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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

TERRANCE JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000146

A P P E N D I X

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON
3
4
5 STATE OF SOUTH CAROLINA
6 vs.
7 TERRANCE D. JOHNSON
8
9 BEFORE: The Honorable Deadra L. Jefferson
10 DATE: March 9 - 10, 2006
11
12 APPEARANCES OF COUNSEL:
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PATRICIA THOMPSON-MORRISON
Official Court Reporter

1 THE COURT: Ladies and Gentlemen, as I
2 indicated, you've been selected for the State of
3 South Carolina versus Terrance D. Johnson. What I
4 have determined after consultation with the lawyers
5 is I'm going to allow y'all to go to lunch and we
6 are going to break until 2:15.

7 There are many reasons for that, one of
8 which is I have matters of law that I need to take
9 up with the attorneys that will probably take us an
10 hour. I don't want to have y'all sitting while we
11 do that, so we are going to break. I ask that you
12 return to your jury room at 2:15. The bailiffs
13 will show you how to gain entry by this door to
14 come to your jury room and they will show you how
15 to do that once you reenter the courthouse.

16 During this break please do not have
17 any discussion about the case among yourselves or
18 with anyone else. I am not aware of any media
19 accounts about this case, but if there are any,
20 please do not watch, read or listen to anything
21 that could be on the radio, television, in the
22 newspaper, the internet or otherwise.

23 Also, you're strictly prohibited from
24 doing any independent research of any kind, and
25 that includes anything that could be found on the

1 internet. When you return to the courthouse,
2 please don't have any contact with anyone that you
3 don't recognize to be a juror, a bailiff or a
4 member of court staff. The reason we do that is
5 because we have a courtroom full of people who look
6 very different outside of these surroundings, and I
7 would hate for y'all unwittingly to have an
8 innocent conversation with a witness or a party and
9 a third party observe that and misconstrue it.

10 I hope y'all enjoy your lunch. We will
11 see you at 2:15. You are excused.

12 (Jury recessed for lunch at 12:35 p.m.)

13 (The following suppression hearing held out
14 of the presence of the jury:

15 THE COURT: Ready to proceed?

16 MR. BIANCHI: Yes, your Honor.

17 MR. KNISLEY: I think we are going to premark
18 exhibits briefly.

19 (Discussion off the record.)

20 THE COURT: Are y'all ready?

21 MR. BIANCHI: Yes, your Honor.

22 THE COURT: Let's precede.

23 MR. BIANCHI: The State calls Officer Troy
24 Butler.

25 MS. GAY: Your Honor, we have a motion to

1 sequester.

2 MR. BIANCHI: Corporal Middleton is a case
3 agent.

4 MS. GAY: He is not the person who wrote the
5 report. I can show you the report. It is Mr. Butler
6 who did.

7 THE COURT: You said he's going to testify in
8 the suppression?

9 MR. BIANCHI: If he's going to testify in the
10 suppression, let's sequester him.

11 MR. KNISLEY: Judge, I understand the Court's
12 ruling.

13 THE COURT: The whole purpose of
14 sequestering is to avoid the appearance that their
15 testimony is somehow in collusion with one another.
16 It doesn't hurt anybody to be sequestered.

17 MR. BIANHI: The State calls Officer Troy
18 Butler.

19 ...OFFICER TROY BUTLER, having been duly
20 sworn, was examined and testified as follows:

21 THE COURT CLERK: Please be seated. Would
22 you state your full name and spell your last.

23 THE WITNESS: Officer Troy Butler, North
24 Charleston Police K-9 Division.

25 THE COURT: You may proceed.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 5

1 DIRECT EXAMINATION

2 BY MR. BIANCHI:

3 Q. Good afternoon, officer Butler.

4 On the afternoon of January 28, 2004 did you
5 have a chance to encounter the defendant in this
6 case?

7 A. Yes, I did.

8 Q. Would you briefly explain for me how you
9 first came in contact with the defendant.

10 A. Over an equipment violation on the vehicle
11 that he was driving.

12 Q. So you pulled him for that vehicle violation?

13 A. Yes, sir, I did.

14 Q. Where was it that you stopped the defendant?

15 A. Rivers Avenue. We were traveling eastbound
16 on Rivers Avenue going towards Charleston city around
17 Columbia Street.

18 Q. And where did he come to a stop during --

19 A. He actually came to a rest at the flower shop
20 located on Rivers Avenue. I believe it's around the
21 3,000, 2,000 mark somewhere.

22 Q. When you first stopped him did you notice
23 anything that he was doing?

24 A. Yes. He was making a lot of furtive
25 movements in the car as well as he wanted -- he

1 seemed to want to distance himself from the driver's
2 side of the vehicle.

3 Q. When you saw he wanted to distance himself
4 from the driver's side, when you got out of your car
5 -- what do you mean by --

6 A. Basically prior to me approaching the vehicle
7 he got out of the vehicle and went to the passenger
8 side of the car to actually retrieve items from the
9 glove box, which seemed somewhat weird because
10 normally just people --

11 MS. GAY: I would object to the speculation.
12 He doesn't know why he did that.

13 THE COURT: Actually it's not speculation.
14 It would be foundation. As a traffic patrol officer
15 this is something he does every day.

16 MS. GAY: He's the K-9 Unit, your Honor.

17 THE COURT: They all patrol. I'm going to
18 give him some latitude based on you laying the
19 appropriate foundation.

20 BY MR. BIANCHI:

21 Q. Where do you work?

22 A. I really don't have a specific realm anywhere
23 of latitude or longitude.

24 Q. Who are you employed by?

25 A. North Charleston Police Department.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI

7

1 Q. What is your job description?

2 A. Basically per our standard operating
3 procedures of North Charleston Police Department we
4 are basically utilizing a back-up unit, meaning we
5 have a canine. However, there is actually no
6 specific job duties that entails me or keeps me from
7 doing other things such as traffic stops as one part
8 of my job that I do on a daily basis.

9 Q. This was your same role on January 28, 2004?

10 A. Correct.

11 Q. How many traffic stops have you made?

12 A. In the approximate six years numerous. I
13 really don't have any . . .

14 Q. So you have a good bit of experience with
15 traffic stops and dealing with people that have been
16 stopped for traffic violations?

17 A. Correct. Yes, I do. I do.

18 Q. Thank you. So let's go back to the stop on
19 the defendant.

20 He pulls into the parking lot of the flower
21 shop. When you first get out of your car to approach
22 his car, that's when you see him get out of his car?

23 A. Right. It was a slightly thereafter. I
24 basically approached the vehicle; came out of the
25 vehicle. Like I said, I retrieved some items from --

1 I think I requested some vehicle information and so
2 forth. He automatically provided me with a valid
3 South Carolina driver's license with a different name
4 that he had actually told me after he was
5 incarcerated that he had legally changed his name.

6 Q. But he got out of the car; walked around to
7 the passenger side door and went into the glove --
8 opened the passenger side door and went into the
9 glove box from there?

10 A. Correct.

11 And just to elaborate a little bit, just from
12 the traffic stops that I have been trained in that
13 kind of sends up one of the little red flags.

14 Q. When that red flag was sent up, was there
15 anything else you did?

16 A. Yes. Actually I contacted for a back-up
17 officer based kind of on that -- basically during the
18 course of my shift I would venture to say, with
19 giving a little bit of a leeway to the defendant,
20 probably over -- less than half -- or more than half
21 of the people that I stop never exit their vehicle to
22 retrieve something from the passenger side of the
23 car.

24 Q. So after he got the information out of the
25 glove compartment what did you have him do?

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI

9

- 1 A. I had him have a seat back in the vehicle.
- 2 Q. So he got back in the driver's seat?
- 3 A. Yes.
- 4 Q. What did you do from there?
- 5 A. I contacted Corporal Middleton.
- 6 Q. After the backup what did you do?
- 7 A. I actually asked for -- basically if there
- 8 was anything illegal, any type of contraband in the
- 9 car, which he stated no. And normally what I do, I
- 10 have a narcotics detention canine which is trained --
- 11 Q. What was the basis for asking him if there
- 12 were any --
- 13 A. Just the furtive movements that he was
- 14 making: Exiting the vehicle, just really trying to
- 15 distance himself from whatever was in the car and
- 16 just kind of being -- he was a little bit more
- 17 comfortable outside of the vehicle instead of inside
- 18 the vehicle.
- 19 Q. So you asked him for permission -- or you
- 20 asked him if he had any contraband or drugs in the
- 21 car?
- 22 A. Yes, sir.
- 23 Q. What was the answer?
- 24 A. The answer was no. That's a standard
- 25 question, be it an 80-year-old lady or a 20-year-old

1 male, that I ask everybody pretty much that.

2 Q. Once he said no what did you do then?

3 A. I believe I requested for backup and I
4 retrieved my canine; deployed my canine from the
5 vehicle and I asked for consent to search.

6 Q. So you asked for consent to search the
7 vehicle, and what did he say?

8 A. He denied the consent.

9 Q. After that --

10 A. Just based on the case law with the canine --
11 and that's normal just for patrol purposes and use
12 that I can document. I like to try to work my dog
13 around every vehicle that I stop, and I was going to
14 -- I basically honored his request not to search the
15 vehicle.

16 Q. So you went back and got your dog.

17 A. Right.

18 Q. The dog was in your car with you the whole
19 time?

20 A. With me the whole time. Correct.

21 Q. You ran the dog around his car?

22 A. Yes, I did.

23 Q. What were the results of that?

24 A. My dog is an aggressive alerted canine, which
25 basically is alert to a narcotic using basically a

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 11

1 scratching the body method. There was not a hundred
2 percent indication from the canine; therefore, I
3 allowed the defendant to have benefit of the doubt,
4 so I did not go any further in searching the vehicle.

5 However, when I say there wasn't a hundred
6 percent, he was obviously driving a newer vehicle,
7 and we get numerous complaints from people saying
8 we're scratching up their cars. I'm obviously not
9 going to let my dog scratch all day long on his
10 vehicle. So I took the canine away from the car,
11 which pretty much could have been my fault or, you
12 know, the . . .

13 Q. So after that what did you do with the canine
14 then?

15 A. I placed him back in the vehicle. I issued
16 the defendant a verbal warning just for the license
17 tag obstruction. I didn't feel that there was any
18 need for a citation of any sort or any kind, and
19 basically he was set and free to go.

20 Q. So you gave him a verbal warning and then you
21 told him he was free to go.

22 What did he do after that?

23 A. I believe his son exited by himself. He had
24 his son out of the car. They entered into the flower
25 shop here on Rivers Avenue.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 12

- 1 Q. Between the time you stopped the defendant
2 and the time you told him he was free to go and went
3 into the flower shop, how long a time period was
4 that?
- 5 A. I'm sorry. Can you restate the question?
- 6 Q. From the time you initially stopped the
7 defendant until the time you said you are free to go
8 and he got out and went into the flower shop how much
9 time elapsed, would you say?
- 10 A. 10, 15 minutes. Maybe not even ten minutes.
- 11 Q. Once him and his son go into the flower shop
12 what happens after that?
- 13 A. Basically what happens after that Corporal
14 Middleton can pretty much better testify.
- 15 We were walking back toward our vehicles and
16 basically in plain view there was located in the seat
17 -- up underneath the seat the silver end of the
18 barrel of a handgun which was in plain view of the
19 vehicle.
- 20 Q. When you say in "plain view", where was it?
21 On the driver's seat, you said?
- 22 A. Yes. We actually saw it walking back to the
23 vehicle. The sunlight was shining on the car and --
- 24 Q. Who saw the gun first?
- 25 A. Corporal Middleton did.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 13

1 Q. Where was he -- how did he see it?

2 A. We were in front of the defendant's vehicle,
3 I believe just observing the defendant walking in the
4 store. We were talking about other things and we
5 were walking back to our cars.

