North Charleston
20 Police Department back on November 21st, 2008?

21 **A** Yes, sir.

22 **MR. SAVAGE:** And Your Honor, may I approach
23 the witness?

24 **THE COURT:** Yes, sir.

25 **BY MR. SAVAGE:**

1 Q Mrs. Teachy, I'm showing you what has been
2 previously marked as Exhibit 2. Do you recognize
3 that?

4 A I do.

5 Q And what is that?

6 A It is a SLED drug analysis on a white powder.

7 Q And how do you recognize that?

8 A By the case number, by the officer's name and
9 the Best kit number.

10 Q When did you receive that item?

11 A Uh, I believe it was the 17th of November,
12 2008.

13 Q And how did you come in possession of it?

14 A It was dropped in a dropped box that was
15 locked in our evidence room on the 17th.

16 Q And did anyone else handle the, that item
17 during this time?

18 A Not at that time, no.

19 Q And what did you do with the item when you
20 received it?

21 A When I received it on the 17th, I placed it
22 into our drug area that's locked and secured and kept
23 it there for court, I'm sorry, actually for SLED.

24 Q Okay. And were they, were these items in
25 your care, custody and control from the time you

1 received them until you drove them up to the South
2 Carolina Law Enforcement Division in Columbia?

3 **A** Yes, sir.

4 **MR. SAVAGE:** That's all I have at this time,
5 Your Honor.

6 **THE COURT:** Okay. Any cross?

7 **MRS. RANEY:** No.

8 **THE COURT:** Okay. You can step down. Thank
9 you very much. All right. You need her?

10 **MR. SAVAGE:** No.

11 **THE COURT:** All right. You may be excused.
12 Thank you very much.

13 **THE WITNESS:** Thank you.

14 **MR. SAVAGE:** The State calls Doris
15 Yarborough. The State calls Doris Yarborough.

16 **DORIS YARBOROUGH**

17 having first been sworn, testifies as follows:

18 **THE CLERK:** Please state your full name to the
19 court and spell your last.

20 **THE WITNESS:** My name is Doris Yarborough.
21 Y-A-R-B-O-R-O-U-G-H.

22 **DIRECT EXAMINATION**

23 **BY MR. SAVAGE:**

24 **Q** Mrs. Yarborough, where do you work?

25 **A** I work for the South Carolina Law Enforcement

1 Division.

2 Q And how long have you worked there?

3 A For 19 months.

4 Q Could you briefly describe your duties.

5 A I am a forensic technician in the logging
6 department. Different officers from different
7 agencies throughout the state bring me their evidence
8 for forensic analysis. It starts in my office.
9 Whatever they bring me is what we log in.

10 Q Were you working at, uh, back on November
11 21st, 2008?

12 A I was.

13 MR. SAVAGE: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. SAVAGE:

17 Q Mrs. Yarborough, I'm showing you what is
18 marked as State's Exhibit 2. Do you recognize that?

19 A I recognize it by the lab number on it.

20 Q And when did you receive that?

21 A On November 21st of 2008 at 10:26 a.m. in the
22 morning.

23 Q How did you come into possession of that
24 item?

25 A Through the evidence technician from the

1 North Charleston Police Department.

2 **Q** What did you do with that item when you
3 received it?

4 **A** I verified that the paperwork is correct. I
5 looked at the numbers on the paperwork and I log it in
6 based on the information on the paperwork.

7 **Q** And is that item in your continuous care,
8 custody and control from the time you received it
9 until when you placed it into the evidence room?

10 **A** It was.

11 **MR. SAVAGE:** I have no further questions at
12 this time, Your Honor.

13 **THE COURT:** Any cross?

14 **MRS. RANEY:** No questions for Mrs.
15 Yarborough.

16 **THE COURT:** You may step down, Mrs.
17 Yarborough.

18 **MR. SAVAGE:** The State calls Nicki Perry.
19 Nicki Perry.

20 **NICOLE PERRY**

21 having first been sworn, testifies as follows:

22 **THE CLERK:** Thank you. Please state your
23 full name and spell your last.

24 **THE WITNESS:** Okay. My name is Nicole Renee
25 Perry. P-E-R-R-Y.

DIRECT EXAMINATION

BY MR. SAVAGE:

Q Good afternoon, Mrs. Perry. Where do you work?

A I'm currently employed with the South Carolina Law Enforcement Division commonly known as SLED.

Q And how long have you worked there?

A I been employed with SLED since June of 2006.

Q Could you please briefly describe your duties with SLED?

A Uh-huh. I'm an Evidence Control Technician. I log in evidence brought in by agencies across the state of South Carolina.

Q Were you working, were you employed by SLED back on November 21st, 2008?

A I was.

MR. SAVAGE: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. SAVAGE:

Q Mrs. Perry, I'm showing you what has been previously marked as State's Exhibit 2. You recognize that item?

A I do. I recognize the lab number L-0817026,

1 item number one.

2 Q And when did you receive it?

3 A I received it on November 21st, 2008.

4 Q And how did you come in possession of that
5 item?

6 A Jill Clark, the forensic scientist, in the
7 drug ID department will send an email requesting items
8 of evidence to be picked up from our evidence room.
9 On that day, I received it from the drug evidence
10 intake storage which is located in our evidence room.
11 And I would then scan all those items into my custody.
12 We have a badge. I would scan it to my custody. Then
13 I would scan it over into the custody of the forensic
14 scientist Jill Clark. She filled in her password and
15 took custody of those items.

16 Q And were these items placed into a secure
17 location after you transferred them?

18 A They were given to Jill Clark, in her
19 possession.

20 Q And when you had the, were they in your
21 continuous care, custody and control from the time you
22 received them until when you transferred custody of
23 them?

24 A Yes, sir.

25 MR. SAVAGE: I have no further questions at

1 this time, Your Honor.

2 **THE COURT:** Cross?

3 **MRS. RANEY:** No, Your Honor.

4 **THE COURT:** Okay. Thank you very much.

5 **MR. SAVAGE:** The State calls Jill Clark.

6 **JILL CLARK**

7 having first been sworn, testifies as follows:

8 **THE CLERK:** For the record please state your
9 full name and then spell your last name.

10 **THE WITNESS:** Jill Clark, J-I-L-L,
11 C-L-A-R-K.

12 **DIRECT EXAMINATION**

13 **BY MR. SAVAGE:**

14 **Q** Mrs. Clark, where do you work?

15 **A** I work for the South Carolina Law Enforcement
16 Division.

17 **Q** How long have you worked there?

18 **A** Since December of 1999.

19 **Q** Could you briefly describe your duties with
20 SLED.

21 **A** I'm in the scientific drug analysis
22 department and my primary duty is to analyze
23 controlled substances for the state.

24 **Q** Could you describe your educational
25 background please.

1 **A** I have a Bachelor's Degree in Chemistry. I
2 have completed the Drug Analysis Training at SLED.

3 **Q** During your time at SLED, have you chemically
4 analyzed substances to determine whether or not they
5 are narcotics?

6 **A** Yes, I have.

7 **Q** Approximately how many times have you done
8 this?

9 **A** Thousands of times.

10 **Q** This may seem like a silly question, but is
11 this part of your regular job, part of your regular
12 duties?

13 **A** Yes, it is.

14 **Q** Have you been qualified as an expert on drug
15 analysis in a court of this state before?

16 **A** I have.

17 **Q** How many times?

18 **A** I testified 34 times.

19 **MR. SAVAGE:** Your Honor, at this time, the
20 State would offer Mrs. Jill Clark an expert in the
21 field of drug analysis.

22 **THE COURT:** Do you agree?

23 **MRS. RANEY:** I agree.

24 **THE COURT:** All right. I qualify her as an
25 expert.

1 **MR. SAVAGE:** Your Honor, may I approach the
2 witness?

3 **THE COURT:** Yes, sir.

4 **BY MR. SAVAGE:**

5 **Q** Mrs. Clark, I'm showing you what has been
6 marked as State's Exhibit 2. Do you recognize that
7 item?

8 **A** Yes. This is a Best kit drug case that I
9 analyzed.

10 **Q** Based on your experience and training, do you
11 have an opinion as to what the substance is?

12 **A** Yes, I do.

13 **Q** And how do you recognize this bag?

14 **A** I recognize it because it has our computer
15 generated case number that is assigned at SLED. And
16 it also has the Best kit number which is a unique six
17 digit number that was assigned to this case.

18 **Q** And how do you come into possession of this
19 item?

20 **A** I receive this evidence from Nicki Perry on
21 November 21st of 2008.

22 **MR. SAVAGE:** Court's indulgence, Your Honor.

23 (Pause.)

24 **BY MR. SAVAGE:**

25 **Q** Mrs. Clark, Exhibit 2, would that be, uh,

1 would that be in your continuous care, control and
2 custody from the time you received it?

3 **A** From the time it was in my custody, it was in
4 my continuous care until I turned it back into our
5 lobby and for storage.

6 **Q** And the substance, being item 2, is that in
7 the same condition now as it was when you first
8 received it?

9 **A** When I took the packaging off the drugs and
10 tested it. Then I repacked part of it in a separate
11 ziplock bag. But other than that, yes.

12 **Q** For what reason did the substance come into
13 your possession?

14 **A** Uh, they were sent to me to be analyzed as
15 controlled substances.

16 **MR. SAVAGE:** Your Honor, at this point, the
17 State moves Exhibit 2 into admission for
18 evidence.

19 **MRS. RANEY:** Is that the drug test?

20 **MR. SAVAGE:** No, it's the drugs.

21 **MRS. RANEY:** The drugs?

22 **MR. SAVAGE:** Yes.

23 **MRS. RANEY:** No objection, Your Honor.

24 **THE COURT:** I will just have it marked for
25 ID at this time.

1 BY MR. SAVAGE:

2 Q Mrs. Clark, did you test the substance in
3 item 2?

4 A Yes, I did.

5 Q Can you describe your examination.

6 A What I did was, there were two bags of
7 powder --

8 THE COURT: You have any objection to her
9 testing? I don't think so. Her objection is as
10 to search. I don't think she has any objection
11 to the testing process.

12 MR. SAVAGE: Okay.

13 THE COURT: Is that correct?

14 MRS. RANEY: That's correct.

15 THE COURT: I've heard it a thousand times.

16 MR. SAVAGE: Okay.

17 THE COURT: May be not a thousand.

18 MRS. RANEY: I'm not stipulating to the
19 chain but I ---

20 THE COURT: I understand. I just don't want
21 to go into the testing part of it.

22 MRS. RANEY: I agree.

23 BY MR. SAVAGE:

24 Q Mrs. Clark, what were the results of your
25 testing?

1 **A** I found there were two plastic bags
2 containing a powder substance. Cocaine was found of
3 141.62 grams which converts to 2179.03 grams, and it's
4 a Controlled Schedule II drug.

5 **MR. SAVAGE:** Your Honor, may I approach the
6 witness?

7 **THE COURT:** Yes, sir.

8 **BY MR. SAVAGE:**

9 **Q** Mrs. Clark, I'm showing you what's been
10 marked as State's Exhibit 3. Do you recognize that?

11 **A** Yes, this is a copy of the report that I
12 prepared.

13 **Q** Was that prepared in the ordinary course of
14 business?

15 **A** Yes, it was.

16 **MR. SAVAGE:** Your Honor, at this point, the
17 State, uh, offers to move Exhibit 3 into
18 admission as evidence.

19 **THE COURT:** I'll let you mark it for
20 identification.

21 **MR. SAVAGE:** That's all I have for now, Your
22 Honor.

23 **THE COURT:** All right. Admitted for
24 identification only.

25 **MR. SAVAGE:** I have no further questions,

1 Your Honor.

2 THE COURT: Okay. Any cross?

3 MRS. RANEY: No, Your Honor.

4 THE COURT: You may step down. Thank you
5 very much.

6 Call your next witness.

7 MR. RIESEN: Okay. The State now calls Greg
8 Gomes, Officer Greg Gomes.

9 THE COURT: Greg who?

10 MR. RIESEN: Gomes, G-O-M-E-S, Your Honor.

11 GREG GOMES

12 having first been sworn, testifies as follows:

13 THE CLERK: Please be seated. For the
14 record, please state your full name and spell
15 your last.

16 THE WITNESS: George Gregory Gomes,
17 G-O-M-E-S.

18 DIRECT EXAMINATION

19 BY MR. RIESEN:

20 Q Good afternoon, Detective Gomes. Where are
21 you employed?

22 A City of North Charleston Police Department.

23 Q And how long have you been with them?

24 A Approximately 12 years.

25 Q And briefly, what are your current duties?

1 **A** Currently, I'm the Sergeant of the Narcotics
2 Unit.

3 **Q** And what were your duties back in November of
4 2008?

5 **A** Same, Sergeant of the Narcotics Unit.

6 **Q** And can you describe your educational and law
7 enforcement background?

8 **A** Yes, I started in '98 as a uniform patrol.
9 Then I was assigned to the narcotics unit. I worked
10 the MET, Mobile Enforcement Team. Then I worked in
11 the tap force, working wire tap in investigation of
12 conspiracy cases. Then I was assigned to the crime
13 unit for about a year and a half. In 2008, in
14 January, I was promoted as sergeant and assigned back
15 to the narcotics unit.

16 **Q** Were you involved in the investigation of
17 Alfred Adams, the Defendant back in November of 2008?

18 **A** Yes, I was.

19 **Q** Can you describe briefly how your
20 investigation came about and why you were
21 investigating?

22 **A** Initially, around July of 2008, there was a
23 robbery, shooting that involved Mr. Adams that
24 occurred. He was involved in a drug deal gone bad and
25 stole about \$30,000 cash. That's when immediately we

1 found his potential for drug trafficking which came
2 from information from informant that he distributed
3 large quantities of drugs. Then, in November, we
4 conducted a purchase from him.

5 Q Was the purchase done?

6 A Yes.

7 Q What were the quantities?

8 A Initially, it was like 30 grams, like an
9 ounce of cocaine initially where we arranged it with
10 him. He actually sent his wife out to give us the
11 drugs. Then there was a follow up payment for the
12 initial drugs. Then there was a second purchase that
13 occurred within a week or so of another ounce of
14 cocaine and four grams of heroin.

15 Q And what type of, did he have a deal, was it
16 money?

17 A The initial, well, both of them, he actually
18 furnished the drugs. He thought that the informant
19 was actually going to sell the drugs to a third party
20 and then return and pay him. We had to get the
21 payment back to him.

22 Q Okay. But based on these, uh, buys, what did
23 you end up doing?

24 A On the 11th of November, based on our
25 investigation we just described, we knew what kind of

1 vehicle that Mr. Adams drove. We placed a tracking
2 device on one of his vehicles.

3 Q Did you get a warrant for that tracking
4 device?

5 A No, sir.

6 Q Where was the tracking device installed?
7 Where was the vehicle located?

8 A It was in a public garage, parking garage
9 down here in Charleston.

10 Q You know what garage it was?

11 A Yeah, MUSC parking garage.

12 Q Do you acknowledge -- could you just describe
13 for the judge what this tracking device did, how it
14 worked.

15 A Basically, it was self-contained. Not much
16 larger than maybe like a pack of cigarettes. A little
17 bit longer than that, but the same sort of shape.
18 It's self-contained. It had its own battery. The way
19 the technology basically works is it sends it to a
20 satellite. It's not required to work on the battery
21 of the vehicle. It's magnetic. Basically, it just
22 attaches to the undercarriage, to the bumper or
23 whatever on the vehicle that is metal.

24 Q So it was placed on the bumper?

25 A Yes, the undercarriage of the vehicle.

1 Q Okay. And, uh, did you at any point, did
2 anyone go inside that vehicle?

3 A No.

4 Q Anybody go under the hood?

5 A No.

6 Q Uh, you said this was in a public lot,
7 correct?

8 A Yes, sir.

9 Q Did you strike conversations or anything? It
10 was basically a good location; is that correct?

11 A That's correct.

12 Q Did you ever go on any private property to
13 install this?

14 A No, sir.

15 Q Did you learn anything other than where the
16 vehicle traveled?

17 A Yeah, it just provided location.

18 Q Did you do physical surveillance in
19 conjunction with it?

20 A Yes, sir. You have to. Although it will
21 tell you, it will give you a specific location, the
22 technology is not pinpoint accurate. It may tell you
23 he's at 123 First Street. That may or may not be
24 true. He could be within a couple of residences of
25 that location. We always have to do physical

1 surveillance to verify the exact location.

2 Q Uh, now based on that, what did you learn
3 from the tracking device?

4 A On the 16th of November, we noted the vehicle
5 traveled to Georgia. Based on our investigation and
6 informant information, we thought strongly that
7 Atlanta was his source of supply. We monitored his
8 activity. He was in the Atlanta area less than an
9 hour before he started coming back towards Charleston.

10 Q Okay.

11 A Based on that, we contacted Sergeant Blair.
12 We asked him to get on the interstate to be on the
13 lookout for the vehicle and he observed any traffic
14 infractions to stop him.

15 Q Now, had you learned from the CI that Georgia
16 was one of the places, Georgia and New York were the
17 places that he was getting his drugs?

18 A Yes, sir.

19 Q And where was Sergeant Blair stationed?

20 A I think he was in the rest area.

21 Q 203?

22 A I'm not sure of that. I know it was near the
23 rest area.

24 Q And what did you tell him?

25 A Told him that if he observed any traffic

1 infractions, stop him.

2 **Q** And, uh, you were aware that he was stopped
3 for traffic violations, correct?

4 **A** Yes.

5 **Q** And that was that evening around midnight or
6 11:55?

7 **A** Correct.

8 **Q** And were you present when he was stopped or
9 arrested?

10 **A** No.

11 **Q** Did you show up later?

12 **A** I did.

13 **Q** Now, in light of your history of the
14 Defendant, had you not did the beeper, would you have
15 been physically surveilling him?

16 **A** Yes, sir. We had given money to the
17 informant.

18 **Q** Finally, what did you do after the Defendant
19 was arrested?

20 **A** Like I said, drug investigation, we knew that
21 coordinated ---

22 **MRS. RANEY:** Your Honor, I'm going to object
23 to this. I think this is involving a different
24 case in another county.

25 **THE COURT:** What's your objection?

1 **MRS. RANEY:** Relevance.

2 **THE COURT:** At this point in time, I'm going
3 to overrule. I'm not sure where he's headed.

4 **BY MR. RIESEN:**

5 **Q** Sir, just briefly, so he was arrested and
6 what happened?

7 **A** We did a search warrant at his residence and
8 storage unit that he had. There's evidence in a
9 storage unit that he had and seized -- in the storage
10 unit, there was evidence of drug trafficking and
11 cocaine in his house.

12 **THE COURT:** I will agree. That's not
13 relevant to this issue that is before the Court.

14 **MR. RIESEN:** All right. No problem.

15 **THE COURT:** All that happened after that
16 fact.

17 **MR. RIESEN:** It happened after, right
18 after ---

19 **THE COURT:** I don't think it's relevant to
20 this issue.

21 **MR. RIESEN:** Okay. That's fine.

22 **THE COURT:** You finish?

23 **MR. RIESEN:** Yes, Your Honor.

24 **THE COURT:** Okay.

25 **CROSS-EXAMINATION**

1 BY MRS. RANEY:

2 Q It's Sergeant Gomes?

3 A Yes, ma'am.

4 Q You placed a tracking device on this car on
5 November the 11th?

6 A Yes, ma'am.

7 Q And it wasn't until November 16th that he was
8 going to Atlanta?

9 A Yes, ma'am.

10 Q The tracking device had been on his car for
11 approximately six or seven days?

12 A 5, 6, 7, Yes, ma'am.

13 Q And you placed the tracking device on his car
14 based on information you had from an informant?

15 A Coupled with the fact that we had made
16 several purchases of drugs.

17 Q With undercover officers?

18 A With an informant.

19 Q Is that an informant that you used through
20 your agency and he was placed under surveillance to
21 make buys?

22 A Kind of. Obviously, there's a procedure.
23 The informant is brought in. There's the recorded
24 telephone calls that are made. On this case, the
25 drugs were fronted to the informant. His wife

1 actually showed up to bring the drugs.

2 Q Not Mr. Adam?

3 A No, ma'am.

4 Q And you have the name of this informant?

5 A Yes.

6 Q And he gave you information about Mr. Adams
7 trafficking drugs?

8 A Yes, ma'am. We actually received it from
9 several different informants. But we only used one
10 informant to actually buy it.

11 Q And was he charged with something?

12 A He who?

13 Q Your informant.

14 A The informant was not charged.

15 Q Was he paid?

16 A Yes.

17 Q Was that based on how many, how much
18 information he gave?

19 A Was ---

20 Q Was the informant paid based on how much
21 information he gave you?

22 A Like a set payment where if you get this drug
23 you get X number of dollars?

24 Q I am. The more ---

25 A No.

1 Q --- information you give, the more money you
2 make?

3 A No.

4 Q Was he able to give you specifics about where
5 the drugs were kept or where he sells the drugs or
6 anything like that?

7 A Other than what I testified to.

8 Q Just generally that he's a drug trafficker?

9 A Well, obviously, they could buy from him.

10 Q How long did you have this information before
11 you got the tracking device placed on his car?

12 A Like I said, in July, after the shooting is
13 when we first became aware. Of course, over the next
14 few months, we had several informants come in and talk
15 about it.

16 Q They were already coming in in July?

17 A That's when we first identified him. Even
18 prior to that, we knew, we heard of him. I didn't
19 know really until the incident. Over the course of
20 the next few months, we would get information which is
21 pretty common for informants. It was not until
22 November before we were able to get information
23 directly.

24 Q Were you specifically given information that
25 he was going to Atlanta or you knew that from your own

1 surveillance?

2 **A** What do you mean?

3 **Q** You knew he was going somewhere on the
4 interstate because you had the tracking device.

5 **A** Correct.

6 **Q** Did you know he was going to Atlanta?

7 **A** When we picked him up, we knew he was going
8 to the area of Georgia. We knew he was traveling to
9 Georgia. He was on the interstate going in that
10 direction. Like I said, we had information that
11 Atlanta or Georgia was his source. That's where he
12 would go get drugs.

13 **Q** But your informant didn't tell you that he
14 was going to Atlanta that day?

15 **A** The informant had mentioned prior that he may
16 be going at some point. We didn't know specifically
17 that he was going to make that trip.

18 **Q** Okay. That's what I wanted to know. And I
19 believe you told Mr. Riesen that you didn't get a
20 warrant for the tracking device.

21 **A** No, ma'am.

22 **Q** And no order from a judge?

23 **A** No, ma'am.

24 **Q** We have a magistrate on call in Charleston
25 County, don't we?

1 **A** Yes, ma'am.

2 **Q** And they could sign search warrants pretty
3 quickly?

4 **A** They can.

5 **MRS. RANEY:** Beg the Court's indulgence.

6 (Pause.)

7 **BY MRS. RANEY:**

8 **Q** I believe you told me you didn't get an order
9 or a search warrant.

10 **A** No, ma'am.

11 **Q** You didn't call Mr. Riesen and have him go
12 get a warrant or any kind of order from a judge?

13 **A** No, ma'am.

14 **Q** And you didn't go to the Attorney General to
15 ask for an application for any electronics or oral
16 communication devices?

17 **A** No, ma'am.

18 **Q** No oral or written testimony of probable
19 cause to get a search warrant or an order from the
20 court?

21 **A** No, ma'am.

22 **Q** And no hearings were held to determine
23 whether there was probable cause?

24 **A** No, ma'am.

25 **Q** That's all.

1 **THE COURT:** Okay. Redirect?

2 **MR. RIESEN:** Briefly.

3 **REDIRECT EXAMINATION**

4 **BY MR. RIESEN:**

5 **Q** Just so we're clear, prior to getting this
6 tracking device, your confidential informant made
7 several buys from the Defendant's wife, is that
8 correct?

9 **A** Yes, sir.

10 **Q** And who set up those buys from the
11 Defendant's wife?

12 **A** All the pre-buy calls, all the telephone
13 conversations were between Mr. Adams and the
14 informant. After the second buy, there was a meeting
15 that did occur with the informant and Mr. Adams where
16 they did discuss future purchases.

17 **Q** So Mr. Adams was working with the CI to get
18 the drugs and get them from his wife?

19 **A** Correct.

20 **MR. RIESEN:** No further questions.

21 **THE COURT:** Any recross?

22 **MRS. RANEY:** No, Your Honor.

23 **THE COURT:** You may step down. Thank you so
24 very much.

25 **THE WITNESS:** Yes, sir.

1 **MR. RIESEN:** The State calls Sergeant Blair.

2 **TIMOTHY BLAIR**

3 having first been sworn, testifies as follows:

4 **THE CLERK:** For the record, please state your
5 full name and spell your last.

6 **THE WITNESS:** Timothy John Blair, B-L-A-I-R.

7 **DIRECT EXAMINATION**

8 **BY MR. RIESEN:**

9 **Q** Good afternoon, Sergeant Blair. Where are
10 you employed?

11 **A** North Charleston Police Department.

12 **Q** And how long have you been there?

13 **A** Approximately 18 and a half years.

14 **Q** And what are your current duties?

15 **A** A night shift supervisor.

16 **Q** What were your duties back in November of
17 2008?

18 **A** I was the K-9 supervisor and handler.

19 **Q** All right. Would you describe your
20 educational and law enforcement background?

21 **A** 1980, I joined the Army as an MT. I had
22 patrol duties and narcotics duties. Two and a half
23 years on the Army reserves as an MT. 16 years in the
24 Air Force Security Forces. Also in 1991, I got hired
25 at the North Charleston department, went to the

1 Academy and trained as a certified law enforcement
2 officer for the state. I worked patrol duties.

3 In '97, December of '97, I got my first K-9.
4 I went to school in January of '98 and attended a 520
5 hour course over 14 weeks to become a K-9 handler and
6 learn how to train my dog, handle my dog. Over the
7 next 11 and a half years, I was a K-9 officer, and
8 after that promoted to sergeant and took over the
9 unit. I was responsible for the training of the unit
10 from approximately 2005 til, uh, this past June.

11 Q All right. How many cases have you been
12 involved in using a K-9 in a drug operation?

13 A Hundreds of cases.

14 Q Let's go back to November 16th of 2008, the
15 reason we are here today. Okay?

16 A Yes, sir.

17 Q I'm not going to -- were you told to be on
18 the lookout for a white 2003 Chevy believed to be
19 transporting drugs?

20 A Yes, I was.

21 Q And did you find that vehicle?

22 A Yes, I did.

23 Q And where were you when you spotted that
24 vehicle?

25 A I was at the rest area at the 203 exit area

1 of Interstate 526 eastbound.

2 Q Okay. And approximately what time was that?

3 A That was at 11:55 p.m.

4 Q Did you have your dog, K-9 with you?

5 A Yes, I did.

6 Q And what was his name?

7 A Bertus, B-E-R-T-U-S.

8 Q And what did you do when you spotted that
9 vehicle? If you can kind of give a brief overview to
10 the judge as to what happened.

11 A When I observed the vehicle, I turned on the
12 digital camera in my vehicle to capture any violations
13 and turned on my lights, headlights, and entered onto
14 the roadway.

15 Q You entered onto the roadway, what did you
16 do?

17 A Went on the roadway behind the Defendant's
18 vehicle. At which time, I observed. He was in the
19 left lane. He went to changed lanes to the right not
20 using a turn signal. He was really close to another
21 vehicle which had applied brakes because he didn't
22 clear the way. Then he swerved back to his lane.
23 That was a traffic violation. He went down a little
24 further and then turned his turn signal on, then
25 merged in front of that vehicle.

1 Q Okay. And where did he exit?

2 A He exited at the next exit going onto Highway
3 78.

4 Q And at this time, where were you when he
5 exited?

6 A At that time, I was directly behind the
7 vehicle in which he broke in front of.

8 Q Why weren't you directly behind him?

9 A There wasn't room for me to get between him
10 and the other vehicle.

11 Q So he got off pretty quick on Highway 78 ---

12 A Yes.

13 Q --- once you were behind him?

14 A Yes, he did.

15 Q And your lights were not on, your blue lights
16 were not on at the time?

17 A Not at this time.

18 Q Once he exited on Highway 78, which we
19 explained so the judge is familiar, did you move back
20 over to the interstate heading towards Charleston
21 Southern?

22 A As you get off the interstate on that exit,
23 it does go back to Golden Interstate and it moves back
24 and places you on Highway 78 going in a direction
25 towards, uh, ---

1 Q Okay. And what happened as he exited, as he
2 got over the pass?

3 A As he gone on top of the overpass, there's
4 another dotted line to his left. He still had his
5 right turn signal on, however, he merged left across
6 the dotted line into the next lane over which is a
7 violation and which he should have had his left turn
8 signal on then merged. He had his right turn signal
9 on merging left.

10 Q Okay. It's been a lot of information for the
11 judge. Just so we're clear, we have two traffic
12 violations; is that correct?

13 A Yeah.

14 Q The first on I-26 when he crossed the center
15 white line there on I-26 when the car put on the
16 brakes behind him; is that correct?

17 A Correct.

18 Q Without using his blinker?

19 A Correct.

20 Q Or his right blinker. Then when he gets on
21 I-26, he merges left. He doesn't use his left
22 blinker. He has his right blinker on.

23 A He kept his right blinker on and merged left.

24 Q Okay. And you got this all on video?

25 A Yes.

1 Q And you know what statute, what is that
2 violation? Is that improper lane change?

3 A Basically, yes. It is improper lane change
4 under 56-5-2150.

5 Q Okay.. Let's talk about the actual stop.
6 Where did this occur?

7 A The actual traffic stop, once he made that
8 violation and come down off of the, uh, I-26, I
9 activated my blue lights to do the traffic stop. He
10 pulled into the gas station, the BP gas station on
11 Highway 78, directly across from Charleston Southern
12 University.

13 Q Okay.

14 A The location was, uh, ---

15 Q Would you -- oh, I'm sorry. I didn't mean to
16 interrupt.

17 A The location was, uh, 9195 University where
18 the gas station is.

19 Q Okay. And where was your vehicle in relation
20 to the Defendant when he stopped?

21 A Behind his vehicle.

22 Q Okay. Did you approach the Defendant's
23 vehicle?

24 A Yes, I did.

25 Q On what side?

1 **A** I initially approached on the driver's side.

2 **Q** And what did you say to him?

3 **A** I identified myself and advised him of the
4 violation.

5 **Q** Okay. And how was the Defendant acting?

6 **A** He was acting very nervous. He had his hands
7 down below where I couldn't see them.

8 **Q** Did you have to tell him anything?

9 **A** Requested to see his hands, also requested
10 that he cut off the vehicle and hand me the key.

11 **Q** Okay. Now, was there anything else that you
12 noticed may have aroused your suspicion?

13 **A** Yes. As he pulled into the gas station, a
14 Jeep Cherokee stopped in the exit as we pulled in to
15 left. The guy stopped in the vehicle. Had his window
16 down. He was kind of panicky, looking back and forth
17 and was fidgeting with his jacket which raised my
18 suspicion and my feeling of safety not knowing if this
19 was a trail vehicle. This vehicle just sat there
20 watching. It made me extremely nervous.

21 **Q** What did you do as a result of the
22 Defendant's nervous behavior and the vehicle that you
23 were concerned about?

24 **A** I called for backup, also I drew my gun
25 believing if I presented it -- I had it out ready to

1 my rear.

2 Q You actually did have to pull your firearm
3 but you did not point it at ---

4 A I never pointed it at nobody. I don't think
5 he even seen it. I had it way behind my body along my
6 leg.

7 Q Again, it's visible on the video?

8 A It's on the video.

9 Q Okay.

10 A For my safety.

11 Q You say you called an officer, Officer
12 Greenawalt, correct?

13 A I called for assistance, and Officer
14 Greenawalt arrived.

15 Q And approximately how long was it before he
16 arrived?

17 A Maybe one or two minutes.

18 Q Okay. When Officer Greenawalt arrived, what
19 happened next?

20 A I saw the vehicle and asked him to check on
21 it before I did the search.

22 Q Okay. Now, let's assume you didn't know the
23 Defendant was actually transporting drugs. Based on
24 his nervous behavior, as well as what you observed of
25 the Jeep Cherokee, would you have still done a

1 perimeter check of that vehicle?

2 **A** Yes, that's my duty as K-9 officer. That's
3 why you got the dog.

4 **Q** Okay. Now you say Officer Greenawalt checked
5 him out, did an NCIC check while you did a perimeter
6 sniff. Would you just briefly explain to the judge
7 how that works.

8 **A** I asked Officer Greenawalt to step off to the
9 side while I ran the dog. I went back around the
10 vehicle. I had my dog, got him out of the vehicle,
11 placed him on a leash, brought him to the right front
12 of Mr. Adams' vehicle. I commanded him to sniff the
13 vehicle for drugs at which time he went in a
14 counterclockwise direction. He went from the right
15 front headlight area around the front of the vehicle
16 and then back down towards the driver's door. At
17 which time, my dog displayed a change in behavior.
18 His breathing changed. He stopped. He stayed at the
19 door. He wouldn't leave it. Then he made an alert to
20 the door of the vehicle that narcotics were in the
21 individual's vehicle.

22 **Q** Now, so we're clear. That's a lot of
23 information. You say he alerted.

24 **A** Yes.

25 **Q** Did he start barking?

1 **A** My dog gives an aggressive alerts. She
2 barks, fights, scratches at the door surface.

3 **Q** So did she do -- she did more than just bark,
4 is that correct?

5 **A** She barked and scratched at the area. I
6 pulled her back. I didn't want her to damage the
7 vehicle unnecessarily. I opened the door and let her
8 go inside to go to the odor that he was smelling.

9 **Q** Okay. He was on the driver's side door
10 initially, correct?

11 **A** Yes.

12 **Q** And what did he do when you deployed the dog
13 inside the vehicle?

14 **A** He jumped upon in vehicle quick in the area
15 and directly went to by the driver's seat in the
16 center console. He was scratching, barking and biting
17 at it.

18 **Q** Okay. What happened after he alerted? What
19 did you do with the dog?

20 **A** I rewarded my dog and got him out the vehicle
21 and put him right back inside my patrol vehicle.

22 **Q** Now how do you reward him?

23 **A** He has a toy.

24 **Q** Is that how you trained him?

25 **A** That's what his reward is.

1 Q After he alerted to the smell of drugs in
2 that area, what happened with Officer Greenawalt?

3 A After my dog alerted, I instructed Officer
4 Greenawalt to pat Mr. Adams down. I put my dog back
5 in the vehicle. I went back to the vehicle where my
6 dog had alerted to.

7 Q Okay. Now, was he, was Officer Greenawalt --
8 excuse me -- was the Defendant handcuffed before this?

9 A No, he was not.

10 Q And when he patted him down, was anything
11 located?

12 A I looked back in Mr. Adams' vehicle. I
13 looked back and he handcuffed him. Officer Greenawalt
14 advised that he felt a hard object.

15 Q Okay.

16 A At which time I went back over there and he
17 advised that he felt a hard object and retrieved it.

18 MR. RIESEN: Okay. Your Honor, uh, we would
19 like to play the video of the stop and the dog
20 alerting if that's okay.

21 THE COURT: Well, have you seen the video?

22 MRS. RANEY: I have.

23 THE COURT: Do you consent that he made a
24 traffic violation -- is the video accurate with
25 what the officer said? Do I need to look at it?

1 **MRS. RANEY:** I honestly have a hard time
2 seeing it. I can tell when he's getting off the
3 exit ramp he has the wrong blinker on after he's
4 been pulled over. But I don't see the improper
5 lane change.

6 **THE COURT:** The first one?

7 **MRS. RANEY:** The first one.

8 **THE COURT:** How about the second one?

9 **MRS. RANEY:** The second one, I see a blinker
10 problem, but I don't know that that constitutes
11 improper lane change.

12 **THE COURT:** Well, the officer said it does.
13 You didn't look at the statute?

14 **MRS. RANEY:** I have.

15 **THE COURT:** 51 -- 56-5-2160 I think you
16 said?

17 **THE WITNESS:** 2150.

18 **THE COURT:** 2150?

19 **THE WITNESS:** Yes, sir.

20 **THE COURT:** I don't necessarily want to look
21 at the video unless you think it is necessary for
22 your motion to suppress.

23 **MRS. RANEY:** I don't think it does. I still
24 may argue in regards to improper lane change
25 after the ---

1 **THE COURT:** Okay. Does the video
2 corroborate his testimony or change it?

3 **MRS. RANEY:** I don't think it changes
4 anything.

5 **THE COURT:** Well, if it doesn't change
6 anything, I don't see a reason to look at it.

7 **MR. RIESEN:** Okay. That's fine with me,
8 Your Honor.

9 **THE COURT:** You can mark it for
10 identification if you want.

11 **MR. RIESEN:** Okay. Yes.

12 **THE COURT:** If it doesn't change any, change
13 the officer's testimony, I don't see any reason
14 to look at it.

15 **MR. RIESEN:** It's just to corroborate his
16 testimony, Your Honor. That's all I needed it to
17 do.

18 **BY MR. RIESEN:**

19 **Q** We're not looking at the video. It has the
20 time on it. Uh, how much time was it between,
21 approximately how much time was it from the time you
22 stopped the Defendant until when the dog alerted to
23 drugs in the vehicle?

24 **A** Approximately eight minutes, 10 minutes.