6 Basically, like I said, the sunlight, for
7 myself, and it was right there in plain view.

8 Q. What did you do once you saw that gun
9 sticking out from under the driver's seat?

10 A. Well, actually the defendant saw us once we
11 were there and started walking back towards the door,
12 at which time we said: Hey, we have a separate
13 incident here. We see a gun in plain view. We just
14 went ahead and grabbed him there when he came to the
15 door.

16 Q. And placed him under arrest?

17 A. For the firearm. Correct.

18 Q. Once you placed him under arrest for that
19 what did you do from there?

20 A. Basically he was Mirandized. And for our
21 standard operating procedure we run all firearms
22 through NCIC to inquire their valid status, and this
23 firearm came back as a stolen firearm identical to
24 the serial number that I had this faxed back to me
25 being a stolen status from Berkeley County.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 14

1 Q. Once you arrested him for that gun charge did
2 you do anything else with the car?

3 A. There was pretty much just a search incidence
4 arrest. Inventory of vehicle -- since it was a
5 rental car we didn't want to try to have the vehicle
6 towed. We couldn't get in contact with anyone. I
7 believe it was a Budget rental car. And located in
8 the center console of the vehicle was five separate
9 baggies, and approximately 70, 75 grams of cocaine
10 was weighed and was positive for cocaine.

11 Q. That was found in the center console?

12 A. In the center console. The armrest of the
13 vehicle.

14 MR. BIANCHI: The Court's indulgence.

15 BY MR. BIANCHI:

16 Q. The windows of the Jaguar that you pulled,
17 were they tinted?

18 A. Yes, sir.

19 Q. Real quick I'm going to show you two exhibits
20 that have been marked for identification from the
21 State.

22 First off, State's Exhibit 1, do you
23 recognize this?

24 A. Yes, sir. That's the items I placed in our
25 evidence locker.

OFFICER TROY BUTLER - CROSS EX. BY MS. GAY 15

1 Q. And I show you real briefly what has been
2 marked for identification as State's Exhibit 2, and
3 do you recognize this?

4 A. Yes, I do.

5 Q. And what is that?

6 A. That is the 9 millimeter Taurus handgun that
7 was located in the defendant's vehicle.

8 MR. BIANCHI: Thank you very much. No
9 further questions. Please answer anything that
10 defense may have.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MS. GAY:

14 Q. Officer Butler, pursuant to your stop in this
15 case you prepared a report or an incident report for
16 the records in this case, didn't you?

17 A. Yes, I did.

18 Q. You have had occasion to review that pursuant
19 to this trial, haven't you?

20 A. Yes, ma'am. Being that it was almost two
21 years ago or a little over two years ago, I tried to
22 refresh my memory on it, yes, ma'am.

23 Q. So when you read this report and when you
24 initially -- let me ask it this way: This report was
25 contemporaneously created at the time of this arrest

1 around -- I think it was created on the 28th of 2004.
2 So sometime shortly after this arrest you created the
3 report?

4 A. Yes, ma'am. It was probably no longer than a
5 couple of hours maybe, given there was some
6 identification issues that I had to go through with
7 the defendant.

8 Q. Now, in your report -- I'm sure when you went
9 to the Academy they told you to write pertinent
10 information down.

11 A. Yes, ma'am.

12 Q. To write the things that would be
13 important --

14 A. Yes, ma'am.

15 Q. -- to the stop. Write as much detail as you
16 can remember on stuff.

17 A. Yes, ma'am.

18 Q. Because, as you said, this has been two years
19 ago and you may or may not have personal recollection
20 about the incidents that happened years back.

21 A. Correct.

22 Q. I have had occasion to review this report,
23 and this report doesn't mention anything about a dog,
24 does it?

25 A. Yes, ma'am. No, it does not.

OFFICER TROY BUTLER - CROSS EX. BY MS. GAY 17

1 Q. It doesn't mention that you were even a K-9
2 Unit?

3 A. Yes, ma'am.

4 Q. It doesn't mention anything?

5 A. You are correct.

6 Q. And so at no point in this report does it say
7 that you ever had an occasion to have your dog walk
8 around Mr. Johnson's car?

9 A. That's correct.

10 Can I elaborate a little bit on that?

11 Q. The question is it's not in the report.

12 A. Yes, ma'am. There is a reason for that. If
13 I can elaborate for the Court, please.

14 THE COURT: If you would like to elaborate,
15 that's fine.

16 A. I would like to elaborate on that being based
17 solely on that I felt that it was not pertinent,
18 being that the location of the gun and the law states
19 in the plain view doctrine -- it was a totally
20 separate incident. However, it may have came down to
21 that's how I stopped the vehicle. That's just part
22 of my regular procedure. That's a whole separate
23 incident report that we normally do for our
24 procedures, canine reports. It wasn't very pertinent
25 to me that I place that in the incident report, being

1 that it was a totally separate incident. He was free
2 to leave.

3 Q. Let's back up a minute.

4 And just in general based on what you just
5 said is it a fair assessment to say that you had no
6 articulable suspicion about Mr. Johnson doing
7 anything criminal based on your dog's behavior?

8 A. Based solely on the dog, yes, ma'am.

9 Q. So whatever happened with that dog and when
10 it moved around the car, there was nothing about that
11 that created any articulable suspicion in your mind
12 that he had anything to do with the criminal
13 activity?

14 A. I wouldn't say that, ma'am. I wouldn't say
15 that. Basically --

16 Q. You didn't make any arrest -- or you didn't
17 do anything further with Mr. Johnson from what
18 happened with your dog?

19 A. No, ma'am. Actually the case with the drugs
20 stemmed from the claim that the firearm that he had
21 in plain view of the vehicle.

22 Q. I'm talking about the dog right now.

23 Ultimately in this report there is no mention
24 of there being anything about your dog having
25 searched -- what do they call it, a swipe?

OFFICER TROY BUTLER - CROSS EX. BY MS. GAY 19

1 A. No, ma'am. A drug sniff.

2 Q. And the drug sniff, it's not mentioned and
3 there is nothing about there being any type of alert,
4 positive, 100%, less than a hundred percent? Nothing
5 is mentioned in this report. It's not mentioned in
6 the report.

7 A. No, ma'am, it's not. No.

8 Q. I want to go back to the beginning. I
9 believe that -- I have checked the report and I know
10 about times here, and I believe that this incident
11 started approximately 3 o'clock or so in the
12 afternoon on January 28, 2004.

13 A. I'm just looking at dispatch records. Yes,
14 ma'am. You are correct.

15 Q. That's about 3 o'clock in the afternoon?

16 A. Yes, ma'am.

17 Q. And it's daylight?

18 A. Yes, ma'am. That's not zula time. Zula time
19 is 1535. That would be around 3:30.

20 Q. Around 3:30 in the afternoon?

21 A. Yes.

22 Q. You said that you were traveling eastbound
23 toward Charleston on Rivers Avenue.

24 A. Yes, ma'am, I was.

25 Q. And when you first saw the vehicle, the

1 vehicle was a gray in color Jaguar.

2 A. Like a silverish gray. I mean, I'm not good
3 with -- it was silver, silver gray.

4 Q. And that particular Jaguar had a license
5 plate on it, obviously.

6 A. Yes, ma'am.

7 Q. Your testimony is that that was a problem
8 with his car.

9 A. Yes.

10 Q. Did you have an occasion during the time that
11 you were traveling down Rivers Avenue to run the
12 license plate of this car through any type of check?

13 A. No, I did not.

14 Q. So you did not check the license plate
15 number?

16 A. No, ma'am, I did not.

17 Q. So at that time you would not have known that
18 that particular license plate was registered to
19 Enterprise Rent-A-Car?

20 A. No, ma'am. That wasn't the reason why -- no,
21 ma'am.

22 Q. As you were traveling down Rivers Avenue was
23 there an occasion where you were beside the Jaguar?

24 A. Yes, there was.

25 Q. When you were beside the Jaguar, that's when

OFFICER TROY BUTLER - CROSS EX. BY MS. GAY 21

1 you noticed that a black male, Terrance Johnson, was
2 driving the car?

3 A. Yes, ma'am.

4 Q. Now, at that point when you were beside the
5 car do you remember what intersection you were at?

6 A. No, I do not.

7 Q. If I said it was somewhere around the CVS/gas
8 station on Rivers Avenue, would that refresh your
9 recollection about the event?

10 Do you know where that gas station is on
11 Durant?

12 A. The CVS drugstore, yes.

13 Q. The CVS drugstore.

14 A. What are you inferring?

15 Q. Do you recall whether that was the area where
16 you may have been next to the car, the Jaguar?

17 A. It may have. I don't recall, ma'am.

18 Q. Approximately how much further down the road
19 from that intersection is the flower shop?

20 A. I don't know, ma'am.

21 Q. A mile, half a mile?

22 A. I don't even want to speculate. I don't
23 know.

24 Q. From the time you noticed the silverish in
25 color Jaguar with the black man driving it until the

1 time you actually made the stop how far was it in
2 distance?

3 A. Less than a mile. The speed limit on Rivers
4 Avenue is 35 miles an hour. I don't really know 100%
5 how far.

6 Q. So you see the car. It's a Jaguar. You see
7 the driver, a black male driving the car, and in less
8 than a mile later this car pulls off of Rivers Avenue
9 into the parking lot and the flower shop.

10 Isn't that what happened?

11 A. Yes, ma'am.

12 Q. At no point during that period of time did
13 you ever put your blue lights on, did you?

14 A. No, I did not.

15 Q. So you never actually blue-lighted this car
16 pursuant to the fact -- before he pulled up in the
17 driveway of the flower shop?

18 A. Actually when he began to switch lanes that's
19 when I was like: Look, I'm going to lose him here.
20 Basically I'm observing the car.

21 MS. GAY: This is Defendant's Exhibit 4.
22 This is a picture which I have showed the State of
23 the flower shop which I would like to talk to him
24 about.

25 BY MS. GAY:

1 Q. Do you recognize this?

2 A. Yes, ma'am, I do.

3 Q. Can you describe to me what this is.

4 Is this the flower shop that he stopped in
5 front of?

6 A. Yes, ma'am. It appears to be.

7 Q. You can just kind of tell me and then we'll
8 show it to the judge in a minute.

9 As Mr. Johnson was traveling down Rivers
10 Avenue you said you were beside him.

11 A. You said I was beside him. I agreed with
12 you, ma'am. Yes, ma'am, I was. I was going with
13 regular traffic, observing everything around me, not
14 just the defendant here. At no point in time did it
15 ever cross my mind that, as you say or said, that
16 Mr. Johnson was a black male. Two days ago before
17 that I arrested a white man coming out of the
18 neighborhood with approximately the same amount of
19 narcotics that was found in the defendant's vehicle.

20 Q. What I'm trying to get to: As you were
21 traveling down the road there were periods of time
22 when you were beside the vehicle and there were
23 periods of time when you were behind the vehicle.

24 A. There were periods of time when I was beside
25 the vehicle, yes, ma'am.

1 Q. And when you stopped this car, I understand
2 from your report and from your testimony that you
3 said that it had a tag obstruction.

4 A. Yes, ma'am, it did.

5 Q. And what that would mean is that you had a
6 difficult time seeing the numbers on the tag?

7 A. Correct.

8 Per State law you have to be able to read the
9 month and year sticker on the registration of the
10 vehicle tag.

11 Q. Is that a violation? In other words, can you
12 actually write a ticket to somebody for that
13 violation? Do you know what that code section is?

14 A. Not off the top of my head. There are so
15 many 56 codes. However, there is a violation where
16 you can issue a citation. Normally I don't.

17 Q. That was going to be my question.

18 Have you ever issued a citation for that?

19 A. I have. As I have gotten older and years go
20 by in law enforcement, I don't like giving people
21 citations for, you know, something as such. They
22 need to be aware of it, is what I'm talking about.
23 So basically you make somebody aware of it, or it may
24 be a tag light that's out or a brake light that --
25 they need to be aware of it. It's not something I

1 would normally give a ticket for.

2 Q. So it's not really a moving violation?

3 A. No, ma'am.

4 Q. When he pulled into this driveway, you don't
5 have your blue lights on?

6 A. I do at the time we are in the driveway.

7 Q. Not yet.

8 When he pulled into this driveway you didn't
9 have your blue light on?

10 A. Well, I was behind him, so I was turning them
11 on.

12 Q. So you said as y'all are coming in the
13 driveway you had your blue light on?

14 A. Remember what we were talking about? When I
15 was beside him he actually was in another lane, so I
16 had to get over. Then he abruptly turned into the
17 flower shop. So I actually had to -- if you see
18 right here where Rivers Avenue is, adjacent to the
19 sidewalk and a little bit of parking spaces here,
20 half of my car is basically sticking out of the
21 roadway and I had to give myself some time to
22 activate my blue lights and so forth.

23 Q. So when he pulled up, he actually pulled up
24 next to the building?

25 A. The front of the building. I believe so,

- 1 yes, ma'am.
- 2 Q. And your car was on the other side of his car
- 3 closer to Rivers Avenue?
- 4 A. Kind of at a diagonal, yes, ma'am.
- 5 Q. And at that time, that minute, what you were
- 6 planning to do was talk to him about this equipment
- 7 violation. It was not a moving violation, but an
- 8 equipment violation about this obstructed tag.
- 9 A. Totally, yes, ma'am.
- 10 Q. That's what you thought?
- 11 A. Yes, ma'am.
- 12 Q. So at the time that you got out of your
- 13 vehicle and Mr. Johnson got out of his vehicle --
- 14 because you said he got out of his vehicle -- he had
- 15 not committed any type of moving violation. He
- 16 hadn't sped. He wasn't speeding, was he?
- 17 A. Not that I can recall.
- 18 Q. He hadn't swerved lanes or put his tires into
- 19 the center line or anything like that?
- 20 A. I really can't speculate that, ma'am.
- 21 Q. Well, I'm asking you --
- 22 A. All I know is the reason why I stopped him is
- 23 the vehicle violation.
- 24 Q. So there was no other thing that he did that
- 25 would have been illegal at that time?

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1 I mean, a lot of times when you stop people
2 for equipment violation, they might also have been
3 speeding or done something, made an illegal turn.
4 That was not the case with Mr. Johnson?

5 A. No.

6 Q. Now, you had testified on direct that his
7 child who is nine years old who was part of this stop
8 was sitting in the passenger seat of the Jaguar,
9 wasn't he?

10 A. As I recall, yes, ma'am.

11 Q. He never got out of the car when you stopped
12 him, did he? The little kid.

13 A. No, not that I recall.

14 Q. So when Mr. Johnson got out of his car and
15 walked around to the passenger seat, he was actually
16 -- where he walked is where his child was sitting on
17 that seat. He opened the passenger door, and that's
18 where his child was sitting.

19 A. Yes, ma'am, which seemed kind of weird
20 because he looked over --

21 Q. I understand it seemed weird, but that is
22 what he did?

23 A. Yes.

24 Q. You said that pursuant to the fact that you
25 got out of his vehicle and he had gotten out of his

1 vehicle, that you then thought it was somewhat
2 suspicious because he reached into the glove
3 compartment from the passenger side.

4 A. Yes, ma'am. The standard for law enforcement
5 -- there is really nothing in the norm. Everything
6 is different all the time. The standard rules for
7 the law in South Carolina is not for the occupants of
8 a vehicle to exit. It's always -- I believe
9 everybody knows this. Basically the officer always
10 approaches the vehicle. So it did seem kind of
11 weird.

12 Q. However, in the many arrests or stops that
13 you have ever done it's happened before where people
14 have gotten out of their car?

15 A. Yes, and normally they flee from there.

16 Q. This man didn't flee, but he did stand out of
17 his car?

18 A. There again, he was distancing himself from
19 the narcotics and weapon.

20 Q. That's your opinion, and I understand that.
21 But --

22 A. I didn't know that at the time.

23 Q. But what happened factually is he stopped his
24 car; got out of his vehicle and walked around to the
25 side where his child was sitting? That's factually

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1 what happened?

2 A. That's factually what happened, yes, ma'am.

3 Q. And pursuant to your discussions with him
4 he's handing you paperwork. You then took --

5 A. Yes, ma'am.

6 Q. You took his paperwork, which I believe would
7 have been the registration and his license.

8 Did you then ask him to sit back in his car?

9 A. Yes, ma'am.

10 Q. Did he comply?

11 A. Yes.

12 Q. And did you at any point ever tell him to put
13 his hands on the steering wheel?

14 A. Later on during the drug sniff of the
15 vehicle, just so that I didn't have to ask him and
16 his son to both exit the vehicle.

17 Q. We are not there yet.

18 At that time you didn't ask him to put his
19 hands on the steering wheel?

20 A. No. There is no reason for me to make him
21 uncomfortable. The only reason I would ask him to do
22 that is if I was at a disadvantage and --

23 Q. I got you.

24 So at that point when you said sit back in
25 the car, he complied, and you took his paperwork and

1 his license to your car where you then ran his
2 license number and looked at the registration?

3 A. Uh-huh.

4 Q. Right?

5 A. Yes, ma'am.

6 Q. I believe your testimony is at that point
7 that he had a valid South Carolina driver's license.

8 A. He was identified, yes, ma'am, by the South
9 Carolina --

10 Q. And that license that he had was not
11 suspended?

12 A. No, ma'am, it was not.

13 Q. And he had one in his possession, so it
14 wasn't as if he was operating with no driver's
15 license. He had actually possessed a license.

16 A. Yes, ma'am.

17 Q. And the registration was a registration to a
18 rental car place, not to the man who you had his
19 license in his hand?

20 A. I'm sorry?

21 Q. The car was registered to Enterprise
22 Rent-A-Car?

23 A. Correct.

24 Q. And you would have known that at the time?

25 A. At a later time.

1 Q. You didn't know that that minute?

2 A. No, ma'am.

3 Q. So when you are sitting in your car and he
4 and his son are sitting in that car, the Jaguar,
5 that's when you made the decision to call for backup?

6 A. No. Actually it just started with the
7 furtive movements before I had actually gotten out of
8 my vehicle.

9 Q. When you stopped your car at the flower shop
10 and he got out of his car, after you have already
11 blue lighted him and made your traffic stop, that's
12 when he had some diverted movements?

13 A. Furtive.

14 Q. Those were movements that were causing you to
15 have suspicion?

16 A. Yes, ma'am. As I was observing the vehicle
17 that's why -- I mean, lawfully you can't stop a
18 vehicle without a violation. I am observing the
19 vehicle; observing what is going on in the vehicle;
20 observing everything that is going on around this
21 vehicle.

22 Q. And you stopped him for an equipment
23 violation?

24 A. Yes, ma'am, I did.

25 Q. You are there in your car. You at some point

1 make a decision to call for backup?

2 A. Yes, ma'am. When he exited the vehicle kind
3 of abruptly, it kind of sent up a red flag for me.

4 Q. Did you call for backup before you exited
5 your vehicle?

6 A. I didn't have time really because I wanted to
7 be more -- I had to make sure we had some eye contact
8 to make sure that whoever was in the car was coming
9 out of the car.

10 Q. I understand.

11 Once he handed you his paperwork that's when
12 you called for backup?

13 A. No, ma'am.

14 Q. Not yet? So when did you decide that you
15 wanted to have your dog sniff it?

16 A. If I can clarify. It's not -- actually at
17 which point he exited the vehicle, I'm almost
18 positive I requested -- I called out my location to
19 go ahead and start me Code 3 Unit, which is a 10 code
20 for backup.

21 Q. A Code 3 Unit would be called in because you
22 thought maybe there was some criminal activity going
23 on?

24 A. No, ma'am. It's not safe to do a vehicle
25 stop with just one person.

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1 Q. I understand that. That's my point, is that
2 you decided in your mind to bring in somebody else,
3 but it wasn't because you had any type of suspicion
4 that Mr. Terrance Johnson had committed any crime at
5 that point; right?

6 A. I mean -- no.

7 Q. So once you are looking at his paperwork and
8 you find out that he has a valid driver's license,
9 was it at that point that you decided to have your
10 dog do a drug sniff?

11 A. Yes, ma'am. Like I said before, it's just
12 really for training purposes for the dog. It's not
13 really based on criminal activity. It's something if
14 you are a canine officer you just try to do on a
15 normal routine basis.

16 Q. And you do carry a dog. I understand that.

17 A. Yes, ma'am.

18 Q. You made the comment in direct that you dog
19 sniff all of your cars.

20 A. Not --

21 Q. You did say that.

22 A. The majority of them. —

23 Q. So Mr. Johnson has done nothing specifically
24 wrong at this point, but you have decided based on
25 your dog being there -- it's a pretty day. You are

1 going to give this dog an opportunity to walk around
2 this car.

3 A. Yes, ma'am, because it's not a violation of
4 his rights.

5 Q. I understand that. I am not disputing that.

6 Now, my question is that before you told
7 Mr. Johnson that you were going to have your dog walk
8 around the car did you give him his paperwork back?

9 A. I felt as thought -- no. The case law is
10 basically --

11 Q. That's not the question.

12 Factually did you hand him his driver's
13 license back?

14 A. No.

15 Q. You still had his driver's license at the
16 time that your dog did the drug sniff?

17 A. Yes, ma'am.

18 Q. I'm assuming that what happened was that you
19 left your vehicle; you walked up to the driver's side
20 door, which is where Mr. Johnson was sitting, and did
21 you tell him that you were going to have the dog
22 come?

23 A. Yes, ma'am, I did.

24 Q. And at that time you were literally -- he's
25 got his window down in the driver's seat and you are

1 standing there right next to him. He's sitting in
2 the car and you are talking to him.

3 A. Yes, ma'am.

4 Q. At that point when you told him that you were
5 going to bring your dog, that's when you said for him
6 to place his hands on the steering wheel?

7 A. I think it was somewhere around that time.

8 Like I said, I placed myself at a
9 disadvantage trying to read my dog -- take my
10 attention away from the threat.

11 Q. Had Middleton arrived at that point?

12 A. Yes, ma'am. He had already arrived.

13 Q. Now, one other question.

14 Was there any point where you actually patted
15 Mr. Johnson down?

16 A. Yes, there was.

17 Q. Was that before or after the dog?

18 A. That was before the dog.

19 Q. Let's talk about that for a minute.

20 You describe the fact that he was standing by
21 the passenger door and then you asked him to sit back
22 in his car, and at that point he went and obliged and
23 sat in his car?

24 A. Right.

25 Q. Between the time he was walking from the

1 passenger side to the driver's side, is that when you
2 patted him down?

3 A. Yes. When we came back to the driver's side
4 of the vehicle, being that he exited the vehicle in
5 an abrupt manner, basically I just did a pat down.

6 Q. Did you tell him you were going to do that?

7 A. Yes.

8 Q. So you said: I would like to pat you down?

9 A. I think it was something along the lines that
10 I usually pat you down for any contraband, weapons,
11 whatever.

12 Q. During that actual physical pat down you
13 didn't find anything on Mr. Johnson?

14 A. I believe there was an amount of cash or
15 something that was located on his person.

16 Q. There is nothing written in your report that
17 says you found anything pursuant to a pat down.

18 A. No, ma'am.

19 Q. So back to where we were before.

20 You decided to bring the dog out. You walked
21 up to his car. You are standing in the driver's
22 window basically talking to him and you say --

23 A. No, not with the dog.

24 Q. But you are going to tell him you are going
25 to go get your dog?

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1 A. Yes, ma'am. I am not standing there with the
2 dog as a threatening manner.

3 Q. You said that Officer Middleton was already
4 there.

5 At what point did Middleton arrive on the
6 scene? What were you doing? Is that when you were
7 checking his driver's license?