25 **Q** Okay. Would it be accurate if I were to say

1 five minutes?

2 **A** Yes.

3 **Q** If you were looking at the video?

4 **A** I'd have to see the video.

5 **Q** Okay. Now during that five minute time,
6 during that period, had the Defendant already been
7 issued a citation?

8 **A** No.

9 **Q** To your knowledge, had the NCIC check been
10 completed?

11 **A** No, it had not.

12 **Q** And to your knowledge, how long after Bertus
13 alerted was it that Officer Greenawalt felt the large
14 object he suspected to be drugs on him?

15 **A** Very quick. 30 seconds.

16 **Q** 30 seconds?

17 **A** Yeah.

18 **Q** Now, who arrested the Defendant?

19 **A** I did. When I observed what was removed from
20 his person ---

21 **Q** Uh-huh.

22 **A** --- I advised him he was under arrest.

23 **Q** And did you Mirandize him?

24 **A** Yes. We advised him of his rights.

25 **Q** Okay. Now, so what do you approximate the

1 amount of time from the time that he was stopped to
2 when he was arrested, total stop?

3 **A** 10 minutes.

4 **Q** Okay. What's the normal record time it takes
5 to usually process a routine traffic stop for you?

6 **A** 15 to 20 minutes on average.

7 **Q** Now, do you know who is secured the drug
8 evidence?

9 **A** Officer Greenawalt.

10 **Q** Now, was the Defendant ever issued a citation
11 for the traffic violations you talked about earlier?

12 **A** No.

13 **Q** Is that uncommon or common if someone is
14 charged with something more serious than that you end
15 up not writing the original traffic ticket?

16 **A** Correct. That would have been two courts.

17 **Q** Okay. Finally, let's talk quickly about
18 Bertus' training. Okay. How old is Bertus, your dog
19 sniffing dog?

20 **A** Bertus at that time was six and a half years
21 old approximately.

22 **Q** What breed of dog was he?

23 **A** He was a Belgian Malinois.

24 **THE COURT:** Hold on a second.

25 **COURT REPORTER:** I'm sorry. Belgian what?

1 **THE WITNESS:** Malinios, M-A-L-I-N-I-O-S.

2 **COURT REPORTER:** Thank you.

3 **THE COURT:** Go ahead.

4 **MR. RIESEN:** Thank you, Judge.

5 **BY MR. RIESEN:**

6 **Q** And how long had he been working with your K-
7 9 unit as of November 2008 prior to this stop?

8 **A** Approximately four and a half years.

9 **Q** And was he trained and certified through the
10 South Carolina K-9 Association?

11 **A** Yes, he was.

12 **Q** And what was he trained to find?

13 **A** He was trained to find cocaine, heroin, meth
14 and methamphetamine.

15 **Q** And, uh, ---

16 **A** Cocaine, heroin, meth...

17 **Q** Marijuana?

18 **A** Yeah, marijuana.

19 **Q** Okay. How long have he been certified prior
20 to 2008?

21 **A** He had been certified in 2005, 2006, 2007 and
22 2008.

23 **Q** So about three to four years?

24 **A** Yes.

1 Q And how many drug cases had you worked with
2 him?

3 A Hundreds.

4 Q And just so we're clear, how are they trained
5 to alert?

6 A Bertus was trained from an aggressive way..
7 They are passive or aggressively. Bertus was trained
8 where she barks, bites, scratches at the surfaces.

9 Q And that was done in this case?

10 A Yes.

11 Q Finally let's talk about the Defendant's
12 charges. What was he charged with?

13 A Trafficking Cocaine and also Trafficking
14 Cocaine within Proximity of a School.

15 Q You made the stop and the arrest at 9195?

16 A Correct.

17 Q That's directly across the street.

18 A Correct.

19 Q How do you know it was within a half a mile?

20 A Looked at the Google map and measured it.

21 Q You are familiar with the area?

22 A Yes.

23 Q Okay.

24 **MR. RIESEN:** Court's indulgence.

25 **THE COURT:** Certainly.

1 BY MR. RIESEN:

2 Q You said earlier that Greenawalt was the
3 person who confiscated the drugs?

4 A Yes, he removed the drugs.

5 Q And you did Mirandize him?

6 A Yes. I advised him he was under arrest.

7 MR. RIESEN: No further questions.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MRS. RANEY:

11 Q What was traffic like that night?

12 A Medium. Medium to light.

13 Q And how far in the lane did he cross, Mr.
14 Adams?

15 A In front of the other vehicle. He was
16 directly in front of the vehicle. He crossed over.
17 His wheels came this much over.

18 Q And then returned to the lane that he was
19 traveling?

20 A Right.

21 Q Did the car have to swerve?

22 A The vehicle behind him had to press hard.

23 Q When he was on the exit ramp, were your
24 lights on?

25 A My headlights were on.

1 Q But not your blue lights?

2 A No, ma'am.

3 Q That's when he had the wrong signal on?

4 A When he was on the exit ramp, he had turned
5 on his right turn signal. He actually had the proper
6 signal on then. However, once he looked around and
7 got on Highway 78, he continued to keep his right turn
8 signal on and merged left when he should have changed
9 it to his left turn signal on.

10 Q Was he being pulled over at that time?

11 A At that time, no. I wanted to get to a safe
12 location to do a traffic stop. It wouldn't be safe to
13 do it directly on the ramp. Once we got up the lane
14 of traffic, then I turned on my blue lights.

15 Q When you are determining the proximity to a
16 school when you charge somebody, ---

17 A Yes.

18 Q --- you use Google map?

19 A We use -- yeah. We use Google map. In this
20 case, we look at the map. And also it was directly,
21 right across the street.

22 Q Did you Google on Google maps the proximity
23 to Charleston Southern from where the traffic
24 violation occurred?

25 A Yes.

1 Q And how far was that?

2 A It shows like .2, but it goes into the
3 property line. The property line actually starts
4 right there on that side of the street.

5 Q The property line for Charleston Southern?

6 A Yes.

7 Q So here is Google from I-26 and Charleston
8 Southern?

9 A No, ma'am, from the gas station which is 9195
10 University Boulevard to 9200 University Boulevard
11 which is directly across the street.

12 Q So only where he was pulled over, where the
13 traffic stop had occurred?

14 A Correct.

15 Q Not where the traffic violation occurred?

16 A Correct.

17 Q How far did you travel or follow Mr. Adams?

18 A A short distance.

19 Q How far would you say? A mile, half a mile?

20 A No, less than half a mile.

21 Q In your agency, often you think Google map is
22 the way to determine proximity?

23 A That or the meter. You drive your vehicle
24 and pace it.

25 Q Google map is an accurate way?

1 A You can use Google map or such type map.

2 Q When you pulled him over, is that when you
3 called for backup?

4 A Yes, ma'am.

5 Q Is that what you normally do?

6 A Yes, ma'am. You don't want to search alone.

7 Q Not for every traffic violation?

8 A When you deploy the dog, yes.

9 Q Only when you deploy the dog?

10 A Yes, ma'am.

11 Q When you stopped Mr. Adams, did you see any
12 guns or drugs?

13 A Did I observe guns? Not at the time I
14 stopped him.

15 Q You actually asked him if he had any guns or
16 drugs? Do you remember that on the video? You asked
17 him?

18 A I didn't ask him when I stopped him. I asked
19 him to show his hands.

20 Q Did you feel like he was armed?

21 A Possibly, yes, ma'am.

22 Q Did you have him step out of the vehicle?

23 A When Officer Greenawalt arrived.

24 Q He did hand the keys over?

25 A Yes, ma'am.

1 Q Did you confirm that his driver's license was
2 valid?

3 A I asked Officer Greenawalt to do that.

4 Q You never wrote a ticket?

5 A Didn't have time.

6 Q You never intended to write him a ticket?

7 A Oh, no. I would have.. I should have wrote a
8 ticket.

9 Q You knew who Mr. Adams was, right?

10 A Yes.

11 Q And you were waiting on him?

12 A Yes, I was.

13 Q Were you aware of the tracking device on his
14 car?

15 A Yes.

16 Q Did you ever get a warrant for that tracking
17 device?

18 A No, ma'am. That was not my part.

19 Q You did write a report about this incident.
20 Is that correct?

21 A Yes, ma'am.

22 Q There is nothing document in your report
23 about that investigation or that tracking device, is
24 there?

25 A I wasn't the one that placed it on him.

1 Q Your report starts out that you pulled out of
2 the interstate onto I-26 and that's when you saw his
3 car?

4 A Yes, ma'am.

5 Q And in fact, you had already seen his car and
6 that's why you were pulling out of the rest area?

7 A Yes, ma'am.

8 Q When you put the K-9 Officer Bertus to the
9 vehicle, he alerted to the door?

10 A To the driver's door.

11 Q Where was Mr. Adams at this time?

12 A He was directly to the left with Officer
13 Greenawalt.

14 Q Besides Officer Greenawalt's car?

15 A I believe behind the officer's car.

16 Q You said he was not handcuffed at that time?

17 A No, ma'am.

18 Q Was Greenawalt running his license or doing
19 an NCIC check?

20 A I asked him to, yes.

21 Q Do you know if he did that?

22 A I don't know. You have to ask him.

23 Q I want to ask you about your dog. You went
24 through training. How many times had your dog been
25 correct about the presence of narcotics?

1 **A** He has about a 90 percent accuracy rate.

2 **Q** Has your dog ever been wrong?

3 **A** Yes, ma'am.

4 **Q** In fact, he was wrong this day, wasn't he?

5 **A** No, ma'am. He was correct.

6 **Q** Did you find drugs in the car?

7 **A** When the dog alerted, he alerted the past or
8 present odor or lingering odor.

9 **Q** Past and present odor, so that may mean there
10 are no drugs in there?

11 **A** There is a past or present odor. Mr. Adams
12 had the odors on him when he was in the vehicle which
13 the dog detected. There were odors in the vehicle.
14 There was a lingering odor.

15 **Q** Which could mean there are no drugs in the
16 car at all?

17 **A** True. At that time, there wasn't. Mr. Adams
18 had them on his person.

19 **Q** Did you find any drugs in the car?

20 **A** No, ma'am.

21 **Q** Did you ever put the dog on Mr. Adams'
22 person?

23 **A** We are forbidden from doing that. It would
24 not have been very smart. He would have gotten bit.

25 **Q** Once you -- once your dog alerted on the

1 door, that's when you put him inside with the car.

2 **A** Yes, ma'am.

3 **Q** He alerted on the console. At that time, you
4 searched the car yourself.

5 **A** I reward my dog. Then I put him back. Then
6 I started to look in the vehicle, yes, ma'am.

7 **Q** And at that same time, Officer Greenawalt was
8 patting down Mr. Adams?

9 **A** Yes, after the alert of the dog, yes.

10 **Q** That's why you had him to pat him down? The
11 dog had alerted?

12 **A** Officer Greenawalt patted him down.

13 **Q** Is that because the dog had alerted on the
14 car?

15 **A** Yes.

16 **MRS. RANEY:** Beg the Court's indulgence.

17 (Pause.)

18 That's all I have.

19 **THE COURT:** Redirect?

20 **MR. RIESEN:** Just briefly.

21 **REDIRECT EXAMINATION**

22 **BY MR. RIESEN:**

23 **Q** Mrs. Raney was asking you about the Google
24 map.

25 **A** Yes, sir.

1 Q You recognize this Google map here?

2 A Yes, sir.

3 Q You used it before?

4 A Yes, I have.

5 Q What does it show?

6 A It shows the BP gas station and Charleston
7 Southern and it shows the distance of less than a half
8 mile.

9 Q And it's even closer to the property line
10 here, correct?

11 A Correct.

12 Q This document -- I'm sorry.

13 MR. RIESEN: I just like to mark for
14 identification purposes only whatever State's
15 Exhibit we're on. We're on 4? Thank you.

16 (WHEREUPON, State's Exhibit 4 is marked for
17 identification purposes.)

18 MR. RIESEN: No further questions.

19 THE COURT: You may step down.

20 MR. RIESEN: The State calls the last
21 witness which would be Sergeant Greenawalt.

22 THE COURT: Okay.

23 JAMES GREENAWALT

24 having first been sworn, testifies as follows:

25 THE CLERK: Please be seated. For the

1 record, please state your full name and spell
2 your last.

3 THE WITNESS: James Greenawalt. Last name
4 spelled G-R-E-E-N-A-W-A-L-T.

5 DIRECT EXAMINATION

6 BY MR. RIESEN:

7 Q Good afternoon, Officer Greenawalt.

8 A Uh-huh.

9 Q Where are you employed?

10 A North Charleston Police Department.

11 Q About how long have you been here?

12 A Two years.

13 Q And where did you work prior to the North
14 Charleston Police Department?

15 A Mt. Pleasant Police Department.

16 Q And what are your current duties here with
17 North Charleston?

18 A I'm part of uniform patrol, calls for
19 service.

20 Q Briefly for the judge describe your law
21 enforcement background.

22 A I have an Associate Degree from Trident Tech
23 in Criminal Justice. I've also logged over 100 hours
24 worth of advance classes in narcotics.

25 Q Okay. Were you involved in the arrest of the

1 Defendant back on November 16th, 2008?

2 **A** Yes, I was.

3 **Q** Approximately what time was this?

4 **A** 12:03.

5 **Q** Where did this arrest take place?

6 **A** It was at 9195 University Boulevard.

7 **Q** Where is that? Highway 78?

8 **A** Highway 78, across the street from Charleston
9 Southern University.

10 **Q** And what county is that?

11 **A** That is in Charleston County.

12 **Q** Were any other officers around when you
13 arrived?

14 **A** Yes, Sergeant Blair.

15 **Q** And what did you do when you arrived?

16 **A** When I arrived on the scene, I took the
17 driver out of vehicle, went over to rear of the
18 vehicle. I advised the suspect to place his hands on
19 the rear of the vehicle and begin running NCIC.

20 **Q** At this time, was he arrested?

21 **A** No.

22 **Q** Was he handcuffed?

23 **A** No.

24 **Q** Did you observe Officer Blair working the K-9
25 at this time?

1 **A** Yes.

2 **Q** Did you notice whether or not the K-9
3 alerted?

4 **A** Yes.

5 **Q** And where did he alert?

6 **A** He alerted to the driver's side door and then
7 he deployed inside the vehicle.

8 **Q** Okay. And where were you standing when --
9 how far away were you and the Defendant from this?

10 **A** We were probably about 10 yards.

11 **Q** Okay. And, uh, prior to him alerting, what
12 was the Defendant doing?

13 **A** The Defendant -- I advised the Defendant
14 several times to keep his hands on the rear, trunk of
15 the car. He kept turning around and trying to talk to
16 me. His eyes were looking in other directions like
17 trying to make a way for escape.

18 **Q** Okay. So based on that and Bertus alerting,
19 what did you do? Describe what you did.

20 **A** I had the subject place his hands on the car.
21 I advised him what was being done on the car and then
22 proceeded to pat down the outside of the clothing of
23 the subject.

24 **Q** Did you feel anything?

25 **A** I located a, or I felt a jagged round object

1 in the groin area of the Defendant.

2 Q And based on your training and experience,
3 what did you believe it to be?

4 A Drugs.

5 Q What did you do at the time?

6 A The subject was then placed in handcuffs. I
7 advised Sergeant Blair. I put gloves on and retrieved
8 the item.

9 Q Did you physically do a pat down for officer
10 safety as well?

11 A Yes.

12 Q Did you have any reason to have pat him for
13 officer safety in this situation?

14 A Yes.

15 Q Why is that?

16 A Due to the movements of the subject and me
17 having advised him several times to place his hands on
18 the vehicle, on the rear of the police vehicle and
19 when the K-9 dog alerted to the vehicle.

20 Q So the pat down was done as a result of
21 officer safety as well as the dog alerting?

22 A Yes.

23 Q Again, the pat down was done after Bertus
24 alerted, correct?

25 A Correct.

1 Q And after the movement?

2 A Correct.

3 Q He was not handcuffed ---

4 A After the third time being told to put his
5 hands on the car, he was pat down.

6 Q Now, was it uncommon to pat him for officer
7 safety when someone is detained but not under arrest?

8 A No.

9 Q What did the, the large object, did you put
10 on any gloves to retrieve it?

11 A Yes.

12 Q And what did you do after retrieving the
13 item?

14 A I secured the item in my vehicle.

15 Q Did you test it?

16 A I did field test it.

17 Q What did it field test as?

18 A Positive for the presence of cocaine.

19 MR. RIESEN: I assume you don't need me to
20 go into field testing.

21 THE COURT: No, sir, I don't need him to do
22 that.

23 MR. RIESEN: I'm sorry?

24 THE COURT: No, sir.

25 MR. RIESEN: Okay.

1 BY MR. RIESEN:

2 Q After field testing it and it testing
3 positive, was the Defendant Mirandized?

4 A Yes, by Sergeant Blair.

5 Q Did you witness him Mirandize him?

6 A Yes.

7 Q Was it done verbally?

8 A Yes.

9 Q Uh, let's talk briefly about chain of custody
10 of the drugs, okay. What did you do with the cocaine,
11 the drug that field tested positive?

12 A I secured them and then transported them to
13 the North Charleston Headquarters where I placed them
14 into a Best kit.

15 MR. RIESEN: Your Honor, may I approach?

16 THE COURT: Yes, sir.

17 BY MR. RIESEN:

18 Q I'm showing you what's been previously marked
19 for identification purpose only State's Exhibit number
20 2. If you will just take a look at this and tell me
21 if you recognize it.

22 A Yes, I do.

23 Q How do you recognize it?

24 A It has my signature on it.

25 Q And what is that?

1 **A** This is the Best kit I submitted to SLED.

2 **Q** Were these drugs in your continuous care and
3 custody from the time you retrieved them til when you
4 delivered them to -- scratch that. Where did you
5 deliver those?

6 **A** I delivered to the evidence locker that's
7 located at the North Charleston Headquarters.

8 **Q** And when was that done?

9 **A** The same night in question.

10 **Q** Okay. Were they in your continuous care and
11 custody from the time you retrieved them til the time
12 that you dropped them off at NCPD evidence?

13 **A** Yes, they were.

14 **MR. RIESEN:** I guess we don't need to admit
15 them into evidence for the suppression hearing,
16 so we'll just leave them marked for
17 identification.

18 **THE COURT:** You are learning.

19 **MR. RIESEN:** What's that, Your Honor?

20 **THE COURT:** You are learning.

21 **MR. RIESEN:** I'm trying. That's all I got.

22 **THE COURT:** Okay. Cross-examination.

23 **CROSS-EXAMINATION**

24 **BY MRS. RANEY:**

25 **Q** Officer Greenawalt, you responded to assist

1 Sergeant Blair with the traffic stop, correct?

2 **A** Yes.

3 **Q** You have videotape abilities in your car?