8 A. Yes, ma'am. Correct. It was somewhere
9 between a minute and two minutes maybe.

10 Q. Did you ever have occasion to talk to
11 Middleton on the radio while you were in your car, or
12 did you just wait and talk to him in person?

13 A. No, ma'am. Like I said, the defendant exited
14 his vehicle so quickly, I really didn't have time for
15 anything as far as --

16 Q. So you're sitting there and you're checking
17 his driver's license and Middleton has driven up.

18 Did he get out of his car and come and talk
19 to you?

20 A. He didn't come and talk to me right then and
21 there. He just stood as a backup officer's position,
22 just back behind me a little bit.

23 Q. So he's in a backup officer's position. You
24 told Mr. Johnson that you are going to have the dog
25 alert. You have asked him to put his hands on the

1 steering wheel, and that's when you went and got your
2 dog out of the car?

3 A. Yes, ma'am. Like I said, I asked him for
4 protective purposes for myself and Officer Middleton
5 to place his hands on the steering wheel so that they
6 can be displayed for the back-up officer while I did
7 the drug sniff of the vehicle.

8 Q. Now, when you did that -- we can go on and on
9 about what you think, but ultimately in your report
10 there is no occasion where that dog alerted to the
11 car to create any type of either speculative -- you
12 know, reasonable suspicion or even probable cause.

13 A. There was. You know, you can't say 100% --
14 there was. I probably pulled the dog off an alert
15 based on the claims that I've had brought against me
16 of my dog, being an aggressive alerted dog --
17 basically Internal Affairs has contacted me saying we
18 have a complaint, somebody saying we have scratched
19 up their car.

20 The truth be known, a dog is not a reason --
21 you can't reason with an animal. The truth be known,
22 I probably -- it was a handler error. I probably
23 pulled the dog off of an alert because of the newer
24 -- the vehicle was new.

25 Q. But factually at this point you are not

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1 presenting evidence today that this dog alerted for
2 you to have either probable cause or reasonable
3 suspicion that something criminal was going on.

4 A. To be honest with you, ma'am, the reason why
5 your defendant is here today is because the weapon
6 was in plain view.

7 Q. I understand that, but we haven't gotten
8 there yet.

9 I'm saying when the dog went to your car,
10 nothing about that -- that alert did not cause you to
11 create more activity in Mr. Johnson's car?

12 A. It did. But there again, based on all the
13 circumstances -- I could just let my dog sit there
14 and scratch on the car all day long. I can tell you
15 factually that my canine has been certified --

16 Q. I understand that.

17 A. -- animal protection of narcotics.

18 Q. We keep going around the same thing.

19 Reality was at that time maybe you thought
20 after the fact: Oh, gosh. I should have let the dog
21 do some more sniffing, but at that point it didn't
22 create any probable cause for you to want to search
23 his car further.

24 So ultimately then you decide -- as
25 Mr. Middleton, Officer Middleton, walked up to the

1 car, at this point did he have any communication with
2 Mr. Johnson?

3 A. Officer Middleton?

4 Q. Yes. Did he ever communicate with
5 Mr. Johnson?

6 A. I don't believe so, ma'am. You would have to
7 ask him that. I don't recall that.

8 Q. So at that point is when you ended the
9 traffic stop and you said: Hey, you are free to go.

10 A. Pretty much, yes, ma'am. Yes, ma'am.

11 Q. And at that point I believe what happened
12 next is Mr. Johnson and his child walked into the
13 flower shop.

14 A. Correct. Yes, ma'am.

15 Q. You were walking up to the door of the flower
16 shop with him.

17 A. No. I was just basically -- I was going to
18 walk around the car to get back to my vehicle.

19 Q. When you said you were walking around the
20 car, did you have to walk around the back of the car
21 or the front of the car?

22 A. I walked around the front of the car.

23 Q. So your position was that you had to walk
24 around the front of the car to get back to your car
25 because of where you were standing?

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1 A. Yes, ma'am. Because the way our cars were
2 positioned, that was just the most reasonable way to
3 go. That's all.

4 Q. Your testimony is that you were not the
5 officer who actually saw the shiny object in the car.

6 A. No. I later saw it once it was brought to my
7 attention. It wasn't that we had to actually like
8 peer in the car. The gun was in plain view.

9 Q. My point is that you are not the one who
10 initially saw it?

11 A. No, ma'am, I am not.

12 THE COURT: We are way beyond lunchtime. We
13 are going to take a lunch break.

14 We are going to break for lunch until 2:15.

15 Officer, during the break please do not
16 discuss your testimony with anyone.

17 MS. GAY: Specifically with the solicitor.
18 I'm sure he knows that.

19 THE COURT: I have instructed him.

20 Sir, the jury has been sworn. If you do not
21 return, a bench warrant will be issued for your
22 arrest. In addition to that, this trial will
23 continue and you will be tried in your absence.

24 Do you understand that?

25 THE DEFENDANT: Yes, ma'am.

1 MR. KNISLEY: For the record, I know you just
2 ruled on that, but we would request that he be taken
3 into custody. The seriousness of the situation,
4 Judge --

5 THE COURT: The jury has been sworn, so I
6 think we probably have to take him into custody.

7 MS. GAY: I would ask you to reconsider that,
8 but it's up to you.

9 THE COURT: There is no statutory authority
10 for me to do it. Once the case is called any
11 obligation on the bond has ended.

12 We'll be at ease until 2:15.

13 (Lunch recess at 1:20 - 2:30 p.m.)

14 THE COURT: Is there any exception to me
15 going into the jury room and telling them that the
16 matters of law have extended themselves? And I'm
17 going to give them 30 minutes to walk around or do
18 whatever they want to do so they are not sitting in
19 the room.

20 MR. BIANCHI: None from the State, your
21 Honor.

22 MS. GAY: No, your Honor.

23 THE COURT: I'll be right back.

24 (Short recess taken.)

25 THE COURT: If the officer would retake the

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1 stand.

2 Sir, I would remind you that you are still
3 under oath.

4 MR. KNISLEY: Your Honor, can counsel
5 approach for one moment?

6 THE COURT: Yes.

7 (Bench conference held off the record.)

8 THE COURT: We will be at ease for just a
9 moment.

10 (Short recess taken.)

11 THE COURT: You can be seated.

12 Officer, if you would retake the stand,
13 please.

14 Ms. Gay, you may continue with your
15 cross-examination.

16 BY MS. GAY:

17 Q. Officer Butler, before we took a lunch break
18 we were discussing this situation and we had gotten
19 to the point where you had told my client,
20 Mr. Johnson, that he could go.

21 What exactly did you say to him? What
22 specifically did you say?

23 A. I don't recall.

24 Q. Do you recall in your police report that you
25 said -- I'm going to look at the police report for

1 just one second.

2 I think you said in your police report that
3 he just walked away and entered the flower shop. So
4 you don't recall specifically telling him --

5 A. Where are you seeing this?

6 Q. That is the narrative, Page 2, the second
7 paragraph.

8 A. Where do you see that?

9 Q. Right here.

10 A. Yes, ma'am. He was issued a verbal warning.

11 Q. What it says is that he was issued a verbal
12 warning but not cited, and then it says he entered
13 the flower shop with his son. That's what the report
14 says?

15 A. Yes.

16 Q. And you said -- your testimony was that you
17 didn't recall specifically what you said to him at
18 that time, but certainly he walked in the flower shop
19 and shut the door.

20 A. I believe the door was closed behind him,
21 yes, on a shock.

22 Q. Now, from the time that that door went closed
23 and you and Officer Middleton were walking around the
24 front end of the car to get to your vehicle how much
25 time elapsed?

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1 A. Between the time that he was walking inside
2 the store --

3 Q. I'm having a hard time hearing you. If you
4 could speak up.

5 A. Between the time frame of him walking inside
6 the store --

7 Q. Yes.

8 A. -- and us leaving the scene?

9 Q. Right.

10 A. Or between the time frame when we noticed the
11 firearm in the defendant's vehicle?

12 Q. No. Between the time he walked in the door
13 and y'all proceeded to walk around the side of the
14 vehicle to go towards the front to get back to your
15 car.

16 A. We were almost directly behind him, ma'am.

17 Q. So we are talking seconds?

18 A. Right.

19 Q. So while you are standing there -- and
20 obviously Officer Middleton was standing with you at
21 the time -- within seconds is when as far as you know
22 something was said -- and I'm not asking you to
23 repeat what Middleton said -- about there being an
24 object or a gun.

25 A. Yes, ma'am. If I recall correctly, I put in

1 the incident report that we walked back toward our
2 patrol vehicles. We passed by the vehicle
3 passenger's side; and as I stated before, the glare
4 of the barrel -- I mean, the obvious handgun was in
5 plain view of the vehicle.

6 Q. I understand that that is your position.
7 I understand that that is what you keep referring
8 to, but basically you are saying that somebody saw
9 it.

10 A. Yes, ma'am. We both saw it.

11 Q. Earlier you said you didn't see it, but you
12 said Middleton saw it?

13 A. I mean, we both saw it. Officer Middleton --
14 Corporal Middleton obviously was bringing that to my
15 attention that it was a crime and he needed to be
16 arrested for it.

17 Q. So seconds from when he walked in the door,
18 and you are walking past the passenger side there is
19 something seen.

20 Now, I've read your report and I've listened
21 to your testimony.

22 A. Yes, ma'am.

23 Q. What you just said to me is that y'all saw a
24 gun in the passenger window.

25 A. Yes, ma'am.

1 Q. When you go through your report -- and if you
2 need to review your report you can -- that this
3 report was contemporaneously done with this arrest.

4 Isn't it true that it says that you saw
5 something shiny through the passenger window and that
6 you then had to look through the windshield of the
7 car down through into the driver floorboard to see
8 the gun?

9 A. Yes, ma'am. That was the verbiage that was
10 placed in the incident report, but there was no doubt
11 -- obviously we had to confirm what we believed that
12 we saw was in fact a firearm. What we observed from
13 plain view from the vehicle was the firearm, and we
14 confirmed that.

15 Q. So it is your testimony today that when you
16 -- both of you looked or specifically you looked in
17 the passenger window and you saw a gun under the
18 driver's seat.

19 A. Yes, ma'am, with the barrel -- I can show
20 you. It's a very shiny handgun.

21 Q. So when you say the "barrel", are you saying
22 an inch and a half of it?

23 A. No, ma'am. There was a portion of the slide
24 of the firearm there as well as the barrel. I think
25 there was a small portion that protrudes out of the

1 -- if you want to take a look at it -- as well as the
2 slide. It was all in plain view.

3 Q. But then specifically in your report it says
4 -- were you the officer that went around and looked
5 through the windshield of the car down into the
6 driver's seat, or did Corporal Middleton do that?

7 A. All it was, ma'am, was just basically he was
8 going his way, I was going my way, and basically just
9 passing by and there is a handgun. I believe it was
10 relayed that there was a handgun in the vehicle.

11 "Middleton, you are correct. There is a handgun in
12 the vehicle. We need to get this guy out of the
13 store now."

14 Q. Which officer or which one of y'all is the
15 one who actually looked through the windshield of the
16 car to confirm that it was a handgun into the
17 driver's floor?

18 A. It wasn't --

19 Q. Was it you?

20 A. I'm going to answer your question.

21 It wasn't even a looking into -- I mean, it
22 was like -- it was enough room for both of us to be
23 there and partially glance.

24 Q. This is through the windshield into the
25 driver's floor?

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1 A. It's -- like I said, ma'am, you didn't have
2 to actually look in anything. We just got closer to
3 the window and confirmed what we saw being a handgun.

4 Q. What I am trying to figure out is when you
5 confirmed that it was a handgun.

6 Was it through the passenger window or the
7 windshield?

8 A. You could confirm that through both ma'am.

9 Q. Okay.

10 In your report specifically, though, it says
11 that the windshield was looked through.

12 A. I apologize. That was the verbiage that was
13 used. I mean --

14 Q. It's there.

15 A. Yes, ma'am, it is.

16 Q. And in this particular situation you said
17 that you would have had to have confirmed that it was
18 a gun. You had to look down into the window and say
19 "yes, that's a gun", and that's when you say
20 Mr. Johnson came out of the flower shop to see what
21 y'all were doing.

22 A. Well, can I just bring a point of view -- if
23 you drop a piece of shiny change on the floor, you
24 know it's a piece of change, but you might not know
25 if it's a dime or a nickle, so you get a little bit

1 closer. That's what I'm trying to say, is we didn't
2 have to veer -- we knew it was a handgun, ma'am. It
3 was a handgun in plain view that the defendant had in
4 the vehicle.

5 Q. And this is the same vehicle that 30 seconds
6 before he had -- just a few seconds before he had
7 exited to go into the flower shop after your traffic
8 stop? The same car.

9 A. Yes, ma'am.

10 Q. And after he came out and y'all placed him
11 under arrest did you ask him to open up the car, or
12 did you take the keys from him?

13 A. No, ma'am. At that time knowing what we had,
14 by the law we just did everything by the book.

15 Q. What does that mean? You took the keys from
16 him and opened the car?

17 A. Basically he was placed under arrest. He was
18 Mirandized and basically the inventory of the vehicle
19 was conducted for towing purposes.

20 Q. I'm not there yet.

21 Who took the keys from him to open up the
22 car?

23 A. I don't recall, ma'am.

24 Q. So when y'all went into the car and got the
25 gun out, the drugs were not right next to the gun?

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- 1 A. They were in proximity, very, very --
- 2 Q. They weren't sitting next to each other?
- 3 A. Proximity.
- 4 Q. That's not my question.
- 5 They weren't sitting next to each other?
- 6 A. No, ma'am.
- 7 Q. And ultimately your testimony is that
- 8 pursuant to the inventory of the vehicle they found
- 9 the drugs in the console of the car, the closed
- 10 console?
- 11 A. Closed armrest, yes, ma'am.
- 12 Q. Certainly we would agree that those drugs
- 13 were not in plain view?
- 14 A. No, ma'am.
- 15 MS. GAY: One moment, your Honor.
- 16 I have no further questions of this witness
- 17 at this time, your Honor.
- 18 THE COURT: Any redirect?
- 19 MR. BIANCHI: None, your Honor.
- 20 THE COURT: You may step down. Please call
- 21 your next witness.
- 22 MR. BIANCHI: The State calls Corporal
- 23 Middleton.
- 24 MR. KNISLEY: Officer Butler can remain;
- 25 correct?

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1 MS. GAY: Well, your Honor, he's not the case
2 agent.

3 THE COURT: If he's going to testify later in
4 the trial he has to be sequestered.

5 THE COURT CLERK: Sir, come forward, please.

6 Will you state your full name to the Court
7 and spell your last.

8 THE WITNESS: Tony Middleton,
9 M-I-D-D-L-E-T-O-N.

10 CORPORAL TONY MIDDLETON

11 being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BIANCHI:

14 Q. Good afternoon, Corporal Middleton.

15 On January 28 of 2004 did you have an
16 encounter with the defendant here?

17 A. Yes.

18 Q. And if you could for the Court just start at
19 how you got to the scene and just go through the
20 entire encounter.

21 A. Officer Butler requested a backup unit at
22 Rivers Avenue in reference to a traffic stop.
23 I arrived on the scene and he and the defendant
24 were pulled over in a flower shop, in the parking
25 lot. He advised me that he initiated the traffic

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1 stop, that the defendant was, you know, moving
2 around suspiciously inside the vehicle, you know.
3 I observed the defendant leaning over forward in
4 the driver's seat with his arms moving.

5 At that time Officer Butler asked him
6 to exit the vehicle. He talked with him and asked
7 him if he had anything illegal in the vehicle. He
8 asked for consent to search. The defendant
9 declined. He said no.

10 At that time he with his canine walked
11 around the vehicle. It looked like the dog had
12 made a hit on the passenger side door and then he
13 kept walking. At that time Officer Butler said:
14 Well, since his canine had made a hit on the car,
15 he told the defendant he had -- he had a plate,
16 like a cover type thing on his license plate that
17 was covering the year and the month, and that was
18 the reason why he stopped him. And he had given
19 him a verbal warning on that and told him he was
20 free to leave.

21 When he exited the vehicle -- I was
22 standing on the passenger side of the vehicle.
23 When he exited the vehicle I saw a shiny object on
24 the floorboard by the driver's seat, and I looked.
25 I told Butler -- I said: That's a gun down there.

1 He was surprised, you know. He walked over and he
2 said: It sure is.

3 By that time the defendant had walked
4 into the florist shop, and he came back to the door
5 and he opened the door and he walked out.
6 I grabbed him by his left wrist. Officer Butler
7 grabbed his right wrist. We escorted him to his
8 car and placed and cuffed him and detained him.

9 Q. I'm going to show you what has been marked
10 for identification as State's Exhibit 2.

11 Do you recognize this?

12 A. Yes, sir.

13 Q. And where do you recognize this from?

14 A. That was the handgun that was on the
15 floorboard of the defendant's vehicle.

16 Q. This was the gun that was taken from his
17 vehicle?

18 A. Yes, sir.

19 Q. Thank you very much.

20 The windows of this car, were they tinted?

21 A. No, sir.

22 Q. I'm going to bring State's Exhibit For
23 Identification No. 2 up real quick.

24 If you could with that gun show the Court how
25 much of the gun was sticking out from under the seat

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1 that you were able to see.

2 A. The whole weapon was visible. The whole
3 weapon was visible.

4 Q. Where is the car seat and the front of the
5 car seat?

6 A. If this was the car seat right here, the
7 weapon was just like this on the floorboard, on the
8 edge of the seat.

9 Q. So entirely exposed on the floorboard?

10 A. Yes.

11 Q. Thank you very much.

12 Going back to that day when the defendant
13 came back out, you said you took him into custody.
14 You arrested him then?

15 A. Yes.

16 Q. Could you go through what exactly happened
17 starting with when he came out of the flower shop.
18 Just go through until the end --

19 A. Well, I grabbed his left wrist; Officer
20 Butler grabbed his right wrist. He began to tense up
21 a little bit. We told him to relax. Don't think
22 about it. Don't try it.

23 We walked him to the front of the car; placed
24 the handcuffs over him. Officer Butler got the keys.
25 We got the door open. He retrieved the weapon. He

1 handed it to me and it had a clip. It was loaded.
2 One round was in the chamber. I ejected the round in
3 the chamber; rocked the slide back.

4 At that time Officer Butler began the search
5 of the immediate area of the vehicle, and he
6 discovered a bag that contained some white brick like
7 substance. He field tested it, and it was tested
8 positive for cocaine.

9 Q. Just to make sure we are clear, when you say
10 he gave you the keys and he handed you the gun, "he"
11 is Officer Butler?

12 A. Officer Butler handed me the weapon, yes.

13 Q. And where did he find those drugs?

14 A. It was in the center console of the vehicle.

15 MR. BIANCHI: No further questions, your
16 Honor.

17 Please answer any questions that defense
18 counsel has.

19 THE COURT: Ms. Gay?

20 CROSS-EXAMINATION

21 BY MS. GAY:

22 Q. Sir, when you got the call from Butler, where
23 were you located? Were you on Rivers Avenue or
24 somewhere else?

25 A. I was on Rivers and Cosgrove at the south

CORPORAL MIDDLETON - CROSS EX. BY MS. GAY

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1 precinct.

2 Q. Is that like half a mile from this place?

3 A. About that.

4 Q. And were you coming westbound or eastbound?

5 A. I was coming westbound.

6 Q. So you are coming up Rivers towards North
7 Charleston?

8 A. Right. Towards the city hall.

9 Q. And you would have made a left-hand turn to
10 go into the flower shop?

11 A. Well, I didn't go in it.

12 Q. I mean, to park in the parking lot.

13 A. I didn't park in the parking lot. I stayed
14 in the roadway by the curbside.

15 Q. This is Defendant's 4 for purposes of
16 discussion.

17 Do you recognize this?

18 A. Yes, ma'am.

19 Q. What is this?

20 A. That's the florist.

21 Q. This is the florist where all this happened,
22 in front of?

23 A. Yes.

24 Q. And this is a parking lot up in here and this
25 is Rivers Avenue. So your car wasn't parked up in

1 that parking lot?

2 A. I was parked on the curb.

3 Q. Of Rivers?

4 A. Uh-huh.

5 Q. So you were pulled up parallel to Rivers and
6 parallel to the flower shop?

7 A. Right.

8 Q. When you came up did you see the Jaguar
9 parked close to the building?

10 A. Yes, ma'am.

11 Q. And did you see Officer Butler's car sort of
12 parked kind of more towards the driveway that pulls
13 in, or where was his car parked?

14 A. If I'm not mistaken, his car was in this way.

15 Q. Parked --

16 A. Behind the defendant's vehicle.

17 Q. Now, looking at this picture could you please
18 describe to me where the front of the Jaguar was.

19 A. The front?

20 Q. Yes.

21 A. It was pointed towards the window.

22 Q. Towards -- there is a big pole right here.

23 Would the front of the Jaguar be faced to the
24 right of the pole or the left of the pole?

25 A. From my recollection, it was pointed this

CORPORAL MIDDLETON - CROSS EX. BY MS. GAY

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1 way.

2 Q. So it would have been pointed towards the
3 front door of this building?

4 A. Yes.

5 Q. So if it was pointing towards the front door
6 of this building -- and think this through because
7 I'm not sure. I wasn't there.

8 Was the driver's side closest to the door of
9 the flower shop or was the passenger side closest to
10 the door of flower shop?

11 A. The passenger side.

12 Q. The passenger side would have been closest to
13 the door of the flower shop?

14 A. Uh-huh.

15 Q. You got the call. You went up. You pulled
16 up off of Rivers Avenue to help this investigation or
17 whatever. Be present.

18 Was there any radio transmissions between you
19 and Officer Butler before you got out of your car?

20 A. No, ma'am.

21 Q. When you got out of your car, I think your
22 testimony was that Butler told you that there had
23 been some fidgeting going on in the car.

24 A. Yes, ma'am.

25 Q. Think this through for me: At what point did

- 1 he tell you that? What was going on with Mr. Johnson
2 when he told you I saw this defendant fidgeting in
3 the car?
- 4 A. When you said what was going on with him?
- 5 Q. Yes. Where was Mr. Johnson?
- 6 A. He was in the driver's seat.
- 7 Q. He was in the driver's seat?
- 8 A. Uh-huh.
- 9 Q. So did you actually observe Mr. Johnson get
10 patted down by Officer Butler?
- 11 A. I didn't see him get patted down.
- 12 Q. You didn't?
- 13 A. Not -- before I got there or after I got
14 there?
- 15 Q. After you got there.
- 16 A. After I got there? I can't recall him
17 patting him down. I know he asked him to exit the
18 vehicle. I heard him ask if there were any weapons
19 or drugs in the vehicle, and he asked if he could
20 search the vehicle.
- 21 Q. You heard all that, but you don't recall
22 whether or not you actually saw him physically pat
23 him down?
- 24 A. No, I don't.
- 25 Q. Then you said that Mr. Johnson said no.

1 There was no consent given.

2 A. Right.

3 Q. And then I believe you said at that time --
4 let me ask it this way: Did Officer Butler say
5 anything else to you after Mr. Johnson said no on the
6 consent to search?

7 A. No, he didn't.

8 Q. Where were you standing at that time?

9 A. My first position, I was behind the vehicle.
10 That's when --

11 Q. Behind the passenger back panel?

12 A. No. We met up at the trunk and we talked,
13 and then that's when Officer Butler started doing
14 what we call a field investigation of the subject.
15 Then when he went to have his dog walk around the
16 vehicle, then I was on the passenger side of the
17 vehicle.