4 **A** I do not.

5 **Q** As a result of that stop that night, you read
6 the incident report?

7 **A** I did.

8 **Q** In that incident report, you asked Mr. Adams
9 that night, you wrote this in your report, you asked
10 him if he had any illegal drugs or guns on him?

11 **A** Correct.

12 **Q** And he told you no?

13 **A** Correct.

14 **Q** And that's when you took him over to the
15 officer's car?

16 **A** We were already at the car when I asked him
17 that question.

18 **Q** And he put his hands up on the car?

19 **A** Yes.

20 **Q** Well, he was told to, right?

21 **A** He was told to.

22 **Q** And at that point, did you pat him down for
23 any weapons?

24 **A** No.

25 **Q** You said he was not handcuffed?

- 1 **A** No.
- 2 **Q** But did have his hands on the car?
- 3 **A** On the car.
- 4 **Q** What was he wearing?
- 5 **A** I believe they were jogging pants. I can't
- 6 remember the exact shirt.
- 7 **Q** They were jogging pants?
- 8 **A** They were jogging pants.
- 9 **Q** You did not pat him down until the dog
- 10 alerted on the car, correct?
- 11 **A** Correct.
- 12 **Q** When the dog alerted on the car, was Mr.
- 13 Adams under arrest?
- 14 **A** No.
- 15 **Q** Was he wearing longjohns as well as boxers?
- 16 **A** Correct.
- 17 **Q** Did he have a jock strap on as well?
- 18 **A** I don't recall a jock strap.
- 19 **Q** How was the item wrapped that you found?
- 20 **A** Uh, it was packaged in two separate plastic
- 21 bags wrapped inside more plastic.
- 22 **Q** Wrapped tightly with Saran wrap?
- 23 **A** Correct.
- 24 **Q** When I look back at your report, it says

1 after K-9 Bertus alerted to the vehicle, that's when
2 you performed the search of Mr. Adams.

3 **A** Correct, after the K-9 alerted to the
4 vehicle, I asked Mr. Adams again to place his hands on
5 the trunk of the car and a pat down was performed.

6 **Q** And you described what you felt as a large
7 round shaped item.

8 **A** Correct.

9 **Q** Okay. And I believe you stated you believed
10 it to be drugs.

11 **A** Correct.

12 **Q** Did Officer Blair's K-9 ever alert on Mr.
13 Adams?

14 **A** The dog was put on his person? No.

15 **Q** Just on the car?

16 **A** Just on the vehicle.

17 **Q** And your search of Mr. Adams was based on the
18 dog alerting on the car?

19 **A** The pat down.

20 **Q** You are aware that no drugs were found in the
21 car?

22 **A** Correct.

23 **MRS. RANEY:** That's all I have.

24 **THE COURT:** Redirect?

25 **MR. RIESEN:** Nothing further.

1 **THE COURT:** You may step down. Thank you
2 very much.

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** Any motions?

5 **MRS. RANEY:** Thank you, Your Honor. Uh, I
6 don't think that the State has met the warrant
7 requirement under the Fourth Amendment in this
8 case. I have reviewed 17-30-140 of the South
9 Carolina statute that goes through the process of
10 getting a tracking device placed on a object,
11 including a motor vehicle. In this statute, it
12 requires that an Attorney General or any
13 Solicitor can make an application to a judge for
14 an order authorizing placement of that tracking
15 device on an object. None of these steps were
16 followed in this case. The statute reads that the
17 requirements are ---

18 **THE COURT:** What's the code section?

19 **MRS. RANEY:** I'm sorry. 17-30-140.

20 **THE COURT:** 17 what?

21 **MRS. RANEY:** 30-140.

22 **THE COURT:** Okay. Go ahead.

23 **MRS. RANEY:** It's entitled Interception of
24 Wire, Electronic or Oral Communication. The
25 process is to make an application. There is to

1 be a --

2 THE COURT: Does that section cover actual
3 tracking device?

4 MRS. RANEY: It does say mobile tracking
5 devices.

6 THE COURT: It does say mobile?

7 MRS. RANEY: Yes, sir.

8 THE COURT: All right. Go ahead.

9 MRS. RANEY: The statute reads much like the
10 requirements for a search warrant. There's
11 testimony that there's probable cause to get
12 that. The statement to which information likely
13 to be obtained, why it is necessary and upon
14 application to the Court or an ex parte order can
15 be issued for this tracking device. This wasn't
16 done, nor a search warrant signed by a magistrate
17 to place the tracking device on the car. I
18 believe that Officer Gomes testified that they
19 learned about this in early June.

20 THE COURT: Let me ask this question about
21 the statute real quick. You have it printed out?

22 MRS. RANEY: Yes, sir. I can pass it up
23 real quick.

24 THE COURT: Let me look at it. Does it
25 require the Circuit Court to issue one?

1 **MRS. RANEY:** I believe so, Your Honor.

2 **THE COURT:** I don't think the magistrate can
3 issue one.

4 **MRS. RANEY:** Not under that, I don't think.
5 What I was addressing is the magistrate for
6 getting the search warrant.

7 **THE COURT:** Okay.

8 **MRS. RANEY:** That wasn't done either.
9 Neither one was done.

10 **THE COURT:** Search warrant for what? The
11 car? The stop or the car that they put the
12 tracking device on? What would the search
13 warrant have to do with the tracking device?

14 **MRS. RANEY:** I think it would be based on
15 the car.

16 **THE COURT:** You talking about the car that
17 the dog alerted on?

18 **MRS. RANEY:** Yes, sir. And that's what the
19 tracking device was on. I think that they
20 certainly had time to follow this statute and
21 follow its requirements. They had information on
22 Mr. Adams in the summer of 2008. This incident
23 occurred in November. The tracking device was
24 placed on his car on November the 11th at MUSC.
25 This trip to Atlanta and this incident, the

1 traffic stop did not occur until November the
2 17th. I don't think that the State can argue
3 that there are exigent circumstances because they
4 certainly had time to go file the requirements of
5 this statute.

6 He was pulled over for an improper lane
7 change. There's some issue as to whether --
8 there is some cases from other states that says
9 there has to be a chance that there would be an
10 accident. I do admit, I do agree that pretextual
11 stops have been found to be constitutional.

12 I think where the problem lies in this case
13 is once the dog alerts on Mr. Adams' car, the dog
14 is deployed into the car and the dog alerts to
15 the center console. At the same time, Mr. Adams'
16 person is searched. I don't think that the
17 officers can now come in and say that they were
18 patting him down for weapons. He had already
19 been taken over to the car for the officer's
20 safety. His hands had been placed on the car.

21 **THE COURT:** The officer also testified that
22 he kept looking back and he was afraid that he
23 was going to run. He also said in addition --
24 that was the first reason for the pat down. The
25 second reason was when the dog alerted.

1 **MRS. RANEY:** Yes, sir.

2 **THE COURT:** So it wasn't just the -- the pat
3 down wasn't just based on the dog based on the
4 officers testimony. I know on cross-examination,
5 you asked him point blank about the dog. He said
6 yes. But he earlier testified about the man kept
7 turning his head, turning his head and wouldn't
8 keep his hands on the car, and he was afraid he
9 was going to run.

10 **MRS. RANEY:** Your Honor, he never patted him
11 down for weapons until the dog alerted. I think
12 that's really why it happened that day. I think
13 the information they had on Mr. Adams, the
14 improper lane change stop, I think the whole
15 history of the case shows that they weren't there
16 to pat him down for weapons. They were there to
17 find drugs on him. As soon as that dog alerted,
18 these officers got ahead of themselves and they
19 were looking for drugs.

20 I don't think either of them testified that
21 they were patting him down for weapons. I think
22 that's the problem that we have here. They feel
23 something that they believe to be drugs. I think
24 that the case law says it has to be immediately
25 recognized as far as drugs. He said he believed

1 them to be drugs. In his report, he described it
2 as a large, jagged, round shape, not that it was
3 it definitely drugs. And he did not say that it
4 was drugs until he pulled the drugs out of his
5 crouch area.

6 Your Honor, I think that they frisked him.
7 Immediately felt like or immediately knew that it
8 was drugs based on the officer's experience. I
9 think at that point, they could have pulled the
10 drugs out if it was a frisk for weapons. I don't
11 think that's what they were doing here. I think
12 that they didn't know that it was drugs. I don't
13 think that they can manipulate it. But they
14 didn't even do that in this situation. They just
15 immediately reached in and grabbed the drugs and
16 pulled them out.

17 **THE COURT:** Let me ask you this. What's
18 wrong with the traffic stop when the dog alerted?
19 If he violated the traffic laws and he was
20 stopped for traffic laws and then the dog
21 alerted, what's wrong with that? You are saying
22 the fact that it was in the pretext that they had
23 reasons to stop him that the traffic violations
24 are illegal?

25 **MRS. RANEY:** I think there is a problem with

1 the tracking device.

2 **THE COURT:** Let's just say they didn't find
3 any drugs and they stopped him for a traffic
4 violation. Did they do anything improper?

5 **MRS. RANEY:** I don't think so. I think he
6 has the right to put the dog on the car.

7 **THE COURT:** Right.

8 **MRS. RANEY:** I don't think that they had the
9 right to search Mr. Adams himself.

10 **THE COURT:** You talking about on his person.

11 **MRS. RANEY:** I don't think they have enough
12 to reach down in his pants and pull these drugs
13 out. I don't know that they had ever put the dog
14 on a person or not but the dog certainly did not
15 alert on him. Alerted on the car, and then ---

16 **THE COURT:** The officer said -- I don't want
17 to misquote him. The Defendant had been sitting
18 in that location.

19 **MRS. RANEY:** I don't think that there's any
20 case law on that. I think that the case law that
21 I could find where they found the drugs in the
22 car then obviously, he would be under arrest.
23 But they didn't find any.

24 **THE COURT:** They found where he had
25 immediately been sitting.

1 **MRS. RANEY:** Yes, sir.

2 **THE COURT:** Just prior to the dog alerting.
3 It was a relatively short period of time.

4 **MRS. RANEY:** My other concern is that I
5 don't think that they should be able, the officer
6 should be able to come in now and say that they
7 were frisking him for weapons. We know certainly
8 that they were looking for drugs that day on Mr.
9 Adams. I think that the most important cases,
10 Minnesota versus Dickerson ---

11 **THE COURT:** Let me ask you this. Do you
12 have anything that says the fact that officers
13 are sitting there and waiting for the driver of
14 the vehicle because of a tracking device, do you
15 think that makes the stop illegal?

16 **MRS. RANEY:** I don't. I think that they
17 didn't follow the proper procedures to get the
18 tracking device.

19 **THE COURT:** Does that make the stop illegal
20 because they didn't follow the procedure with the
21 tracking device?

22 **MRS. RANEY:** I don't know that. The statute
23 doesn't provide for any remedy for any violation
24 of that statute. My biggest concern is I just
25 don't think that they can further their

1 investigation of Mr. Adams by continuing to
2 search his person.

3 **THE COURT:** Okay.

4 **MRS. RANEY:** I think that once they knew
5 that he wasn't armed and there were no drugs in
6 the car that they continued to search him for the
7 drugs. They didn't pat him down before. Now,
8 they are going to claim that he was moving
9 around. I think that they were certainly
10 searching for drugs.

11 **THE COURT:** Let's assume the officer's
12 testimony is correct that he was moving, he
13 didn't keep his hands on the car and he kept
14 looking around. Would that give an officer
15 reason to search?

16 **MRS. RANEY:** I think they could have
17 searched him for weapons. Obviously, this did
18 not fell like a weapon. They could have patted
19 him down. I do not think they could manipulate
20 the object and determine whether ---

21 **THE COURT:** It may not have been a gun.

22 **MRS. RANEY:** We did hear that from Officer
23 Greenawalt.

24 **THE COURT:** I know that. He didn't say that
25 but he was talking about a pat down.

1 **MRS. RANEY:** Yes, sir. I just know that
2 they -- I just think that in this case, Your
3 Honor, they were looking for the drugs. They got
4 ahead of themselves.

5 **THE COURT:** You got any cases that said they
6 could have searched the person after the dog
7 alerted?

8 **MRS. RANEY:** I do not. All the cases
9 involve cars, box that come through UPS, they
10 were all objects. I do believe that a person has
11 a higher degree of privacy than a suitcase or a
12 box or a car. This was, when they were going in
13 his pants, I think that that's why this is such a
14 hard case is there aren't any cases that say once
15 a K-9 alerts on the car, they can or can not
16 search their person. I believe that's where this
17 went wrong. I think under Minnesota versus
18 Dickerson, once they determined that he is not
19 armed, they have to end their search there. They
20 can't manipulate the object to find out if it
21 really is drugs.

22 **THE COURT:** Yes, sir.

23 **MR. RIESEN:** Yes, sir. Thank you, Your
24 Honor. First of all, as to the statute 17-30-
25 140, there are three cases on point that says

1 that apply to constitutional violation on, not
2 statutory violation.

3 THE COURT: I'm sorry. What now?

4 MR. RIESEN: Three cases, uh, ---

5 THE COURT: You want to hand those cases up?

6 MR. RIESEN: I do have them. Your Honor, I
7 just going to give you all the cases I'm going to
8 be citing.

9 THE COURT: Okay.

10 MR. RIESEN: Not necessarily in that order.

11 THE COURT: Which one are you talking about
12 with code section, uh, 17-30-140?

13 MR. RIESEN: 17-30-140. Okay. If you look
14 at the three cases of State v. Chandler -- well,
15 the one that's in there is State v. Odom. Okay.

16 THE COURT: State v. Odom?

17 MR. RIESEN: Yes, sir.

18 THE COURT: All right.

19 MR. RIESEN: In that case, a circuit judge
20 ruled that the state violated 18 U.S. 27 03(d)
21 which was a statute included under the Patriot
22 Act allowing for discovery orders to determine
23 who was the owner of certain IP addresses that
24 related to child porn cases. The evidence was
25 suppressed. The Supreme Court ruled that they

1 had not complied and nevertheless the
2 exclusionary rule applied to constitutional, not
3 statutory violations. It's highlighted in there
4 where they cite that.

5 Also Hudson v. Michigan is just a case that I
6 quoted from the language which is 547 U.S. 586
7 which says the exclusionary rule is a drastic
8 remedy, not automatic simply because of Fourth
9 Amendment violation.

10 **THE COURT:** What case are you talking about
11 now?

12 **MR. RIESEN:** That's not in there. That's
13 just US Supreme Court, Hudson versus Michigan,
14 547 U.S. 586. I have a brief prepared but I
15 didn't submit it because I didn't know what all
16 issues we were going to do. I just want to quote
17 what the Supreme Court said in that when they are
18 referring to the exclusionary rule. They say,
19 quote, suppression of evidence, however, has
20 always been our last resort, not our first
21 impulse. The exclusionary rule generates
22 substantial social costs which sometimes include
23 setting the guilty free and the dangerous at
24 large.

25 We have, therefore, been cautious against

1 expanding against it and have repeatedly
2 emphasized the rule's 'costly tole' upon truth-
3 seeking and law enforcement objectives present a,
4 quote, high obstacle for those urging its
5 application. We have rejected indiscriminate
6 application of the rule and have held it to be
7 applicable only where its remedial objectives are
8 thought more efficaciously served. That's where
9 its deterrence benefits outweigh its substantial
10 social costs.

11 In this case, we have three South Carolina
12 cases, State v. Odom, and it cites in there State
13 v. Huntley and State v. Chandler for the
14 proposition that the exclusionary rule applies to
15 constitutional, not statutory violation. That's
16 our first argument.

17 Second, I argue that it is not even a
18 violation of the statute. The reason being, if
19 you look at 17-30-140, it says the Attorney
20 General or the Solicitor may make application.
21 It does not say must or shall. Most importantly,
22 if you go down to subsection E, it says the
23 standard established by the United States Supreme
24 Court for information and monitoring of mobile
25 tracking devices apply to the installation and

1 its use of any device authorized by this section.

2 US v. Knotts is a similar case on this. US
3 v. Knotts is a Supreme Court case in which a
4 tracking device, a beeper was placed in some
5 chloroform that was in a vehicle of which they
6 tracked it. Supreme Court held, the United
7 States Supreme Court held -- uh, let me find it
8 -- held that tracking devices on a vehicle
9 without a warrant for which officers conducted
10 surveillance. The Court also held that because
11 the surveillance took place in public, there was
12 no legitimate expectation of privacy and no
13 search and seizure within the Fourth Amendment.

14 A person traveling in an automobile in public
15 has no reasonable expectation of privacy in
16 moving from one place to another. Using a
17 tracking device in public does not create a
18 constitutional issue. That's the US v. Knotts
19 case. Every case that I've found in general
20 Circuit Court has basically followed the rule of
21 law in Knotts.

22 For instance, I'm quoting a case called
23 United States v. McIver which was out of the
24 Ninth Circuit. It held that the installation of
25 a GPS device on the undercarriage of a vehicle in

1 a driveway does not constitute a search within
2 the curtilage. Okay.

3 US v. Williams is a western district
4 Kentucky case, Sixth Circuit. No search for GPS
5 device was installed on the exterior of the
6 vehicle and the vehicle was tracked only on
7 public roads, but the outcome might have been
8 entirely different if the device had been
9 controlled and monitored while the vehicle was
10 located on private property. That's the big
11 thing that Supreme Court in every case is about.
12 Okay?

13 Another case, United States v. Jones, 451 F.
14 2d 71. Tracking GPS device on a public roadway.
15 GPS data received while parked in a garage on a
16 private property. And then finally, United
17 States v. Moran. Tracking device, excuse me,
18 tracking GPS device on a highway does on assert
19 for the officers could have conducted
20 surveillance by following the vehicle on public
21 road.

22 Every case I have looked at, they said there
23 is no expectation of privacy. The theory behind
24 it, Judge, is if you can get the stated
25 information from visual surveillance that you can

1 from a beeper, there's no expectation of privacy.
2 The Supreme Court tells if you can drive into
3 someone's backyard and look into the greenhouse,
4 then that's not. You can apply it in someone's
5 back yard. There are two US Supreme Court cases
6 to that effect. If it was private property where
7 his car was parked in a garage, that would have
8 been a totally different outcome, but this was
9 done in public.

10 So the point is they have complied with
11 every United States ---

12 **THE COURT:** It's talking about installation,
13 not the monitoring of it. If you look at the
14 Supreme Court case which you handed me ---

15 **MR. RIESEN:** Yes, sir.

16 **THE COURT:** If I can find it. It says
17 there's no indication the beeper was used at any
18 point to reveal information as to the movement of
19 the car ---

20 **MR. RIESEN:** That ---

21 **THE COURT:** You are talking about the
22 installation of a device. How about the
23 monitoring of a device if it's in a private
24 dwelling?