18 Q. You had testified earlier that the passenger
19 side of the vehicle was the closest side to the door.

20 A. Uh-huh.

21 Q. Are you pointing towards the Rivers Avenue
22 side when you're saying you were standing by the
23 passenger side?

24 A. Towards this side. That's where the
25 passenger door was located.

1 Q. You said that he had his dog go around.

2 A. Yes.

3 Q. You are not a trained dog officer, are you?

4 A. No, ma'am.

5 Q. You would have absolutely no idea whether or
6 not a trained dog officer would determine whether or
7 not there had been an alert or not?

8 A. Well, I have seen them work and I've seen
9 when a dog hit, he'll like scratch or he'll bark or
10 something like that.

11 Q. You're aware in this particular case, though,
12 that there is no allegation or evidence to present
13 that the dog actually alerted on the car?

14 A. Well, he didn't alert it-alert it.

15 Q. "He didn't alert it-alert it."

16 What does that mean?

17 A. If he would have alerted it he would have
18 stayed in that position, but he -- I guess he acted
19 like he sensed something, but then he walked away.

20 Q. So in your opinion did you think that maybe
21 the dog was maybe kind of alerting --

22 MS. KNISLEY: Objection, your Honor. This
23 officer is not an expert in canine enforcement.

24 MS. GAY: He said in his history of doing it,
25 your Honor.

1 THE COURT: Repeat the question.

2 MS. GAY: I said: In your opinion did you
3 think the dog was showing some type of problem there,
4 alert.

5 THE COURT: Actually it will be based on his
6 observation, but the question has already been asked
7 and answered. His direct testimony that it looked
8 like the dog was going to alert on one side, but he
9 did not, and that's when he let him go.

10 Move on.

11 BY MS. GAY:

12 Q. So after that and after the dog went around
13 and was put back in the car that's when you heard
14 Butler say: Sir, I stopped you because this plate
15 that you have -- this metal thing around the plate is
16 blocking the numbers and I can't see it very well.
17 I'm just going to give you a verbal and you can go
18 now.

19 A. He told me that the reason why the traffic
20 stop was made because he had -- the tag was being
21 blocked. The month and the year was being blocked.

22 Q. That was after the dog had walked around his
23 car?

24 A. Yes. Yes, ma'am.

25 Q. And he said: I stopped you because of that

1 and now I'm just letting you know that.

2 Did you ever hear him say that he wasn't
3 going to write him a citation?

4 A. He gave him a verbal warning.

5 Q. And then did you ever hear at any point the
6 officer tell Mr. Johnson you are free to go?

7 A. He told him he could go.

8 Q. And that was when Mr. Johnson and his son
9 walked into the flower shop?

10 A. Right.

11 Q. From the time the door shut or Mr. Johnson
12 walked in the flower shop until the time that you say
13 that you saw something in the car, what was that? A
14 couple of seconds?

15 A. Yes. About three or four seconds maybe.

16 Q. Now, a Jaguar is a car that doesn't have a
17 real high top like a four-wheel drive. It's kind of
18 a low car.

19 A. Yes; pretty much.

20 Q. How tall are you?

21 A. 5' 9".

22 Q. Where would you say that the Jaguar's hood
23 hit on you?

24 A. Probably about chest level.

25 Q. So the hood is chest level?

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- 1 A. About that.
- 2 Q. Were you about a foot or so away from the
3 car?
- 4 A. About two. Maybe two feet. Two, three
5 maybe.
- 6 Q. So you are two or three feet away and the
7 hood of the car is kind of hitting you chest level.
8 Did you kind of lean in and just kind of
9 look?
- 10 A. Huh-uh. I saw something shiny, you know, and
11 I just looked at it and I said: That's a gun.
- 12 Q. You had to kind of lean down to look?
- 13 A. I leaned down a little bit.
- 14 Q. This shiny thing wasn't in the seat or in the
15 floorboard of the -- you're standing by the passenger
16 window. It wasn't in the passenger window; it was
17 over --
- 18 A. It was on the driver's side.
- 19 Q. So when you are leaning down and looking
20 down, your position and your testimony is you could
21 see that entire gun?
- 22 A. Yes, ma'am.
- 23 Q. Have you had an occasion to review the police
24 report in this case?
- 25 I know your name is on the bottom of it.

- 1 A. Uh-huh.
- 2 Q. Are you aware that this police report says
3 that somebody went around and looked through the
4 windshield down into the driver's floorboard to see
5 the gun?
- 6 A. When --
- 7 Q. Are you aware of that?
- 8 A. Yes, I am.
- 9 Q. Are you aware that it actually also says that
10 there was something shiny seen in the driver's
11 floorboard, but that it doesn't call it a gun at that
12 stage? Are you aware of that?
- 13 A. I'm aware of that, but I'm also aware of when
14 I observed the weapon, I told Butler. Because he was
15 on the driver's side and I told him -- I said:
16 That's a gun. I said: There is a gun on the
17 floorboard. And he was like -- you know, he walked
18 over. He walked up to the windshield and he looked,
19 and he was surprised. He was like: Oh, shit. He
20 said: That's a gun.
- 21 Q. He's the one who looked through the
22 windshield into the driver's floorboard?
- 23 A. After I advised him that there was a gun on
24 the floorboard.
- 25 Q. That's when Mr. Johnson came out and y'all

CORPORAL MIDDLETON - CROSS EX. BY MS. GAY

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1 basically detained him?

2 A. Right.

3 Q. And your testimony is that Butler took the
4 keys away from him --

5 A. Yes.

6 Q. -- and opened up the car door?

7 A. Yes.

8 Q. And it was right that minute basically that
9 Butler went and started looking around to see if he
10 could find -- not if he could find, but what was in
11 the car?

12 A. No. He retrieved the weapon. He gave it to
13 me. I made the weapon safe, and at that time
14 Mr. Johnson was advised that he was being placed
15 under arrest for the unlawful carrying of a weapon,
16 and then that's when Officer Butler searched the
17 vehicle.

18 Q. And that's when the drugs were found?

19 A. Yes, ma'am.

20 Q. Certainly you would agree with me that those
21 drugs were not in plain view?

22 A. No, they weren't.

23 Q. Once again, this particular report which I
24 know that you looked at -- if you need to look at it
25 to refresh your recollection.

1 Are you aware that there was 23 minutes
2 listed in this report that this situation occurred?
3 I mean, that's on the police report.

4 A. Right.

5 Q. And your recollection of the event.

6 Do you have any recollection of what time
7 frame it might have taken from the time you arrived
8 until the time Mr. Johnson was put in custody?

9 A. You would have to look at the time when
10 Officer Butler made the initial traffic stop and from
11 the time he requested a backup unit.

12 I think the traffic stop was made at 1335,
13 3:35 in the afternoon. By the time the arrest was
14 made and the tow truck -- we had a tow truck come in
15 about 4 o'clock or so. From that time on and from
16 the time of the arrest, that sounds accurate.

17 Q. About 20 some minutes?

18 A. Yes, ma'am.

19 Q. And in this situation that Jaguar is a pretty
20 nice looking car, wasn't it?

21 A. Very nice.

22 Q. A new Jaguar, shiny Jaguar.

23 A. It was clean.

24 Q. Did you ever become aware during the course
25 of your involvement that it was owned by Enterprise

CORPORAL MIDDLETON - CROSS EX. BY MS. GAY

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1 Rental Car?

2 A. No, ma'am, not until after the arrest was
3 made and some paperwork was in the glove box stating
4 that it was a rental.

5 MS. GAY: And I just want to touch base with
6 my client for a minute, your Honor.

7 I have no further questions for this witness.

8 Let me check one thing before I say that,
9 before he gets off the stand.

10 BY MS. GAY:

11 Q. Did you ever see Officer Butler or hear
12 Officer Butler tell my client that he suspected him
13 of any type of crime?

14 A. I didn't hear him say that.

15 Q. Other than the fact that he had this tag
16 problem?

17 A. That was it. I mean, he was given the
18 warning for the tag and he told him he could go.

19 Q. When you were observing some of this, at what
20 point, if you recall, did Officer Butler give back my
21 client's driver's license or paperwork?

22 A. I believe he had already given him that
23 before he ran the dog around the car.

24 Q. Before he ran the dog?

25 A. Uh-huh.

CORPORAL MIDDLETON - REDIRECT EX. BY MR. BIANCHI 70

1 Q. Both of y'all were in uniform?

2 A. Yes.

3 Q. Both of you were in marked vehicles?

4 A. Yes.

5 MS. GAY: Thank you, your Honor. I have no
6 further questions.

7 THE COURT: Any redirect?

8 MR. BIANCHI: Very briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BIANCHI:

11 Q. Corporal Middleton, when again was it that
12 you first saw the gun?

13 A. Right after the defendant went into the
14 flower shop.

15 Q. So the defendant was in the flower shop when
16 you saw the gun?

17 A. Yes, sir.

18 Q. So when you saw the gun, would you consider
19 that to be a new incident?

20 MS. GAY: Your Honor --

21 A. Yes.

22 THE COURT: That's a legal conclusion for the
23 Court to draw.

24 MR. BIANCHI: I apologize, your Honor. No
25 further questions.

CORPORAL MIDDLETON - RECROSS-EX. BY MS. GAY 71

1 MS. GAY: One question.

2 RECROSS-EXAMINATION

3 BY MS. GAY:

4 Q. This situation that you walked up on, this
5 traffic stop, during the whole time that you were out
6 there you were communicating with Butler about the
7 traffic stop itself: Why he stopped him, the fact
8 that he was fidgety and all that stuff.

9 A. The only time Butler and I communicated was
10 when I first arrived on the scene.

11 Q. And that was a part of the traffic stop?

12 A. Ma'am?

13 Q. And that was part of the traffic stop?

14 A. That was part of the traffic stop?

15 Q. Yes.

16 A. Well, he had already conducted the traffic
17 stop.

18 Q. He was conducting it when you got there;
19 right?

20 A. It was conducted. He already had the vehicle
21 stopped.

22 MR. BIANCHI: Objection, your Honor. That's
23 a legal conclusion as to whether the stop was --

24 MS. GAY: It's really more the time frame.

25 THE COURT: Go ahead and rephrase the

1 question.

2 BY MS. GAY:

3 Q. He was in the process of talking with
4 Mr. Johnson pursuant to his traffic stop when you
5 arrived?

6 A. The vehicle was stopped. I don't know what
7 went on with them prior to him asking for backup.
8 Okay? But the vehicle was already stopped. When I
9 arrived on the scene he advised me of why he
10 requested a back-up vehicle.

11 Q. And he requested a back-up unit in your
12 opinion because the defendant was fidgety or had
13 moved around a lot?

14 A. Yes.

15 Q. And was the blue light on Officer Butler's
16 car when you arrived?

17 A. Yes.

18 MS. GAY: I have no further questions, your
19 Honor.

20 THE COURT: Anything further of the witness?

21 MR. BIANCHI: Nothing, your Honor.

22 BY THE COURT:

23 Q. Officer, can you tell me exactly exactly
24 where you were standing when you reported to the
25 scene.

1 A. When I first arrived on the scene I exited my
2 vehicle. I approached Butler. We stood behind the
3 trunk. He told me why he requested a back-up unit.
4 He asked Mr. Johnson to exit the vehicle. They
5 talked. He explained some things. He asked him for
6 a consent to search. The defendant said no. He
7 refused. That's when he said he was going to run the
8 dog around the vehicle. So I positioned myself on
9 the passenger side of the vehicle.

10 Q. Tell me exactly how you came to see the
11 weapon.

12 A. After the defendant exited the vehicle and
13 went into the flower shop, that's when I saw it.

14 THE COURT: Any questions as a result of my
15 questions from the State?

16 MR. BIANCHI: No, your Honor.

17 THE COURT: From the defense?

18 MS. GAY: One moment, your Honor.

19 I have no further questions, your Honor.

20 THE COURT: Sir, you may step down.

21 Any argument from the State?

22 MR. BIANCHI: Yes, your Honor.

23 In light of the testimony that we have heard
24 from these two officers the State would argue that
25 the evidence should not be suppressed.

First I would like to cite State v. Nelson.
I have a couple of copies I can give to you.

Clearly here the gun in plain view sticking out or on the floorboard or the front driver's seat is a new separate incident regardless of what happened.

THE COURT: I don't think you can separate the two. The first question is whether there is probable cause to stop him, which I don't think anybody argues there wasn't. It should then become how long the detention was after that and what happened after that.

MR. BIANCHI: If I may, State vs. Williams, 356 South Carolina 591, the Court said when there is probable cause of a violation that the stop is reasonable per se. I have the statute right here. It says: License plates must show in bold characters, the year --

THE COURT: I don't think there is any question he had probable cause to stop him.

MR. BIANCHI: I thought you said not --

THE COURT: That's not what I said.

MR. BIANCHI: Going back to Nelson, though, once there is a new criminal act such as this one, this stop was over. He was free to go. He went into

1 the flower shop. And then there in plain view is a
2 gun. The State sees that as a completely separate
3 incident that is not tied at all to the initial stop
4 based on State v. Nelson.

5 While it's tied to it, it is not considered
6 to be -- I apologize, your Honor. There was the
7 initial stop, but this is a new criminal act that
8 cuts off any connection to the stop itself.

9 Your Honor, if you could give me a second I
10 can give you the exact language from the case.

11 State v. Nelson says that new and state
12 criminal acts do not qualify through the fruits of
13 the poisonous tree merely because such acts were
14 causely connected to any police misconduct.

15 So therefore if there is a ruling that the
16 stop was -- did go beyond the scope of anything,
17 based on State v. Nelson this would be a separate
18 act, a separate and distinct act that would not
19 qualify as a forgery. So any rules as to the stop
20 itself would not have any bearing on this new -- on
21 the plain view of the gun.

22 THE COURT: Anything further?

23 MR. BIANCHI: No, your Honor.

24 THE COURT: Ms. Gay?

25 MS. GAY: May it please the Court, as you

1 know, I asked you to look at the two cases, State v.
2 Williams and State vs. Grant, your Honor. That is
3 the most recent case that sort of tracks this area of
4 the law, and there are some differences and I do know
5 from discussions with you State v. Williams is the
6 main case that has got to do with traffic stops and
7 what happens subsequent to a traffic stop.

8 I just would like to explain to the Court
9 what I believe happened. I have a black man on
10 Rivers Avenue driving a really nice Jaguar. He is
11 not committing any traffic violations whatsoever.
12 He's not speeding; he's not swerving; he's not
13 changing lanes without signal. He's doing nothing
14 legally wrong at all. He has no moving violations
15 whatsoever. And a police officer with a canine, who
16 he testified that his training is to have his dog and
17 he's made a number of traffic stops, comes upon him
18 on Rivers Avenue, is either behind him or beside him
19 at different points of time, and at the time that my
20 client decides to turn right into a flower shop he
21 decides to get behind him and put his blue light on
22 him. He's not blue lighted on Rivers Avenue at all.

23 There is absolutely no reason whatsoever at
24 that point to make a moving violation stop on him,
25 and he gets behind him and he puts the blue light on

1 him, and that's when he testified that Mr. Johnson
2 got out of his car and went around to where his child
3 was sitting in the car. No evidence presented that
4 there was anything unusual about that except that the
5 officer didn't like the fact that he got out of his
6 car.

7 So the officer decides at that point when my
8 client has done absolutely nothing wrong whatsoever
9 to call for backup, and he says in his back-up call
10 that he believes that this -- and he testified that
11 he believed that this was the kind of case that he
12 needed some backup. So then he calls in Officer
13 Middleton who has testified that he's down there by
14 Cosgrove and Rivers. He pulls off to the side, gets
15 out as the back-up officer for this K-9 Unit, and at
16 that time, your Honor, what he does -- as you heard
17 the testimony, he goes up to my client. He says:
18 I need your paperwork. My client hands him his
19 paperwork. He then runs his ID and says that it's
20 a valid driver's license. So he's not committed
21 any offenses there. He's not committed a moving
22 violation. He's not committed any type of unlawful
23 act. He is not driving without a license; he's not
24 driving under suspicion. He's not doing anything
25 illegal at that point, and what he then decides to

1 do is go over to my client after he's patted him
2 down -- because if you recall, he said that he
3 patted him down for officer's safety from the time
4 he walked around from the passenger side to when he
5 was sitting in the driver's side.

6 So he is patting my client down. He
7 finds nothing criminal on him at that point.
8 Nothing that would be any type of suspicion of
9 criminal activity. He's got my client and son
10 sitting in the car and he comes up to my client and
11 say: I'm going to have my dog do a drug sweep of
12 this car. For what reason, we don't know.

13 He then backed off of it and said: No,
14 I don't sweep everyone. But for the most part he
15 lets his dog do what he does. He wants his dog to
16 get extra training, so he's made a decision to drug
17 sweep my client's car for no reason whatsoever.

18 This is a man who you might -- I want
19 to bring to the Court's attention has never been
20 told why he's been stopped. Because if you recall,
21 officer Middleton said he heard Officer Butler say:
22 By the way, I just stopped you because your tag was
23 -- I can't really see your tag very well. That's
24 why I stopped you. I'm not going to issue you a
25 ticket. I'm just giving you a verbal warning. You

1 can go now.

2 But at no point in the testimony is
3 there any point where Mr. Johnson knows that before
4 Officer Middleton says that it was done after the
5 drug dog comes and doesn't alert on the car. There
6 is some discussion about whether or not -- there
7 has been evidence presented that both of these
8 officers thought that maybe there had been some
9 type of alert from the dog, but it's not in the
10 police report. It's not at all listed as being a
11 factor in any of this suspicion that might have
12 been going on towards Mr. Johnson.

13 Officer Butler specifically testified
14 that he didn't have any information whatsoever that
15 my client had done anything wrong, and he said
16 based on -- we went through that, your Honor, but
17 he said based on what he saw the dog do, he might
18 have alerted, but for all practical purposes it's
19 not an alert and it's not something that caused any
20 type of reasonable articulable suspicion or
21 probable cause at that point.

22 What ended up happening, your Honor, is
23 facts beyond change, is that at some point Officer
24 Butler lets my client go into the flower shop. He
25 says he either says it or -- he doesn't even

1 remember saying it, but Officer Middleton says he
2 heard it. You are free to go now. I've done
3 everything I can to try to find out what you might
4 be up to or if you are a criminal, but you are free
5 to go now.

6 Now, it was at that point that Officer
7 Middleton said that he heard Butler tell my client:
8 I stopped you because this tag is obstructed or
9 something. You need to make sure that you can see
10 the numbers of this thing. Not a moving violation,
11 not something they are ever going to take anybody
12 into custody for. There is a statute that says
13 it's a violation to obstruct a tag, but this is an
14 Enterprise car, your Honor. My client doesn't
15 really have any control over the plates at all.

16 So ultimately what happens is my client
17 walks away. Both of these officers testify that
18 within seconds -- not within minutes, not five
19 minutes later. Within seconds pursuant to this
20 entire on-going situation of this traffic stop
21 Officer Middleton looks in the window and sees this
22 gun. He says a full gun in plain view -- he says a
23 full gun that you can see, and of course as you
24 know Officer Butler says it was just the tip of a
25 gun.

1 The next thing you know they are going
2 around looking in the windshield, peering down into
3 the driver's floorboard of this car and seeing this
4 gun. If you recall, Officer Butler specifically
5 testified that he stood next to my client at the
6 driver's window with the driver's window down
7 standing there looking in the car talking to my
8 client at the time that he was doing this traffic
9 stop. There wasn't any mention of a gun being in
10 the floorboard then.

11 So what happens, your Honor, is that
12 within seconds of this situation that was a traffic
13 stop they are looking into my client's window to
14 see that what they saw was something shiny -- the
15 police report says something shiny underneath the
16 seat -- until they go around and peek in the
17 windshield, and the police report says that's when
18 they saw the gun.

19 Now, this is the question, your Honor.
20 You have read the law; I have read the law; the
21 State has read the law. I would like to argue that
22 he had no basis for a stop. Yes; in fact it is
23 possible to stop somebody for an obstructed tag,
24 but in this particular case I don't think it had
25 anything to do with this stop. I think this is a

1 completely pretextural stop. Yes; profiling and
2 things like that have been upheld, but you've got
3 to do something wrong to get to the point where
4 somebody is putting this much
5 attention/detention -- unreasonable detention
6 towards you. Because this is a 23-minute stop on
7 paper, let alone what it might have in fact
8 actually been. It might have taken longer than
9 that.

10 For this man to have stopped my client
11 and take him 23 minutes out of his life before he
12 finally said "okay. You can go now" is a
13 completely unreasonable period of seizure and
14 detention. Completely unreasonable for something
15 that he doesn't even tell my client until a good
16 minute into the stop -- probably 15 minutes the way
17 they have described it, that: By the way, I
18 stopped you because of your tag. I can't see the
19 numbers on your tag. Totally unreasonable, your
20 Honor.

21 It's a completely unreasonable stop.
22 He did not have -- he didn't have a reason to stop
23 my client. He stopped my client because he was a
24 black guy in a pretty Jaguar. That's my client's
25 position. No; that is not what he testified to.

(1 Certainly he's not going to testify to that. He
2 actually said that he didn't even know it was a
3 black guy driver; however, he said that when he got
4 up beside my client he knew that my client was a
5 black male. And at the time that he chose to get
6 behind him and turn the blue light on my client had
7 done nothing wrong. He hadn't even sped. He
8 hadn't even crossed the center line or done
9 anything that most people -- I speed. You could
10 have been going three or four miles over the speed
11 limit and still be potentially going beyond the
12 scope of the posted speed limit.

(13 This officer testified my client was
14 doing nothing wrong, and so, your Honor, I would
15 argue that the stop itself was unconstitutional.
16 Choosing to stop my client, an American citizen, on
17 the street on Rivers Avenue that day was a
18 constitutional violation for him.

19 Now, once we get to the point where he
20 comes out and -- if I had a situation, your Honor,
21 where my client or the dog alerted, then the
22 question would be: Well, did you have any real
23 reason to bring a dog in the first place? I do
24 know and would agree that people -- that officers
(25 who carry dogs oftentimes do do that where they

1 say: Well, I've got my dog. If you don't want to
2 consent to this search, I'm going to bring the dog
3 out. The officer specifically said: It's legal
4 for me to bring my dog out. I understand that,
5 your Honor, but this dog did not alert at all. Did
6 not alert. At no point whatsoever did the dog --
7 was there a situation where articulable suspicion
8 or probable cause existed to continue the detention
9 even longer at that point.

10 So the way it was described, your
11 Honor, is that all of this happens. He brings his
12 dog out there. He still doesn't let my client go.
13 There is finally a point where he decides: Okay.
14 You are free to go.

15 And then, your Honor, it is my position
16 that there is no separate event here. There is no
17 way it can be a separate event. Both of these
18 officers testified it was literally segments beyond
19 the time that Mr. Johnson got out of his car and
20 walked in the building and they peeked in the
21 window and saw this gun.

22 Now, did they intentionally peek in the
23 window? They are not going to testify to that,
24 your Honor, but this officer testified that the top
25 of the Jaguar literally comes to his chest. As we

1 all know, common sense would say that the window is
2 farther down than that. They both testified that
3 there is not tint on the windows, but this is a
4 luxury vehicle and luxury vehicles, your Honor,
5 come out with darker windows than your average Ford
6 Pinto or Neon.