25 **MR. RIESEN:** And that would be ---

1 **THE COURT:** How about if he parks his car in
2 a private drive?

3 **MR. RIESEN:** If it is monitored, arguable,
4 you may have Fourth Amendment violation. In that
5 case, they monitored while it was in the person's
6 cabin. This was never monitored at his house.
7 This was monitored over that five-day period
8 where we're on I-26 from Atlanta.

9 **THE COURT:** I would imagine it was monitored
10 everywhere. They just happened to pick a place
11 on the interstate.

12 **MR. RIESEN:** Yeah, they are not gaining --
13 the issue is are you gaining something private
14 from this beeper. They got nothing private from
15 it. The only thing they got was where was this
16 going. That's why there's no Fourth Amendment
17 issue here. The argument really has been in
18 those cases is it sort of like a trespass. If
19 you go onto someone's private property to do it
20 or if it's a listening device for instance and
21 you are hearing them reveal private information
22 that they have a reasonable expectation about,
23 that's a whole different issue than having a
24 beeper that's been installed in public and has
25 been monitored. They are not gaining anything

1 other than its location.

2 **THE COURT:** In this case, they are gaining
3 knowledge that he's going to his supplier in
4 Atlanta, then they set a trap for him.

5 **MR. RIESEN:** No, they gained ---

6 **THE COURT:** That is what it was, they set up
7 a trap for him. That's basically what they did.

8 **MR. RIESEN:** Your Honor ---

9 **THE COURT:** We are arguing whether that is
10 legal or not legal.

11 **MR. RIESEN:** Yes, sir.

12 **THE COURT:** But obviously there was a trap.
13 Obviously, there was a traffic violation.

14 **MR. RIESEN:** It was a traffic violation.

15 **THE COURT:** I don't question whether it was
16 a technical violation. But very few of us
17 driving on the interstate make the same error as
18 he made moving to another lane without turning on
19 a blinker. The statute says you turn on the
20 blinker when you move. It was clearly a
21 violation. But that was a trap.

22 **MR. RIESEN:** Sure. You can characterize it
23 as a trap, but I just want to go back to ---

24 **THE COURT:** What I don't understand, if they
25 got the statute, would it had still been a trap

1 if they followed the statute?

2 MR. RIESEN: Would it -- I don't understand
3 the question.

4 THE COURT: If they had followed the statute
5 and got a court order, would it have been a trap
6 then?

7 MR. RIESEN: Sure.

8 THE COURT: You think so?

9 MR. RIESEN: Yeah, I mean if --

10 THE COURT: You don't think if they got a
11 court order, they could have then listened to
12 whether it was an expectation of privacy or falls
13 under expectation of privacy? What do you think
14 the purpose of the statute is?

15 MR. RIESEN: The purpose of the statute is
16 to make sure -- first of all, this was enacted in
17 2002 after the Homeland Security Act.

18 THE COURT: Okay.

19 MR. RIESEN: This was for more protection.
20 This is after the bombing and everything. I
21 don't think the purpose of the statute is to take
22 police powers away after, uh, Homeland Security.

23 THE COURT: By setting up a procedure where
24 the public was protected, a procedure for the
25 police to follow. My question is why don't the

1 police follow it.

2 **MR. RIESEN:** Your Honor, I think that first
3 of all they had no -- I don't think -- in fact, I
4 know, they didn't even know the statute existed
5 first of all. They had no idea.

6 **THE COURT:** Well, someone using electronic
7 within its normal use. You get a warrant.

8 **MR. RIESEN:** Yes, sir. I just stumbled upon
9 this not too long ago. We didn't even know ---
10 we just discussed it. I just discussed it today.

11 **THE COURT:** Y'all never got orders for where
12 they got the machine where they track people
13 down off the ---

14 **MR. RIESEN:** I have never been in a case
15 where we were doing that. I can say that I
16 honestly believe that the intent of the statute
17 is to allow the Attorney General or the Solicitor
18 to get warrants as long as what they are doing
19 complies with the Supreme Court. I think the US
20 Supreme -- maybe we need to put that in here.
21 The US Supreme Court specifically said it must
22 apply to the installation in Supreme Court. In
23 every case I found, it says there is not an
24 expectation of privacy in public as long as ---

25 **THE COURT:** My point to you is, and my point

1 to a police officer is if you got an order, I
2 don't think issue of expectation applies.

3 **MR. RIESEN:** Yeah, I ---

4 **THE COURT:** I just don't understand why they
5 don't get the order.

6 **MR. RIESEN:** They didn't know.

7 **THE COURT:** Okay.

8 **MR. RIESEN:** They didn't know they had to.
9 I will show you this is not -- I don't think they
10 had any idea about the statute until I discussed
11 it with them a couple of weeks ago. But leaving
12 that argument aside, there's other case law that
13 said that, first of all, even if we were to
14 assume that there was a violation here,
15 everything -- because we had a permissible
16 traffic stop, that the chain of anything that
17 happened prior to that ---

18 **THE COURT:** He wouldn't have had the traffic
19 stop if the police officer hadn't been sitting at
20 the rest area waiting on him. As I said, it's a
21 trap.

22 **MR. RIESEN:** Not necessarily.

23 **THE COURT:** He would have never got behind
24 him to get the traffic violation if you hadn't
25 had the tracking device. The two are linked

1 **MR. RIESEN:** Two things, number one, I asked
2 Greg Gomes, had you not used this, would you had
3 been surveilling him. He said absolutely, we
4 would have been following him because he was a
5 major player. He brought drugs two days before.
6 Because they have it, they are now using
7 surveillance on him. That's why he got up on the
8 stand and said I used to follow him all the time.
9 The CI said he was going to Georgia. So we would
10 have definitely been tailing this guy and
11 following him if we weren't using this. So I
12 don't accept the position that they wouldn't have
13 followed him. If they had known he had gone to
14 Atlanta, I guarantee you they would have pulled
15 him for a traffic violation, not just because of
16 the beeper.

17 As for the cases, if you will look at, Your
18 Honor, this is a South Carolina state case, State
19 v. Nelson. In that case, uh, -- you should have
20 a copy of it.

21 **THE COURT:** State v. Nelson?

22 **MR. RIESEN:** Yes, sir. In that case, the
23 police initially attempted to do a traffic stop
24 by responding to a complaint that a dog had been
25 running loose in someone's yard. The Defendant

1 didn't stop and eventually ran a stop sign before
2 eventually stopping. The officer then smelt
3 alcohol and the Defendant was charged with DUI.
4 The Defendant argued the initial attempt to stop
5 the Defendant was unlawful because the case
6 doesn't cite any specific law or ordinance the
7 Defendant may have violated with respect to the
8 dog running loose.

9 The holding was even assuming the officer's
10 initial attempt to stop the Defendant would have
11 violated the Fourth Amendment, the officer was
12 still justified in making the stop after the
13 Defendant committed the subsequent traffic
14 infraction. New in the state criminal act
15 following a legal stop do not qualify simply
16 because such act was causally continued between
17 conduct.

18 They cite another case, US v. Sprinkle.
19 Okay, which is another -- I don't have to go
20 through it. It's cited in there. But basically
21 in that case which was much more egregious than
22 this, officers did not have reasonable suspicion
23 to stop the Defendant. They then pulled up
24 behind the car and blue lighted. The person was
25 patted down. They knew he was a drug dealer from

1 before. They had no reasonable suspicion, okay,
2 to pat him down.

3 While conducting a search, he ran. The
4 Defendant tried to suppress the evidence. The
5 judge actually suppressed it. He said it was the
6 first time he done it in 25 years. But the
7 Fourth Circuit reversed saying they agreed no
8 reasonable suspicion.

9 So even if we were to take the argument which
10 I disagree that there is a violation of the
11 statute, but for him breaking the law, had he not
12 broken the law, they couldn't have just stopped
13 him. But he broke, not once, but twice, and it
14 was on video. So that's my argument as to that
15 there was some type of violation of the statute.

16 Finally, I think the last argument was with
17 regarding to everything else. US v. Caballes is
18 a similar case of a dog sniff. There is no
19 question that a dog sniff of a vehicle is not a
20 search. The real inquiry there is is it a
21 prolonged detention. I don't think that Mrs.
22 Raney brought that up.

23 **THE COURT:** I don't think she said it was
24 prolonged. She said it was illegal. They didn't
25 have reason to ---

1 **MR. RIESEN:** And I'm just going to repeat
2 what you said because it's exactly right. Number
3 one, he was acting nervous by Sergeant Blair the
4 first time by putting his hands, concealing his
5 hands. He said he took the car keys out of the
6 ignition. Okay. He also was worried about
7 another vehicle. That's one reason I wanted to
8 show you the vehicle is you could see the
9 vehicle. Based on that, he called Greenawalt.

10 Greenawalt showed up and asked him out of the
11 car and did an NCIC check. At that point, he
12 said he was acting nervous. He had to tell him
13 on three separate occasions to place his hands on
14 the car. He was acting as if he was trying to
15 take off. When the dog alerted, which was less
16 than 10 feet away, he then conducted a pat down
17 for, A, officer safety, which is clearly
18 permissible when there is a nexus between drugs
19 and guns. I've got a case on that. Number 2, the
20 fact that the dog alerted, he had reasonable
21 suspicion to do a pat down on both of those.

22 I disagree with the argument that he could
23 not do a pat down. But under those
24 circumstances, he clearly had a right to do it.
25 The case that I want to bring to your attention,

1 Your Honor, I just want to quote. This is US --
2 I'm sorry. I don't have a copy of it. US versus
3 Sakyi; S-A-K-Y-I, 160 F3d 164.

4 Basically, in that case, the driver was
5 pulled for no brake light. The officer observed
6 a cigar box in the glove compartment when he was
7 getting out his license and registration. Okay.
8 He said he associated a cigar box with marijuana.
9 So based on that, the driver did not have his
10 license.

11 The passenger was actually the Defendant in
12 this case. He ordered the Defendant to step out
13 of the vehicle. And before he searched the
14 vehicle, he conducted a pat down of the Defendant
15 and located drugs on him. The Defendant argued
16 the same thing. No reasonable suspicion to
17 search or pat down.

18 The Court held, quote, a generalized concern
19 for safety during a lawful traffic stop, coupled
20 with reasonable suspicion that drugs were located
21 somewhere in the vehicle justifies that for a
22 passenger, the indisputable nexus between drugs
23 and guns could create a reasonable suspicion.

24 In this case, we have the exact same facts.
25 There was -- he was the sole occupant in the car.

1 There wasn't even a passenger. He was the sole
2 occupant which would make our case stronger than
3 that case. There is a link between drugs and
4 guns. The dog alerted. He said he thought he
5 was trying to run because he had to tell him on
6 three occasions to put his hands on the hood of
7 the car. I don't want to beat a dead horse
8 anymore, Your Honor, but those are the basis for
9 the State's argument.

10 **THE COURT:** Thank you very much. Very
11 briefly reply.

12 **MRS. RANEY:** Yes, sir. First of all, I
13 don't agree that just because you don't know
14 about something that you are exempt to and you
15 don't have to follow it if you don't know about
16 it. I agree with the State on the dog sniff.
17 Illinois v. Caballes is the case law on that. I
18 do agree that that involves the dog sniff of a
19 car, an object, not a person.

20 I believe he testified that he often got them
21 out of the car and patted him down for weapons.
22 Officer Greenawalt testified that he didn't pat
23 him down until the dog alerted on the car.
24 Briefly, I just want to touch on the same. In
25 1993, with Minnesota versus Dickerson, what it

1 said was once it is determined that the person is
2 not armed, the officer can not further his
3 investigation unless there is criminating
4 character that is immediately known and
5 immediately apparent to the officer performing
6 the pat down. That was in 1993.

7 In 1996, our Supreme Court ruled in State
8 versus Abrams in which the officer testified that
9 he believed during the pat down that the
10 container inside the Defendant's jacket, he
11 believed it to be a container that carried drugs,
12 that that was not sufficient, that the
13 incriminating character of the object must be
14 immediately apparent to the officer performing
15 the search.

16 In this case, the officer testified at trial,
17 uh, based on his experience, he knew that the
18 object that he felt was either some kind of
19 bullet or a tubelike object. He said either a
20 shotgun shell or a tubelike object that he knew
21 to be used to hold drugs. The trial court did
22 not suppress the drugs in that case and it was
23 overturned by the Court of Appeals.

24 What the Court of Appeals, in Abrams, said
25 was that the police may briefly detain and

1 question a person upon reasonable suspicion of
2 probable cause for arrest if they, if that person
3 is involved in criminal activity. In this case,
4 the officer had reasonable suspicion. But what
5 becomes important in this case is that they could
6 not carry the search any further under Minnesota
7 versus Dickerson.

8 And then we also have a Court of Appeals in
9 South Carolina, State versus Smith, it was
10 written in 1998. This was also a pat down for
11 weapons. The officer in Smith testified that it
12 was obvious that it was a baggie and knew it was
13 narcotics. The officers asked the Defendant what
14 is this, your reefer? He said yes, sir, that's
15 my reefer.

16 I want to, uh, I bring up this case because I
17 think that our case is very different. This was
18 a Terry frisk in Smith. I don't think that's
19 what this was in this case.

20 **THE COURT:** You don't think this was a Terry
21 frisk?

22 **MRS. RANEY:** I don't. I don't.

23 **THE COURT:** Okay.

24 **MRS. RANEY:** I think that they were looking
25 for drugs. It was not immediately recognizable

1 as drugs. In the Smith case, they asked him. He
2 said yes, those are my drugs. We don't have that
3 this in this case. In the Smith case, the
4 Defendant was wearing a jacket. Mr. Adams in
5 this case was wearing several layers of clothes
6 where the drugs were packaged very tightly in
7 Saran wrap. Your Honor, we submit to the Court
8 that the officers in this case did not have
9 probable cause to pat down Mr. Adams' person in
10 the first place.

11 Even if they were patting him down for
12 weapons, I believe that that search again had to
13 end when they realized that it wasn't a weapon.
14 They could not testify here today that what they
15 did feel was immediately recognizable as
16 narcotics.

17 **THE COURT:** Okay. Thank you very much.
18 Thank y'all very much. I'll see y'all in the
19 morning at 9:30.

20 **MRS. RANEY:** I'm going to give you one that
21 I haven't marked on.

22 **THE COURT:** That's okay. I don't mind you
23 marking on it.

24 **MRS. RANEY:** Okay.

25 (WHEREUPON, the Court recessed for the day.)

1 (WHEREUPON, the Court resumed on January 27,
2 2010.)

3 THE COURT: All right. As far as the, uh, the
4 suppression hearing in the State versus Adams, is
5 Adams here?

6 MRS. RANEY: He is.

7 THE COURT: Okay. Solicitor, first of all,
8 you said yesterday or a party said yesterday 17-
9 30-140 lays out the procedure for law enforcement
10 to follow in getting an order for communications.
11 In this case, I believe the State's position was
12 the North Charleston Police Department were not
13 aware of that statute.

14 MR. RIESEN: That is correct.

15 THE COURT: I think your argument was on
16 State versus Odom that a suppression can to be
17 granted as a result of the violation of the
18 ordinance. However, the Court disagrees with
19 your interpretation in State versus Odom. If you
20 read the case at the very end, it says exclusion
21 of evidence should be related to the violation of
22 constitutional rights and not statutory
23 violations, at least where the Defendant could
24 not be prejudiced at trial resulting from the
25 failure to follow statutory procedures.

1 My point being that it is this Court's
2 opinion is that the statute probably needs to be
3 followed. However, the United States versus
4 Knotts case, Supreme Court case very clearly is
5 on point as to the facts in the case concerning
6 the use of the, use of the tracking device on an
7 automobile. Based on the Knotts case and the
8 facts of this case, it is not a constitutional
9 violation. However, in the future, the parties
10 need to start following the statute primarily for
11 their own protection. The statute gives the
12 police alternative for police investigative
13 techniques. So why not follow the statute for
14 their protection so the evidence won't get
15 suppressed or take the opportunity or possibility
16 of getting suppressed.

17 We're primarily sitting here talking to the
18 Police Department. Start following the statute or
19 at some point in time, it's going to be
20 suppressed. The facts in the case may not meet
21 the Knotts case. In this Court's opinion, it's
22 safe at this time. As far as your argument that
23 they carried the search warrant too far, the
24 Court disagrees with that, and the motion to
25 suppress is denied.

1 You ready for the trial?

2 **MR. RIESEN:** Just have to figure out the
3 procedure of how to go forward. I would like to
4 place on the record, as we discussed earlier that
5 the testimony reflected here may be part of the
6 record in the case in chief. Also I would like
7 that the brief that I submitted to you, Your
8 Honor, be part of the case in chief as well.

9 And do you --

10 **THE COURT:** The brief is lying on my kitchen
11 table. Hopefully I'll bring it tomorrow.

12 **MR. RIESEN:** I have another copy, Your
13 Honor. And then finally, just for, uh, purposes
14 of expediency, because we're going to be calling
15 and asking same exact questions that we did
16 before in the suppression hearing, you denied the
17 motion to suppress, do you still want me to put
18 Officer Greg Gomes on the stand who testified
19 basically all about the tracking device. Does
20 that need to be part of the case in chief?

21 **THE COURT:** I will allow you to move before
22 the Court to make the testimony yesterday part of
23 the trial today and I will grant that if you want
24 to make that motion.

25 **MR. RIESEN:** Okay. And then my last -- I

1 would like to make that motion right now, Your
2 Honor.

3 **THE COURT:** That's granted. We'll make the
4 transcript from the testimony on the suppression
5 hearing part of the testimony for the trial. Now
6 how you want to try the case and whatever else
7 you want to introduce at this point in time ---

8 **MR. RIESEN:** I will definitely ---

9 **THE COURT:** --- that's up to you.

10 **MR. RIESEN:** --- introduce the drugs
11 and ---

12 **THE COURT:** That's up to you and defense
13 counsel how y'all want to proceed at this point
14 in time. I will consider all the testimony I
15 heard yesterday and make it part of the record
16 for trial. Now, how y'all want to proceed --
17 I'll let y'all talk about it for a few minutes.
18 Okay?

19 **MRS. RANEY:** Yes, sir.

20 **THE COURT:** I will leave that up to you.
21 And if you got a copy -- I'm sorry I didn't bring
22 it. I meant to bring it but I left it on the
23 kitchen table this morning. If you got a copy of
24 it, you can mark it as a Court's Exhibit.

25 **MR. RIESEN:** Yes, sir. I dated the pages on

1 the back for yesterday.

2 (WHEREUPON, Court's Exhibit 1 is marked for
3 identification purposes.)

4 THE COURT: Before we get started in the
5 trial, I'm going to give you and the prosecutor
6 an opportunity to decide who you are going to
7 call and who you don't. Before we get to that
8 point, I understand your client does not desire a
9 jury trial; is that correct?

10 MRS. RANEY: He does not.

11 THE COURT: Have you discussed that with
12 him?

13 MRS. RANEY: Yes, sir. I have.

14 THE COURT: Does he understand that he can
15 assert his right to a jury trial?

16 MRS. RANEY: Yes, sir.

17 THE COURT: And you agree with his decision
18 not to have a jury?

19 MRS. RANEY: I do.

20 THE COURT: All right. Mr. Adams, if you
21 would, stand and raise your right hand please.

22 (WHEREUPON, the Defendant is duly sworn.)

23 THE COURT: All right. Mr. Adams, you
24 understand you are entitled to a jury trial?

25 MR. ADAMS: Yes, sir.

1 **THE COURT:** At a jury trial, the State would
2 be required to prove your guilt beyond a
3 reasonable doubt.

4 **MR. ADAMS:** Yes, sir.

5 **THE COURT:** It would take all 12 jurors to
6 find you guilty. It would have to be unanimous.
7 You understand?

8 **MR. ADAMS:** Yes, sir.

9 **THE COURT:** You understood the conversations
10 you had with your attorney concerning the right
11 to a jury trial?

12 **MR. ADAMS:** Yes, sir.

13 **THE COURT:** Anybody force you, threaten you
14 or intimidate you where you could not, make a
15 decision not to have a jury trial?

16 **MR. ADAMS:** No, sir.

17 **THE COURT:** You have any questions about
18 your right to a jury trial?

19 **MR. ADAMS:** No, sir.

20 **THE COURT:** Do you want a jury trial?

21 **MR. ADAMS:** No, sir.

22 **THE COURT:** All right. You want to proceed
23 without a jury; is that correct?

24 **MR. ADAMS:** Yes, sir.

25 **THE COURT:** All right. Anything you would

1 like to add for the record on his knowledge of a
2 jury trial?

3 **MRS. RANEY:** No, Your Honor.

4 **THE COURT:** Any questions you would like to
5 ask your client?

6 **MRS. RANEY:** No, Your Honor.

7 **THE COURT:** All right. Thank you very much.

8 **MRS. RANEY:** Your Honor, I wonder at some
9 point, if it please the Court, if I could just
10 comment one final time on the statute 17-30-140.
11 We certainly respect the Court's ruling, but we
12 would like to ---

13 **THE COURT:** If you got any memos or anything
14 or any cases that you would like to make an
15 argument, I'll be glad for you to do that.

16 **MRS. RANEY:** Thank you, Your Honor. I don't
17 have any cases to make part of the record. But I
18 do want to point out that we have this statute to
19 make sure that the proper procedure is followed
20 and there's a reason for it. If you don't have
21 to follow it, why do we have it in the first
22 place? What I did do was I looked at the statute
23 for getting search warrants for property which is
24 17-30-140. The Solicitor pointed out the statute
25 on tracking devices that it says the Attorney

1 General or the Solicitor may make an application.

2 **THE COURT:** I think I already said I
3 disagree with his position that the statute is
4 not mandatory to place certain devices. I think
5 the Solicitor is wrong. I think you have to
6 follow the statute. I think if you don't follow
7 the statute, you are subject to having them
8 suppressed. However, in this case, United States
9 Supreme Court versus Knotts that a tracking
10 device on an automobile in a public place with no
11 reasonable expectation of privacy. That's the
12 reason I didn't suppress it.

13 If they didn't have the Knotts case and this
14 statute, I would have. I do think you have to
15 also relate it to a constitutional question, not
16 just a technical violation of the statute. Go
17 ahead.

18 **MRS. RANEY:** Yes, sir. We would just submit
19 that in addition to following this statute and
20 the process that it sets forth, you often have to
21 follow the guidelines set forth by the Supreme
22 Court. That is, subsection E. Your Honor, we
23 would submit to the Court that not only do you
24 have to follow the guidelines set by the Supreme
25 Court but also 17-30-140 at the same time.

1 **THE COURT:** All right. Thank you. Anything
2 else you want to put on the record?

3 **MRS. RANEY:** No, sir.

4 **THE COURT:** I'm not trying to rush you. I
5 agree with you ---

6 **MRS. RANEY:** Yes, sir.

7 **THE COURT:** --- is what I was trying to say.
8 Okay. Anything else? Anything the State would
9 like to put on the record?

10 **MR. RIESEN:** No, sir.

11 **THE COURT:** Y'all want to talk for a few
12 minutes about how you want to proceed?

13 **MRS. RANEY:** Yes, sir.

14 **THE COURT:** All right. I'll give you five
15 or ten minutes.

16 **MRS. RANEY:** Thank you.

17 **(WHEREUPON, a short recess is taken.)**

18 **THE COURT:** All right. I believe you wanted
19 to put something on the record; is that correct?

20 **MR. RIESEN:** Your Honor, yes, I would, just
21 a couple of points. Previously, as to your
22 ruling, you ruled that the statute requires to
23 get a warrant. Part of that statute talked about
24 compliance with the United States Supreme Court
25 and you based on the US Supreme Court case, US v.

1 Knotts that based on that --

2 **THE COURT:** They have to comply with the
3 statute.

4 **MR. RIESEN:** In doing so, I've made State's
5 Exhibit -- excuse me, Court's Exhibit number 1,
6 my brief, which listed also several other
7 rationales for why the evidence should not be
8 suppressed. You had not reached a conclusion on
9 those because we just addressed Knotts. I just
10 wanted that for appellate purposes.

11 **THE COURT:** I addressed Knotts and I also
12 addressed the failure to search.

13 **MR. RIESEN:** Thank you, Your Honor. Also,
14 Mrs. Raney and I have stipulated that all the
15 testimony that was testified to in the previous
16 suppression hearing is going to be the same
17 testimony in the case in the chief and rather
18 than wasting the Court's time, we're just going
19 to make that part of the record and not recall
20 anyone other than followup with Sergeant Blair.

21 I will not be doing any opening which you
22 have already heard and I won't be calling or
23 presenting the video. All of that has been
24 marked as identification. I would need to ask
25 that everything be entered into evidence. I will

1 go through that after..

2 **THE COURT:** Okay. Thank you.

3 **MRS. RANEY:** Your Honor, I agreed that I
4 would like to incorporate the testimony from
5 yesterday's suppression hearing into the record
6 for the bench trial. I have a couple of followup
7 questions from two of the officers. I can call
8 them and they can follow up questions as a result
9 of my questions.

10 **THE COURT:** All right. Subject to your
11 previous objections as to the admissibility of
12 the drugs themselves because of the suppression
13 motion, you have any further objections to
14 admitting all the exhibits and evidence that have
15 been marked for identification?

16 **MRS. RANEY:** As the Court said, my
17 objections would be based on my arguments from
18 the earlier suppression hearing that the drugs
19 were seized by the police officers in violation
20 of the South Carolina statute as well as Mr.
21 Adams search was without probable cause.

22 **THE COURT:** Okay. I haven't ruled against
23 you on the motion to suppress, the motion to
24 admitting those items are also -- I will admit
25 -- it was 1 through what?

1 **MR. RIESEN:** May I approach?

2 **THE COURT:** Sure. Put on the record which
3 ones are put into evidence.

4 **MR. RIESEN:** State's Exhibit 1 is the video
5 from the vehicle.

6 **MRS. RANEY:** That's the video? I don't have
7 an objection to ---

8 **THE COURT:** You don't have an objection to
9 the videotape. Okay. It's admitted without
10 objection.

11 (WHEREUPON, State's Exhibit 1 is admitted into the
12 record.)

13 **MR. RIESEN:** Then State's Exhibit 2 was the
14 drugs.

15 **THE COURT:** The drugs?

16 **MR. RIESEN:** Yes, sir, the cocaine.

17 **THE COURT:** Any further objection to State's
18 Exhibit number 2 other than what you already
19 made?

20 **MRS. RANEY:** No, sir.

21 **THE COURT:** All right. Admitted with the
22 Defendant's objection.

23 (WHEREUPON, State's Exhibit 2 is admitted into the
24 record.)

25 **MR. RIESEN:** State's Exhibit number 3, I

1 think, was without objection. It was the SLED
2 report that we discussed.

3 **THE COURT:** Any objections to the SLED
4 report other than what you've already made?

5 **MRS. RANEY:** Not other than my argument.

6 **THE COURT:** All right. It's admitted with
7 objection.

8 (WHEREUPON, State's Exhibit 3 is admitted into the
9 record.)

10 **MR. RIESEN:** State's Exhibit number 4 is
11 just the proximity chart that shows Charleston
12 Southern and the location of the stop.

13 **THE COURT:** Any objection?

14 **MRS. RANEY:** No, Your Honor.

15 **THE COURT:** All right. Admitted without
16 objection.

17 (WHEREUPON, State's Exhibit 4 is admitted into the
18 record.)

19 **MR. RIESEN:** And finally, Court's Exhibit 1
20 which was the brief.

21 **THE COURT:** All right. Anything else? The
22 State has no further witnesses, is that correct?

23 **MR. RIESEN:** That is correct. We reserve
24 the right to ---

25 **THE COURT:** Any motions at the end of the

1 State's case?

2 MRS. RANEY: I do, Your Honor.

3 THE COURT: What's your motions?

4 MRS. RANEY: At this time, uh, the defense
5 would make a motion for a directed verdict based
6 on the failure of competent evidence. The
7 indictments against Mr. Adams, we believe that
8 the evidence in this case were obtained by
9 violations of the Fourth Amendment on the
10 trafficking charge. In regards to the proximity
11 charge, we would make a motion for directed
12 verdict.

13 Mr. Adams was on the interstate. When he
14 made the traffic violation in this case, he was
15 located on the interstate, moving in a car on the
16 interstate. When he was being pulled over by an
17 officer, he exited the interstate and pulled over
18 into a gas station.

19 The proximity charge was based on the gas
20 station in which he pulled over and Charleston
21 Southern that is located directly across the
22 street from the gas station. I think that the
23 statute for proximity is designed to keep drug
24 dealers away from schools and parks and
25 playgrounds and keep them away from distribution

1 of drugs near parks or playgrounds. I don't
2 think that there was any intent by Mr. Adams to
3 possess or distribute these drugs near this
4 school. He was traveling on the interstate.

5 **THE COURT:** You got a copy of the statute?

6 **MRS. RANEY:** Yes, sir. I do. I can pass it
7 up. I don't think that there is any mention of
8 intent as according to the statute. We would
9 argue that the point that should have been
10 measured for the proximity was on an interstate
11 at the time of the ---

12 **THE COURT:** The drugs hadn't been at that
13 point.

14 **MRS. RANEY:** Yes, sir. He pulled over as
15 soon as they blue lighted him. He had no control
16 over where he pulled over. He pulled over at the
17 first place that he could that he felt was safe.

18 **THE COURT:** Proximity is a mile?

19 **MRS. RANEY:** Sir?

20 **THE COURT:** Proximity is one mile; isn't it?

21 **MRS. RANEY:** I think it's half mile.

22 **THE COURT:** Half mile?

23 **MRS. RANEY:** Yes, sir.

24 **THE COURT:** What was the -- what is the
25 radius?

1 **MR. RIESEN:** The radius shows -- what you
2 have to do is ---

3 **THE COURT:** What does it show?

4 **MR. RIESEN:** It shows .22 which is less
5 than ---

6 **THE COURT:** Where the stop was made, right?

7 **MR. RIESEN:** Oh, yes. Exactly. But it's
8 even closer than that.

9 **THE COURT:** All right. Anything else on
10 that?

11 **MRS. RANEY:** No, sir.

12 **THE COURT:** All right. Motion denied.
13 Thank you very much.

14 All right. Any other motions at the end of
15 the State's case?

16 **MRS. RANEY:** I would just renew my
17 suppression motions. I know that the Court has
18 ruled on it.

19 **THE COURT:** All right. Motion denied.
20 Thank you very much. Call your first witness.

21 **MRS. RANEY:** Yes, sir. The defense would
22 call Sergeant Blair to the stand.

23 **TIMOTHY BLAIR**
24 having first been sworn, testifies as follows:

25 **THE CLERK:** For the record, please state

1 your name and spell your last.

2 **THE WITNESS:** Timothy John Blair, B-L-A-I-R.

3 **DIRECT EXAMINATION**

4 **BY MRS. RANEY:**

5 **Q** Good morning.

6 **A** Good morning.

7 **Q** You were the case agent on this case that we
8 are here for today?

9 **A** Yes, ma'am.

10 **Q** And as a result of this incident, you drew up
11 an arrest warrant for Mr. Adams?

12 **A** Yes, ma'am.

13 **Q** Do you have a copy of that arrest warrant?

14 **A** Not with me.

15 **MRS. RANEY:** Your Honor, may I approach the
16 witness?

17 **THE COURT:** Yes, ma'am.

18 **BY MRS. RANEY:**

19 **Q** Is that the arrest warrant that you drew up
20 for Mr. Adams?

21 **A** Yes.

22 **Q** And you wrote the affidavit and presented
23 that to a judge?

24 **A** Yes. Well, I wrote it up.

25 **Q** You wrote that based on what happened that

1 day?

2 **A** Correct.

3 **Q** Can you read to me the part about the pat
4 down by Mr. Greenawalt?

5 **A** Sergeant and K-9 Bertus conducted a
6 search ---

7 **COURT REPORTER:** Could you slow down for me
8 and speak up.

9 **THE WITNESS:** Sorry. It says while Sergeant
10 Blair and K-9 Bertus conducted a search of the
11 vehicle's interior, Greenawalt conducted a pat
12 down of the Defendant. While conducting the pat
13 down, Greenawalt felt a large foreign item in the
14 area of the Defendant's groin.

15 **BY MRS. RANEY:**

16 **Q** So when he did a pat down, he felt a foreign
17 item?

18 **A** When he did the pat down?

19 **Q** Yes.

20 **A** Apparently, yes, ma'am.

21 **Q** And you wrote that down that that's what
22 happened that day?

23 **A** (No response.)

24 **Q** You did an arrest warrant based on what
25 happened at the arrest?

1 **A** Yes, ma'am.

2 **Q** That's all I have. Thank you.

3 **MR. RIESEN:** No follow up.

4 **THE COURT:** Any cross?

5 **MR. RIESEN:** No.

6 **THE COURT:** You may step down. Thank you
7 very much.

8 Call your next witness.

9 **MRS. RANEY:** The defense would call Officer
10 Gomes.

11 **GREG GOMES**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** Thank you. Please be seated.
14 State your name and spell your last.

15 **THE WITNESS:** George Gregory Gomes,
16 G-O-M-E-S.

17 **DIRECT EXAMINATION**

18 **BY MRS. RANEY:**

19 **Q** You started investigating Mr. Adams based on
20 an informant's tip?

21 **A** Yes, ma'am, coupled with the shooting and
22 armed robbery.

23 **Q** That's how it started, the shooting and then
24 you started talking and got some information about
25 that?

1 **A** Yes, ma'am.

2 **Q** And were those people related to Mr. Adams?

3 **A** Not that I'm aware of.

4 **Q** And they were able to tell you about the
5 distributions that had occurred?

6 **A** Yeah.

7 **Q** And were you able to set up any buys for Mr.
8 Adams?

9 **A** Yes.

10 **Q** And were those buys on any kind of
11 surveillance video or audio?

12 **A** I know there is definitely audio. I'm not
13 sure about video.

14 **Q** And based on those facts, did you ever get
15 any arrest warrants for Mr. Adams?

16 **A** No, ma'am..

17 **Q** And why not?

18 **A** I just elected not to based on the weight of
19 the traffic stop.

20 **Q** But in between, in between the alleged
21 distribution and the traffic stops, did you ever get
22 an arrest warrant?

23 **A** No, ma'am.

24 **Q** Why is that?

25 **A** We were still investigating. It's not

1 uncommon during our investigation not to charge
2 someone until after the investigation is complete.

3 **MRS. RANEY:** That's all I have.

4 **THE COURT:** Any cross?

5 **CROSS-EXAMINATION**

6 **BY MR. RIESEN:**

7 **Q** Is it common to do that to protect your
8 confidential informant?

9 **A** Yes.

10 **Q** Throughout your cases when you make buys and
11 use confidential informants, you may not reveal that
12 source or charge him with that to protect your CI when
13 you are investigating someone; is that correct?

14 **A** Yes, sir.

15 **MR. RIESEN:** Nothing further.

16 **THE COURT:** Any redirect?

17 **MRS. RANEY:** Briefly, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MRS. RANEY:**

20 **Q** So instead of, uh, giving identification of
21 your informant, you try for another arrest?

22 **A** I'm sorry?

23 **Q** I caught the tail end of that. Tell me
24 again. You said you didn't make an arrest because you
25 wanted to protect your CI?

1 **A** I think what he was trying to refer to is
2 like frequently we go out and make a buy, we use an
3 informant. Normally, we don't charge whoever bought
4 it from them. We simply use that purchase as part of
5 obtaining a search warrant or arrest warrant.

6 **Q** When you use these confidential informants,
7 do you investigate any hard feelings or any animosity
8 they may have against Mr. Adams?

9 **A** What do you mean investigate?

10 **Q** Did you question them about why they would
11 want to come forward with this information or if they
12 had something against Mr. Adams that they wanted to
13 get him back for?

14 **A** Well, we always ask and try to determine what
15 someone's motivation may be, whether it's money or
16 like you mention, a previous charge that they try to
17 get help on or something like that. We ask those
18 questions. It's not a standardized form if that's
19 what you're asking.

20 **Q** And I believe you testified earlier that you
21 weren't aware of whether the CI was a relative of Mr.
22 Adams.

23 **A** Correct.

24 **Q** They didn't give you that information?

25 **A** Correct.

1 **MRS. RANEY:** Beg the Court's indulgence.

2 (Pause.)

3 That's all I have. Thank you.

4 **THE COURT:** Any recross?

5 **MR. RIESEN:** No, sir.

6 **THE COURT:** You can step down. Thanks so
7 very much.

8 **MR. RIESEN:** I would like to put the video
9 back in.

10 **THE COURT:** Pardon?

11 **MR. RIESEN:** I would like to put the video
12 back with the evidence.

13 **THE COURT:** Oh, okay. Now, do you have any
14 other witnesses you want to call other than your
15 client?

16 **MRS. RANEY:** No, Your Honor.

17 **THE COURT:** All right. Mr. Adams, I have
18 previously sworn you when I asked you questions
19 about your right to jury trial.

20 **MR. ADAMS:** Yes, sir.

21 **THE COURT:** Now, I'm going to ask you
22 questions about your right to testimony and Fifth
23 Amendment. Do you understand?

24 **MR. ADAMS:** Yes, sir.

25 **THE COURT:** All right. You understand in a

1 criminal proceeding, no one can be compelled to be
2 a witness against himself. You have the right to
3 remain silent under the Fifth Amendment to
4 Constitution. You understand?

5 **MR. ADAMS:** Yes, sir.

6 **THE COURT:** That's a personal privilege that
7 you have and only you can waive that privilege.
8 You understand?

9 **MR. ADAMS:** Yes, sir..

10 **THE COURT:** You have the right to testimony
11 or you do not have to testify.. You understand?

12 **MR. ADAMS:** Yes, sir.

13 **THE COURT:** Now, your failure to testify can
14 not be used as evidence of guilt against you.
15 Okay?

16 **MR. ADAMS:** Yeah, I know.

17 **THE COURT:** You have the right to consult
18 your attorney about your right to testify. Have
19 you talked to your attorney about your right to
20 testify?

21 **MR. ADAMS:** Yes, we talked.

22 **THE COURT:** Did you understand the
23 conversations you had with your attorney?

24 **MR. ADAMS:** Yes, sir.

25 **THE COURT:** You understand that if you

1 decide to testify, you assume the role of a
2 witness. You will have to answer all the
3 questions that are admissible under the rules of
4 evidence and rules of the Court, okay?

5 **MR. ADAMS:** Yes, sir.

6 **THE COURT:** You can't pick and choose which
7 questions you would like to make a Fifth Amendment
8 to once you take the witness stand, okay?

9 **MR. ADAMS:** Yes, sir.

10 **THE COURT:** You can either take the Fifth
11 Amendment and not testify or you take the witness
12 stand and testify. You understand?

13 **MR. ADAMS:** Yes, sir.

14 **THE COURT:** Has anybody forced you or
15 threatened you or intimidated you to make you
16 testify?

17 **MR. ADAMS:** No, sir.

18 **THE COURT:** Have you understood all the
19 questions that I have asked you?

20 **MR. ADAMS:** Yes, sir.

21 **THE COURT:** You have any questions you would
22 like to ask the Court or your attorney about your
23 right to testimony?

24 **MR. ADAMS:** No, sir.

25 **THE COURT:** Mr. Adams, I can give you as

1 much time as you need to talk to your attorney
2 about your right to testify if you need some time
3 to talk to her.

4 MR. ADAMS: Okay.

5 THE COURT: All right. I'll give you five
6 minutes. Talk to your attorney.

7 (WHEREUPON, the Defendant consults with
8 Mrs. Adams.)

9 THE COURT: Okay. Mr. Adams, if you need to
10 consult with your attorney, I can give you another
11 break, 30 minutes if you need to talk to your
12 attorney. I can give you as much time as you want
13 to talk to your attorney. I'm not trying to rush
14 you. Do you understand?

15 MR. ADAMS: Yes.

16 THE COURT: You need more time to talk to
17 your attorney?

18 MR. ADAMS: No, sir.

19 THE COURT: All right. Have you made a
20 decision -- first of all, have you understood the
21 conversations you had with your attorney?

22 MR. ADAMS: Yes.

23 THE COURT: You understand what she
24 explained to you?

25 MR. ADAMS: Yes.

1 **THE COURT:** You understand what I have
2 explained to you?

3 **MR. ADAMS:** Yes.

4 **THE COURT:** Do you wish to testify?

5 **MR. ADAMS:** No, sir.

6 **THE COURT:** All right. Let me see the
7 attorneys up here just a second.

8 (WHEREUPON, a bench conference is held off the
9 record.)

10 **THE COURT:** All right. Any further
11 witnesses from the defense?

12 **MRS. RANEY:** None, Your Honor.

13 **THE COURT:** Any witnesses from the State in
14 reply?

15 **MR. RIESEN:** No, Your Honor.

16 **THE COURT:** Any motions from the State?

17 **MR. RIESEN:** No motions from the State, Your
18 Honor.

19 **THE COURT:** Any motions from the defense?

20 **MRS. RANEY:** Your Honor, I would renew all
21 my previous motions and objections.

22 **THE COURT:** All right. Let me hear you on
23 the proximity. Let me hear you on the proximity.
24 Then I want to hear from the State.

25 **MRS. RANEY:** Your Honor, I would ask for a

1 directed verdict on the proximity charge based on
2 the fact that the Defendant was traveling on the
3 interstate. The proximity in the indictment lists
4 the BP station at 9195 University Boulevard where
5 Mr. Adams finally pulled in after being pulled
6 over by Sergeant Blair. This is within a half
7 mile proximity of University Boulevard. The
8 indictment only lists within proximity of the
9 school.

10 The defense position is that the proximity,
11 if at all, can be measured from the interstate
12 where the infraction occurred, but we believe
13 there should not be a proximity charge based on
14 the fact that Mr. Adams was not hanging around.
15 He was not parked at the BP station. He was not
16 in the middle of a transaction. He was traveling
17 in a car on the interstate, would not have stopped
18 at that point had he not been pulled over.
19 Therefore, we would ask for a directed verdict on
20 the proximity charge, Your Honor.

21 **MR. RIESEN:** I don't believe that intent is
22 part of it. I may be wrong. I can only state
23 that ---

24 **THE COURT:** Well, the indictment says
25 possession with intent to distribute a controlled

1 substance. It says -- the indictment says
2 possession with intent to distribute.

3 **MR. RIESEN:** And basically, Your Honor, the
4 only argument you got is the amount that infers
5 intent.

6 **THE COURT:** Her argument is different from
7 that. Her argument is it would have never
8 happened at that place if the police hadn't
9 stopped him. That's the argument.

10 **MR. RIESEN:** But I think we go, I mean, if
11 he's responsible for where the drugs are located.

12 **THE COURT:** They were located in his car.
13 He was traveling down a public highway. Then they
14 turn on the blue light and he stops. That's not
15 that they catch him out on the street with the
16 proximity. He stopped by the school at the
17 direction of the police.

18 **MR. RIESEN:** But he did exit on his own.
19 They didn't force him to exit on ---

20 **THE COURT:** I understand but the purpose of
21 the statute is to prevent distribution of drugs
22 within the proximity of schools.

23 **MR. RIESEN:** I think, Your Honor, when you
24 are in a mobile, in a vehicle and people are
25 stopped in the car, they can always argue that.

1 Cars are mobile. They move anywhere.

2 THE COURT: So what?

3 MR. RIESEN: Well, arguing that they were
4 stopped in front of the school on purpose ---

5 THE COURT: If they found the drugs in the
6 car, in most situation, the drug dealer or whoever
7 is going to sell at that location where the buy is
8 made or where the search is made. In this
9 situation, the Defendant was at that location
10 because of action by the police.

11 MR. RIESEN: Correct.

12 THE COURT: That's the difference.

13 MR. RIESEN: I would say actions of the
14 police and actions of the Defendant, however ---

15 THE COURT: Pardon?

16 MR. RIESEN: I would say it was the action
17 of ---

18 THE COURT: If he had gone a half a mile
19 down the road and then stopped, he would have been
20 charged with failure to stop for a blue light.

21 MR. RIESEN: Arguably, yes.

22 THE COURT: So he stopped. He followed the
23 police officer's instruction with the blue light,
24 he stopped.

25 MR. RIESEN: Uh-huh. That's correct.

1 **THE COURT:** I mean, they didn't find the
2 drugs there because the drug dealer was there.

3 **MR. RIESEN:** I agree with that.

4 **THE COURT:** Okay.

5 **MR. RIESEN:** I ---

6 **THE COURT:** I will ask you do you want to
7 proceed with the prosecution of the within the
8 proximity of a school?

9 **MR. RIESEN:** I will still proceed.

10 **THE COURT:** All right. I grant the motion
11 to direct a verdict primarily because the police,
12 all he was doing was following the direction of
13 the police officer who stopped him for a blue
14 light and he just happened to be across the street
15 from Charleston Southern University. If he had
16 been there pumping gas and the officer come up and
17 offers to search the car and found it under those
18 circumstances, I don't think we would be doing
19 this. I just don't think the facts of this case
20 meets the statute itself.

21 **MR. RIESEN:** Well, can I -- I want to argue
22 against it.

23 **THE COURT:** Well, I gave you the
24 opportunity.

25 **MR. RIESEN:** I understand.

1 **THE COURT:** I gave you the opportunity to
2 drop the charges.

3 **MR. RIESEN:** I understand.

4 **THE COURT:** If you want to do that, yeah,
5 I'll give you the opportunity to nol pros the
6 proximity.

7 **MR. RIESEN:** I'll nol pros it.

8 **THE COURT:** Pardon?

9 **MR. RIESEN:** Yeah, I'll nol pros the
10 proximity.

11 **THE COURT:** Is that what you want to do?

12 **MR. RIESEN:** Yes, sir.

13 **THE COURT:** I was going to rule for her on
14 that issue. Whichever you prefer, it doesn't
15 matter to me.

16 **MR. RIESEN:** I will withdraw the prox
17 charge.

18 **THE COURT:** You're going to nol pros the
19 prox charge?

20 **MR. RIESEN:** Yes.

21 **THE COURT:** Okay. Thank you very much.
22 Anything else?

23 **MRS. RANEY:** No, Your Honor.

24 **THE COURT:** All right. I find the Defendant
25 guilty of the trafficking cocaine under Indictment

1 2009-GS-10-01373, I find him guilty. You have a
2 sentencing sheet?

3 **MR. RIESEN:** I have to go get one, Your
4 Honor. It will take me five minutes.

5 **THE COURT:** You get the sentencing sheet and
6 I'll sentence him.

7 **MR. RIESEN:** I'll be right back.

8 (WHEREUPON, a short recess is taken.)

9 **THE COURT:** All right. Mr. Adams, I believe
10 the amount was 141.62 grams. That, under the
11 statute is a mandatory minimum of 25 years and a
12 mandatory maximum of 25 years and I believe a
13 \$50,000 fine. I'll be glad to hear anything you
14 would like to tell me regarding your sentence.

15 **MR. ADAMS:** No, sir.

16 **THE COURT:** Anything you would like to say?

17 **MRS. RANEY:** No, Your Honor.

18 **THE COURT:** Anything from the State?

19 **MR. RIESEN:** No, sir.

20 **THE COURT:** All right. Thank you very much.

21 (Pause.)

22 All right. Mr. Adams for Indictment number
23 2009-GS-10-01373, Trafficking in Cocaine 100 to
24 200 grams, I sentence you to the State Department
25 of Corrections for 25 years and pay a \$50,000

1

fine.

2

3

(END OF PROCEEDING)

4

5

140R20081106883

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008050993

ARREST WARRANT NUMBER

K351810

DATE OF ARREST

November 17, 2008

ACTION OF GRAND JURY

TRUE BILL

W. Russell
Foreperson of Grand Jury

Date: MAR 23 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT.

DOCKET NO. 2009GS1001373

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

ALFRED ADAMS JR

DOB: 1968-01-27

B/M

Indictment for

Trafficking Cocaine

08-7110 (1)

2009 MAR 23 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about November 17, 2008, the Defendant, ALFRED ADAMS JR, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 100 grams; 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.


 TRIP RIESEN
 ASSISTANT SOLICITOR

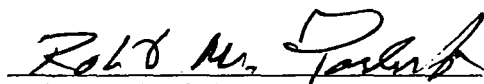
ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG
 CLERK, C.P., G.S. & F.C.

By 
 DEPUTY CLERK

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 19th, 2010

A handwritten signature in black ink, appearing to read "Robt M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
DEC 09 2010
SC Court of Appeals

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED ADAMS,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT:

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STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in refusing to suppress drugs seized from appellant when the State placed a mobile tracking device on his vehicle without applying for approval from a judge to use such a device in violation of S.C. Code§17-30-140?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in cocaine after a bench trial held before the Honorable J.C. Buddy Nicholson, Jr. on January 27, 2010, in Charleston County. A sentence of twenty-five (25) years was imposed along with a fine of \$50,000.

This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress drugs seized from appellant when the State placed a mobile tracking device on his vehicle without applying for approval from a judge to use such a device in violation of S.C. Code §17-30-140.

Detective Gomes with the North Charleston Police Department testified at the suppression hearing that in July of 2008 there was a robbery and shooting involving appellant over a drug deal gone bad. They learned of his potential for drug trafficking from informants. In November of 2008 they made a couple of buys from appellant. On November 11 they placed a tracking device on his vehicle. They did not get a warrant for the tracking device. (ROA p. 27, line 19 – p. 29, line 5)

On November 16, they learned from the tracking device that appellant traveled to Georgia and based on their investigation and informant information they felt Atlanta was appellant's source of supply for drugs. They contacted Sgt. Blair and asked him to get on the interstate and be on the lookout for the vehicle as he returned to Charleston and to observe any traffic violations so they could stop him. (ROA p. 31, lines 4-14)

Sgt. Blair testified that he spotted appellant's vehicle and he had his drug dog with him. He observed a couple of traffic violations and pulled appellant over. (ROA p. 41, line 14 – p. 45, line 12) Sgt. Blair's dog alerted on the driver's side door. (ROA p. 48, lines 9-21) Officer Greenawalt arrived on the scene and patted appellant down and found cocaine on his person. (ROA p. 50, lines 1-17; ROA p. 53, lines 12-15)

Defense counsel noted that S.C. Code §17-30-140 sets forth the requirements for placement of tracking devices. The Attorney General or a solicitor must make an application to a judge for an order authorizing placement of a tracking device. That was not

done. (ROA p. 76, lines 5-16) There has to be a showing of probable cause that was not done. (ROA p. 77, lines 9-19)

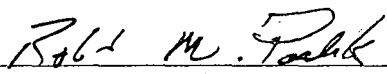
The trial court asked why the police did not follow the statute. The solicitor said they did not know it even existed. The trial court said if they are going to use electronics they need a warrant. (ROA p. 94, line 23 – p. 95, line 9) The court also noted that the police could never have gotten behind appellant to get the traffic violations if they did not have a tracking device. (ROA p. 96, lines 23-25) Ultimately, the court denied the motion to suppress and relied on United State v. Knotts, 460 U.S. 276, 103 S.Ct. 1081 (1983).(Tr.p.107,lines 1-25) That case held that there was no expectation of privacy in driving from one place to another and a tracking device was not a “search” or “seizure” within the contemplation of the Fourth Amendment.

The trial court’s reliance on United States v. Knotts, was misplaced. That case just dealt with the Fourth Amendment and it expressly held that its opinion did not cover the question of the warrantless installation of a tracking device. 460 U.S. at 279-280, 103 S.Ct. at 1084. In appellant’s case we are dealing with a statute that specifically deals with the procedures the State has to follow to get “an order authorizing or approving the installation and use of a mobile tracking device.” The State made no attempt to comply with the statute and that was a violation of due process of law under the Fourteenth Amendment to the United States Constitution and Article I, §3 of the South Carolina Constitution. The motion to suppress the drugs seized from appellant should have been granted. The police have shown no reason why they could not have complied with the statute other than ignorance of the law.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

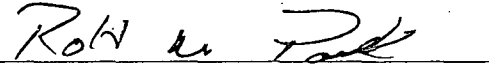
ATTORNEY FOR APPELLANT.

This 9th day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 9th 2010



Robert M. Pachak
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

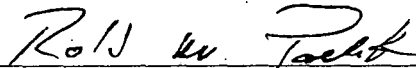
V.

ALFRED ADAMS,

APPELLANT

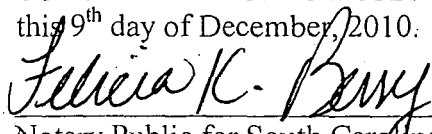
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of December, 2010.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEAL

Appeal from Charleston County

The Honorable J. C. Buddy Nicholson, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA

Respondent

v

ALFRED ADAMS

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The issue of whether law enforcement's failure to obtain a court order pursuant to S.C. Code §17-30-140 prior to placing a tracking device on Adams' car violated due process under the federal and state constitutions is not preserved for appellate review.

II. The circuit court properly found there was no constitutional violation in law enforcement's placement of a tracking device on Adams' car, and any statutory violation did not warrant suppression of the drugs found on his person.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In July 2008, during an investigation into an attempted robbery and shooting associated with a drug deal, members of the North Charleston Police Department's ("NCPD") Narcotics Unit learned Appellant Alfred Adams ("Adams") was involved in trafficking and distributing of drugs. Based on Adams' history, a police confidential informant made several recorded phone calls to Adams over the next few months, and arranged to purchase narcotics from him. Adams set up a meeting with the informant, and Adams' wife delivered thirty grams of cocaine to the informant, with the understanding the informant would pay Adams for the cocaine when he sold it to a third party. The informant's conversations with Adams revealed Atlanta, Georgia was one source for Adams' drugs. (Trial Transcript [TT], pp. 27-28, 34-37, 39; Record on Appeal [R.], pp. 27-28, 34-37, 39).

On November 11, 2008, detectives placed a mobile tracking device on the undercarriage of Adams' wife's car ("Adams' car"), a 2003 white Chevrolet Trailblazer, while it was parked in a public parking garage. The device was small, and held to the undercarriage magnetically. It only sent signals that revealed the car's location. (TT, pp. 28-91; R., pp. 28-91). Five days later, on November 16, 2008, detectives learned via the tracking device that Adams's car traveled to Atlanta, remained there for less than an hour, and was already on the way back to South Carolina that evening. Detectives notified Sgt. Timothy Blair ("Sgt. Blair") of the NCPD K9 Unit to be on the look out for a 2003 white Chevrolet Trailblazer on eastbound I-26, and to stop it if he observed any traffic violations. (TT, pp. 31-32, 41-42; R., pp. 31-32).

Sgt. Blair positioned his car at a rest area on I-26, heading east. When he saw Adams's car, he immediately turned on his vehicle's video camera and pulled onto I-26

behind Adams' car. He did not activate his blue lights or siren at that time. While following Adams' car, he observed two traffic violations, both of which were captured on video. (TT, pp. 42-45, State's Exhibit S-1 [In-car video]; R., pp. 42-45).¹

Based on these traffic violations, Sgt. Blair initiated a traffic stop of Adams' car. Adams was driving the car, and while requesting his license and registration, Sgt.. Blair noticed he was acting nervous and concealing his hands. Officer Timothy Greenawalt ("Officer Greenawalt") arrived less than 2 minutes later, and asked Adams to exit the vehicle so he could conduct a NCIC check while Sgt. Blair performed a perimeter sniff with his drug dog. The dog immediately alerted at the driver's side door, and alerted a second time at the center console after he was deployed in the car. (TT, pp. 44-49, 66-68; R., pp. 44-49, 66-68).

While Sgt.. Blair was escorting the dog around the vehicle, Sgt. Greenawalt noticed Adams was acting very nervous and making furtive movements as if he was going to run, so he told Adams at least three times to put his hands on the hood of the police car. After the drug dog alerted, Officer Greenawalt conducted a pat down based on the dog's response and for officer safety. During the pat down, Officer Greenawalt felt a large, hard object in Adams's groin area, and based on his training and experience, he believed the object was drugs. He then handcuffed Adams and retrieved the item, which was subsequently determined to be 142 grams of cocaine. Sgt.. Blair arrested and mirandized Adams, who was charged with one count of trafficking cocaine 100-200 grams, and possession with intent to distribute cocaine in proximity of a school (Charleston Southern University). (Indictment

¹State's Exhibit S-1 [In-car video] will be transported to the Court for consideration.

No. 2009-GS-10-01373, TT, pp. 50-57, 67-71; 24-25; R., pp. 140-141, 50-57, 67-71; 24-25).²

The case was called for a bench trial before the Honorable J. C. Buddy Nicholson, Jr., Circuit Court Judge, on January 27, 2010. Prior to trial, Adams moved to suppress the cocaine, contending placement of the tracking device violated the Fourth Amendment protection against unreasonable searches and seizures because officers failed to obtain a court order pursuant to S.C. Code §17-40-140 (Supp. 2008). The State argued the officers' placement of the tracking device on the car while it was in a public parking garage complied with the standards for installing and monitoring tracking devices established by the United States Supreme Court, and Adams had no reasonable expectation of privacy in his movements from one location to another. The State further argued there were intervening criminal acts - Adams' two traffic violations - which led to the traffic stop and discovery of the cocaine. (TT, pp. 76-105; R., pp. 76-105).

The circuit court denied the motion to suppress, finding there might be a technical statutory violation, but no constitutional violation. Adams again argued the statute required a court order to place the tracking device on his car. The court stated the statute probably should be followed, but again found suppression of the drugs was not warranted in this case. (TT, pp. 106-108, 112-113; R., pp. 106-108, 112-113).

Based on the evidence presented, the circuit court found Adams guilty of trafficking cocaine, and sentenced him to twenty-five years incarceration and a \$50,000 fine. (TT, pp. 137-139; R., pp. 137-139). This appeal followed.

²The proximity charge was *not proessed* at trial and is not at issue in this appeal. (TT, p. 137; R., p. 137).

ARGUMENT

I. The issue of whether law enforcement's failure to obtain a court order pursuant to S.C. Code §17-30-140 prior to placing a tracking device on Adams' car violated due process under the federal and state constitutions is not preserved for appellate review.

Adams contends the circuit court erred in denying his motion to suppress the drugs found on his person after the traffic stop, asserting placement of a tracking device on his wife's car without obtaining a court order pursuant to S.C. Code §17-30-140 (Supp. 2009) violated his due process rights under the Fourteenth Amendment to the United States Constitution and Article I, §3 of the South Carolina Constitution. This issue was not raised in the circuit court, and therefore, is not preserved for appellate review.

An issue must be raised to and ruled on by the trial court to be preserved for appellate review. State v. Moore, 357 S.C. 458, 593 S.E.2d 608, 612 (2004); State v. Orr, 389 S.C. 286, 698 S.E.2d 633, 637 (Ct. App. 2010). The party is not required to use the exact name of a legal doctrine in order to preserve an issue for appellate review; but is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on it. State v. Brannon, 388 S.C. 498, 697 S.E.2d 593, 595-96 (2010). A party may not argue one ground at trial and another on appeal. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445, 448 (2003); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one basis in support of motion at trial and another ground on appeal); Orr, 698 S.E.2d at 637 (same).

The sole constitutional basis for Adams' motion to suppress in this case was his contention that placing the tracking device on his car constituted an unreasonable search under the Fourth Amendment. (TT, pp. 76-79, 112-113; R., pp. 76-79, 112-113). This is amply confirmed by the circuit court's discussion of, and reliance on, United States v. Knotts, 460 U.S. 276 (1983). (TT, pp. 106-107, 113; R., pp. 106-107, 113). Adams **never**

asserted a due process argument under either the Fourteenth Amendment or the South Carolina Constitution. Thus, the State did not have an opportunity to respond to the due process argument, and the circuit court never had a fair opportunity to rule on it.

On appeal, Adams essentially disavows the Fourth Amendment argument he made at the trial level by asserting the circuit court's reliance on Knotts "was misplaced." Acknowledging Knotts "dealt with the Fourth Amendment," he now contends the failure to get a court order under §17-30-140 "was a violation of due process of law under the Fourteenth Amendment to the United States Constitution and Article I, §3 of the South Carolina Constitution." The issue he raises on appeal is entirely different from the issue raised to and ruled on by the circuit court, and therefore, it is not properly before this Court.

II. The circuit court properly found there was no constitutional violation in law enforcement's placement of a tracking device on Adams' car, and any statutory violation did not warrant suppression of the drugs found on his person.

Even though the issue is not preserved for appellate review, there was no due process violation in this case. The circuit court properly determined there was no constitutional violation arising from placement of the tracking device on Adams' car. Further, the officers complied with the statutory requirements, but even if there was a statutory violation, the drug evidence seized during the traffic stop was admissible.

The admission of evidence is a matter within the trial judge's discretion. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87, 93 (2002); State v. Page, 378 S.C. 476, 663 S.E.2d 357, 359 (Ct. App. 2008). The trial judge's rulings regarding admissibility will not be reversed on appeal absent an abuse of discretion, and the appellate court is bound by the trial judge's factual findings unless they are clearly erroneous. State v. Williams, 380 S.C. 336, 669 S.E.2d 640, 644 (Ct. App. 2008). In Fourth Amendment search and seizure cases, appellate review is limited to determining whether any evidence supports the trial court's finding, and the appellate court may only reverse where there is clear error. State v. Taylor, 388 S.C. 101, 694 S.E.2d 60, 63-64 (Ct. App. 2010).

A. Fourth Amendment

In this case, the circuit court found Knotts was on point on the issue of the Fourth Amendment and tracking devices. In Knotts, the Supreme Court held a tracking device inserted into a container, which was then put on a vehicle police officers monitored, was not a "search" or "seizure" under the Fourth Amendment, and no warrant was required. 460 U.S. at 285. The Court specifically found there was no legitimate expectation of privacy in one's movements from one location to another, and when a person travels over the public streets,

he voluntarily conveys his movements to anyone who wants to watch him. *Id.* at 282-283. Thus, visual surveillance from public places along the person's route would reveal the same information to the police as a tracking device, and the Fourth Amendment does not prohibit police from augmenting their sensory faculties with technological enhancements. *Id.* at 283. See also United States v. Jones, 31 F.3d 1304 (4th Cir. 1994) (postal inspector's use of a tracking device to monitor movement of a mail pouch defendant put in his van did not constitute a search under the Fourth Amendment); United States v. Garcia, 474 F.3d 994 (7th Cir. 2007) (no search or seizure occurred from placement of a global positioning device under bumper of defendant's car); United States v. Pineda-Moreno, 591 F.3d 1212 (9th Cir. 2010) (*reh'g denied*, 2010 WL 3169573 [August 12, 2010]) (no search or seizure occurred when police went onto the curtilage of defendant's home to put a tracking device on the underside of his vehicle).

It is undisputed the tracking device in this case was put on Adams' car while it was parked in a public parking garage, and the car's movements were monitored while it was on public streets or highways. The investigating officer testified that based on their knowledge of Adams' involvement in the narcotics trade and the fact he had money supplied by law enforcement, they would have conducted physical surveillance of Adams if the tracking device had not been on the car. The tracking device revealed only information law enforcement could have obtained through non-enhanced visual surveillance. Therefore, the circuit court properly relied on Knotts as on point with this case, and its ruling should be affirmed.³

³Adams correctly notes Knotts did not address the issue of installing a tracking device without a warrant. He does not assert on appeal, however, that such installation violates the Fourth Amendment, only that it violates due process under the Fourteenth Amendment and

B. Statute

1. Compliance

The cardinal rule of statutory interpretation is to determine the intent of the legislature, and all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the statute's intended purpose. State v. Brannon, 379 S.C. 487, 666 S.E.2d 272, 276 (Ct. App. 2008). Once the legislature makes a choice, courts may not impose a different judgment based on their own notions of public policy. *Id.*

The legislature's intent should be ascertained primarily from the plain language of the statute, which must be read to harmonize with its subject matter and general purpose, and when a statute's terms are clear and unambiguous on their face, there is no room for statutory construction. *Id.* The text of a statute is the best evidence of the legislative intent, and the court must give the words of a statute their plain and ordinary meaning without resorting to subtle or forced construction. *Id.* A court should not construe a particular statutory clause in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. *Id.* at 277.

In 2002, the South Carolina General Assembly enacted the Homeland Security Act, expressly finding legislative enhancements were required to ensure the safety of South Carolina's citizens, including enhancement of tools available to law enforcement, in light of "the tragic events of September 11, 2001, involving acts of terrorism against the people of the United States and . . . continued threats against the peace and safety of our nation." 2002

Amendment and the S.C. Constitution because of §17-30-140. As argued above, Adams did not raise that issue in the circuit court, and it is not properly before this Court.

Act. No. 339, §2. Thus, the **express** purpose of the Act was to enhance, not restrict, law enforcement's ability to conduct investigations.

As part of the Act, Title 17, Chapter 30 deals primarily with the interception of wire, electronic or oral "communications," which is not an issue in this case. As to tracking devices, §17-30-140 provides, in pertinent part:

(A) The Attorney General or any solicitor **may** make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device by [SLED] or any law enforcement entity of a political subdivision of this State.

(E) The standards established by the United States Supreme Court for the installation and monitoring of mobile tracking devices apply to the installation and use of any device as authorized by this section.

S.C. Code §17-30-140 (A) and (B) (Supp. 2008) (emphasis added).⁴ On its face, the statute serves two purposes: 1) gives the Attorney General and solicitors express authority to request a court order for a tracking device; and 2) makes the United States Supreme Court standards for the installation and monitoring of tracking devices apply.

Under Knotts, law enforcement may install and monitor a tracking device on public property without a warrant, and §17-30-140 (E) expressly continues that standard. When law enforcement must enter private property to install and/or monitor a tracking device, however, which would raise Fourth Amendment issues, §17-30-140 enhances law enforcement's ability to investigate criminal activity by providing a mechanism whereby the Attorney

⁴Subsections (A) through (D) create the procedures for the Attorney General and solicitors to request such an order, and the legislative use of the word "may" indicates it is not mandatory.

General and solicitors can apply for a court order allowing it.⁵ This interpretation of the statute gives effect to each provision, and comports with the expressly stated legislative intent to enhance law enforcement efforts.

The tracking device in this case was placed on Adams' car when it was parked on public property, and there is no evidence officers ever went on private property in connection with the tracking device. Therefore, they acted in accordance with §17-30-140 (E), no court order was required, and the drug evidence was properly admitted.

2. Exclusionary Rule

Assuming for argument only there was a statutory violation in this case, exclusion of the tracking device evidence was not mandated. The exclusionary rule is a judicially created tool designed to safeguard Fourth Amendment rights, and should only be used as a last resort. Hudson v. Michigan, 547 U.S. 580 (2006); United States v. Calandra, 414 U.S. 338 (1974); Coolidge v. New Hampshire, 403 U.S. 443 (1971); State v. Chandler, 267 S.C. 138, 226 S.E.2d 553, 555 (1976).

The main purpose of the exclusionary rule is the deterrence of police misconduct, and it should be applied only where deterrence is clearly served. State v. Harvin, 345 S.C. 190, 547 S.E.2d 497, 500 (2001); State v. Sachs, 264 S.C. 541, 216 S.E.2d 501, 514 (1975).

Recognizing the rule's harsh consequences, the United State Supreme Court stated:

Suppression of evidence, however, has always been our last resort, not our first impulse. The exclusionary rule generates substantial social costs, which sometimes include setting the guilty free and the dangerous at large. We

⁵Significantly, the statute does not provide a mechanism for law enforcement to directly seek such an order. Interpreting the statute to require an order even if public property is involved would place restrictions on law enforcement that did not exist prior to the Act, which clearly flies in the face of the Act's stated purpose.

have therefore been cautious against expanding it, and have repeatedly emphasized that the rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging its application. We have rejected indiscriminate application of the rule, and have held it to be applicable only where its remedial objectives are thought most efficaciously served. That is, where its deterrence benefits outweigh its substantial social costs.

Hudson, 514 U.S. at 591 (internal quotations omitted).

Application of the exclusionary rule should be limited to violations of constitutional rights and not to statutory violations, unless the defendant can demonstrate prejudice at trial resulting from the failure to follow statutory procedures. State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585, 586 (Ct. App. 2001). Thus, absent a showing of prejudice, there must be some constitutional protection at issue to justify excluding evidence from the province of the jury.

As discussed above, when the installation and monitoring of a tracking device occurs on public property, applicable case law removes it from Fourth Amendment protection. There simply is no constitutional right to privacy associated with the outside of a vehicle or its movement on public property. Therefore, Adams must show prejudice from the information law enforcement obtained with the tracking device, something he cannot do. As discussed below, neither the traffic stop nor the subsequent pat down resulted from the tracking device information, but were based on traffic violations observed by Sgt. Blair, and the officers' observations during the stop.

Nor can Adams show exclusion of the evidence in this case would act as a deterrent to future police misconduct. It is undisputed in the record that the officers and the solicitor were not even aware of the statute until just before trial, and the solicitor brought it to defense counsel's attention. (TT, pp. 95-96; R., pp. 95-96). Clearly the officers acted in good faith based on their knowledge of the law at that time. Now that they are aware of the

statute, there is absolutely no reason to believe the officers will knowingly violate it in the future. Therefore, application of the exclusionary rule in this case would not serve to deter future police misconduct, and the circuit court properly admitted the drug evidence.

3. Intervening Criminal Act

Even if there was a statutory violation warranting exclusion of improperly obtained evidence, the only evidence offered at trial regarding the tracking device was the record of where Adams' car went while the device was on it. The drug evidence was not obtained as a result of that information, but was found due to Adams' undisputed traffic violations.

The United States Supreme Court has expressly declined to hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. *See, e.g., Wong Sun v. United States*, 371 U.S. 471 (1963); *see also* 5 W. LaFare, Search and Seizure: A Treatise on the Fourth Amendment, §11.4 [3d ed. 1996]). Since Wong Sun, courts have recognized that new and distinct criminal acts following an illegal stop do not qualify as fruit of the poisonous tree simply because such acts were causally connected to the police misconduct. *See State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786, 789-90 (1999) (citing John Wesley Hall, Jr., Search and Seizure, at 364 (2d ed. 1991); *see also United States v. Sprinkle*, 106 F.3d 613 (4th Cir.1997) (police did not have any reasonable suspicion to stop the defendant, but the defendant's intervening illegal acts of running from and shooting at the police made the gun admissible); United States v. Nooks, 446 F.2d 1283 (5th Cir.1971) (even though the initial stop was illegal, suppression was not warranted when the defendant fled from the police at speeds in excess of 100 m.p.h. and fired several shots at them subsequent to the initial stop); United States v. Bailey, 691 F.2d 1009 (11th Cir.1982) (notwithstanding a strong causal connection in fact between

lawless police conduct and a defendant's response, if the defendant's response is itself a new, distinct crime then the police may arrest the defendant for that crime).

When Sgt. Blair got behind Adams on the interstate, he turned on the video camera in his police car, but did not activate the blue lights or siren, and simply followed Adams' car. Sgt. Blair observed Adams swerve from the left lane into the right lane in close proximity to another car, causing that driver to step on his brakes. Adams swerved back over into the left lane, subsequently merged in front of that car, and quickly took the next exit off the interstate. Sgt. Blair followed Adams at the exit, but still did not attempt to stop him. (State's Exhibit S-1; TT, pp. 42-43; R., pp. 42-43).

After Adams turned off the exit ramp, Sgt. Blair observed him make another illegal lane change by going into the left lane while his right turn signal was activated. After observing the second traffic violation, Sgt. Blair initiated the traffic stop. As evidenced by the video, Adams knew he was stopped because of the illegal lane change, and told Sgt. Blair he swerved because he was "texting." (State's Exhibit S-1, TT, pp. 44-45; R, pp. 44-45).

The subsequent pat-down and discovery of the cocaine on Adams resulted from the legal traffic stop and the officers' observations during that stop, including a positive alert on Adams' car by the drug dog.⁶ Even if the tracking device information led to Sgt. Blair following Adams' car, it did not cause Adams to violate any traffic laws, and those violations purged any possible taint from the tracking device information.

This case is on point with the facts of In Re Jeremiah W., 361 S.C. 620, 625, 606

⁶Adams does not challenge on appeal the validity of the traffic stop or the drug dog sniff. Thus, the circuit court's rulings that both were valid is the law of the case. *See, e.g., State v. Woods*, 882 S.C. 153, 676 S.E.2d 128 (Ct. App. 2009); Reliance Ins. Co. v. Smith, 327 S.C. 528, 489 S.E.2d 674, 679 (Ct. App. 1997).

S.E.2d 766 (2004), in which the Supreme Court held the defendant's threats to police officers after he was unlawfully arrested for disorderly conduct constituted a new and distinct criminal act justifying his arrest for threatening a police officer.⁷ In reaching that conclusion, the Court stated:

Simply because respondent's threat was causally connected to police misconduct does not therefore mean that the threat qualifies as 'fruit of the poisonous tree.' While it is true the second offense would not have arisen but for the unlawful arrest for the first offense, as stated in Nelson, there is a strong policy reason for holding that a new and distinct crime, even if triggered by an unlawful arrest, is a sufficient intervening event to provide independent grounds for arrest.

Id. at 768-769 (internal citations omitted).

As in Jeremiah W., even if the tracking device information was improperly obtained and led to Sgt. Blair following Adams' car, Adams' traffic violations constituted a separate and distinct crime justifying the subsequent traffic stop and search.⁸ Therefore, the drug evidence was admissible, and Adams' conviction should be affirmed.

⁷Significantly, the Supreme Court reversed the Court of Appeals holding that the initial illegal arrest rendered the subsequent charge of threatening a police officer invalid. See In re Jeremiah W., 353 S.C. 90, 576 S.E.2d 185 (Ct. App. 2003) (actions leading to defendant's subsequent charge were "part of a continuous flow of action and conduct emanating directly from the unlawful arrest").

⁸The facts of this case are much less egregious than the facts in Jeremiah W., because Adams was not arrested until after the intervening traffic violations and a valid traffic stop.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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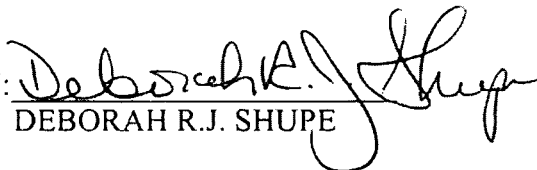
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December 2, 2010

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IN THE COURT OF APPEAL

Appeal from Charleston County

The Honorable J. C. Buddy Nicholson, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

ALFRED ADAMS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 2nd day of December, 2010.


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