7 So what you have here is you have an
8 officer who when I pressed it said: Yes; I had to
9 lean down to get a good look at it. What he is
10 claiming is standing up three feet from the Jaguar
11 where the window is not even parallel to his head,
12 that somehow he can see something that is a
13 full-blown gun underneath the driver's seat. It is
14 completely illogical.

15 Yes; I do believe and agree that if he
16 got down there and peeked into the window that he
17 may have gotten a good view of what was under the
18 driver's seat, but does he have a right to peek in
19 my client's window at that point? That is
20 ultimately the issue.

21 I read the cases, and there is a
22 specific case that was People versus Refiner. It
23 was a Colorado case, but it's cited in your cases,
24 your Honor, and it basically says once the purposes
25 of the initial traffic stop were completed there is

1 no doubt that the officer could not further detain
2 the vehicle or its occupants unless something that
3 occurred during the traffic stop generated the
4 necessary reasonable suspicion.

5 I think this is a case of first
6 impression in our state, your Honor, because this
7 is not a person that they continue to question,
8 that they eventually get some kind of involuntary
9 consent after or possibly some type of confession
10 that they are trying to bring in against him. This
11 is a situation where they're after the car. They
12 are after the car, not my client. I understand
13 that. They have let my client go. They have made
14 that perfectly clear. He was free to go. The
15 client himself was free to go. But my client has a
16 constitutional right against an unreasonable
17 seizure and search of his car. Because that's the
18 container, if you want to go way back to canon law,
19 that is in question here. The container is his
20 car. And that's ultimately what all these traffic
21 stop cases are about, is what they find in the car.

22 So ultimately, your Honor, this case
23 specifically said -- it was adopted by our court
24 -- that you cannot have an unreasonable detention
25 and therefor seizure of a car. And so is this

(1 33-second, 4-second, time period enough to break
2 the causal chain on this traffic stop like the
3 State is trying to say? Is it something that is a
4 completely separate event? We want to just start
5 with the fact that we are standing there and the
6 next thing you know we peek in the window and we
7 see a gun under the seat and it's in plain view.
8 That's not possible under the totality of the
9 circumstances in this case. It's not possible.
10 Because this whole event -- both of these officers
11 testified that they both kind of half thought that
12 drug dog alerted on it.

(13 So there is no question that once my
14 client and his son left the area that they went in
15 further investigation into that car; looked around
16 it; peeked around it; peeked in the window.
17 Whatever. They are looking in that car to see if
18 there is anything that they can see. Lo and
19 behold, they see this gun, which starts this is
20 whole chain. And ultimately the solicitor is
21 trying to say that fruit of the poisonous tree
22 should not apply when it's a separate criminal act.
23 Right. Possessing a gun is a separate criminal
24 act. However, it's a gun that's in a car that is
25 the container that my client owns that is still my

1 client's, despite the fact that he has walked away
2 from it; that this unlawful, completely unlawful,
3 stop started back in the beginning of. And so all
4 of this unlawful stop is completely
5 unconstitutional. It starts all of this 23-minute
6 of unconstitutional detention, which carries over
7 into the unconstitutional detention of his car.

8 It can't be separated. It can't be
9 separated. All this happened all at one time.
10 I told my client -- I said: Well, you know, if you
11 park your car in a parking lot and you leave your
12 car and you go into Wal-Mart and some officer
13 decides to walk by and happens to look in the
14 window and sees a bloody knife or a gun or
15 something like that, that's a plain view search.
16 I totally understand that, your Honor. I
17 understand the law on that.

18 That's not the case in this case. This
19 case started from a completely unlawful traffic
20 stop. It went on for 23 minutes of unlawful,
21 unconstitutional detention which led to seconds
22 later them peeking in the window of his car to find
23 a shiny object. Not a gun, a shiny object in the
24 driver's seat, which required someone else to go
25 and peek in the windshield of the car; peek in the

1 windshield to see whether or not it was a gun.
2 Because that is what is in the report. Both of
3 these officers testified it was immediately
4 apparent to me that it was a gun. There is nothing
5 in this report that says it was immediately
6 apparent. And so ultimately what he said
7 specifically was in order to see it I had to get
8 down and look and get down and look into this man's
9 car.

10 Now, could he have done that with the
11 man sitting in his car, having never left his car,
12 sitting in the car the whole entire time? Would he
13 have been able to get in there and peek in his car?
14 I don't think he could have, and I think that as
15 part of the traffic stop it doesn't matter that
16 he's walked away from the car and he's walked away
17 from the car less than five seconds. All of this
18 happened at the same time. So you can't separate
19 this into some plain view search of a parked car,
20 because you have this whole unconstitutional stop
21 which led to everything else, which is a completely
22 unreasonable act.

23 Your Honor, I have read the cases and
24 there is some reasonableness factors. I can go
25 through them. I know you have read the cases. I

1 know we can talk about it. But time and place of
2 the encounter, which we know was daylight and on
3 Rivers Avenue; number of officers present, whether
4 they were uniform -- we have two officers, one
5 called in for backup for no apparent reason
6 whatsoever. There was nothing that my client had
7 done whatsoever to indicate that there needed to be
8 backup in this case. They were both uniformed and
9 in marked cars. They both said -- Officer Butler
10 said: I never told him what was going on or why I
11 was doing all this. Officer Middleton specifically
12 said: When I arrived he told me he was fidgety.
13 He told me he was acting suspicious, basically.
14 That's all he said.

15 We have the length of detention, which
16 on paper is 23 minutes, though it could have
17 actually lasted longer, which is well over a
18 reasonable traffic stop, particularly if you are
19 just going to give somebody a verbal warning to
20 make sure they adjust the tag holder to make sure
21 that the numbers are straight. Whether the officer
22 moved the person to a different location -- if you
23 recall, he asked my client to go back into his car
24 and patted him down on the way to his car while he
25 said: Sit right there with your hands on the

(1 steering wheel. Don't move while I have my drug
2 dog sniff your car, or isolated him from others
3 when the officer informed the person he was free to
4 leave. Officer Butler never even remembers telling
5 my client he was free to leave. Officer Middleton
6 said: I think he said that. He left. Ultimately
7 they said: Well, he left to go in the flower shop,
8 but we assume we said that he was free to leave,
9 but the traffic stop itself never really stopped
10 because they continued to investigate the vehicle.

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(11 Whether the officer indicated to the
12 person that he was suspected of a crime, which did
13 not happen in this case, and whether the officer
14 retained the person's documents or exhibited
15 threatening behavior of physical contact -- as I
16 said, he patted the guy down. He told my client he
17 had to sit in his car with his hands on the
18 steering wheel so that he wouldn't be distracted
19 while the drug dog was sniffing the car for no
20 apparent reason.

(21 It's the totality of this circumstance
22 that makes this whole entire event unreasonable.
23 And that is the key here, is from the very minute
24 that it started all the way to the very end where
25 they said that they found those drugs as part of an

1 inventory search.

2 Now, your Honor, I know that once they
3 found that gun they had a right to search my
4 client's car. They did search my client's car
5 pursuant to the fact that they found drugs that
6 were not in plain view, and that's the basis of
7 this charge today and that's the basis of our
8 motion, your Honor.

9 We are asking the Court to suppress the
10 drugs as well as the gun pursuant to the fact that
11 we believe that all of that is fruit of the
12 poisonous tree of this unlawful, unconstitutional
13 traffic stop.

14 MR. BIANCHI: Your Honor, if I may, the fact
15 of the matter is that traffic stop was over. He was
16 free to leave. In fact, he left and went in a flower
17 shop. If the stop wasn't over they would have kept
18 him there. The officers made a lawful traffic stop.
19 They gave him a verbal warning. They let him go. He
20 in fact did leave, and then in plain view in a public
21 parking lot they saw the gun through the windshield.

22 There is no expectation of privacy in a
23 public place. They had every right to look through
24 that windshield. Once they saw that gun what were
25 they supposed to do once they saw evidence of a

1 crime? Let it go?

2 Ms. Gay keeps going to the 23 minutes. That
3 23 minutes is from the time he was stopped until the
4 time he was put in the back of that car, which I
5 think -- which is not entirely unreasonable,
6 considering everything they had to do with
7 confiscating the gun, doing the search and finding
8 the cocaine and then ending it. That 23 minutes is a
9 moot point there.

10 On the container, cars and containers are
11 completely different, completely different balls of
12 fire there.

13 Again, the simple truth is the stop was over.
14 He was free to leave. He did leave, and then in
15 plane view in a public parking lot a gun was seen.
16 And I realize Ms. Gay tried to muddy the water with
17 the dog sniff. It has nothing to do with anything,
18 but if we look at actually what happened and look at
19 the fact that the stop was over and this was a
20 completely separate incident after that, regardless
21 of whether a few seconds or a few minutes had passed,
22 it does not matter. This stop was over. He was gone
23 in the flower shop. The car was not being seized.
24 He freely left his car in a public parking lot.

25 Like Ms. Gay said, if he left it in Wal-Mart

1 parking lot, they would have every right to look into
2 his windshield. What is the difference between a
3 Wal-Mart parking lot and a flower shop parking lot?
4 I really don't see it, your Honor.

5 THE COURT: Anything further?

6 MS. GAY: I would like to state that I don't
7 think that this is a standard parking lot situation.
8 This is a situation where my client was being
9 detained by two police officer, two uniformed police
10 officers, up until the point where he walks into the
11 store.

12 At that point, your Honor, I think -- we had
13 two officers come. They were sequestered for a
14 reason. What happened when Officer Middleton came
15 out, he specifically said two things that really make
16 this case. He said that he never heard Officer
17 Butler tell my client why he stopped him and that it
18 had to do with his tag and all he needed to know --
19 "I'm just going to tell you about this and I'm going
20 to give you a verbal warning."

21 My client was never told why he was stopped
22 until that point. After he had done all these things
23 that were completely illegal basically, and it was at
24 that point , your Honor, that he then says to my
25 client: You can go.

1 Officer Middleton, they were saying he was a
2 completely separate person. He's not involved in
3 that. He just happened to be there. It just so
4 happens that he saw this gun. He knew that my client
5 had been acting suspicious. He knew himself that
6 maybe the dog alerted, and he's the one that says he
7 looked down into the window of my client's car.

8 Now, pursuant to the fact that this is not
9 your basic average parking lot situation, that was
10 completely an extension of this traffic stop, your
11 Honor, and that is not -- it's an illegal move. They
12 should not have done that. They should not have
13 violated his privacy in that way. It was his car.
14 Even though he's no longer standing next to it,
15 seconds later they are doing this to his car. This
16 car is protected. It should have been just as if he
17 was sitting in it.

18 What I would ask the Court to do -- because
19 he admitted that he had to look down. This is not
20 plain view. He has to go out of his way to see this,
21 your Honor, is what I'm saying, and I would ask you
22 to please suppress it.

23 THE COURT: Would counsel approach, please.

24 (Bench conference held off the record.)

25 THE COURT: What does your client want to

1 do?

2 Mr. Johnson, are you certain you want
3 to do this?

4 THE DEFENDANT: Yes, ma'am. I certainly
5 didn't do nothing to get a life sentence.

6 THE COURT: What I'm saying is that under
7 the operation of our law we have a law that's
8 called the two and three strikes law, and you were
9 convicted of an offense back -- in ADWICK what we
10 call most serious. That's one strike. You only
11 need two of those to get life without parole or you
12 need three serious tries. So based on your record
13 you have actually -- you got a most serious back in
14 '87. You got a trafficking in '88, which is a
15 serious. So if you get convicted on this
16 trafficking that's your third strike. I would have
17 no discretion in sentencing at all, so you would
18 get life without the possibility of parole.

19 With what the solicitor has done -- the
20 only reason they are doing it is because I have
21 leaned on them -- is to take life without the
22 possibility of parole off the table and allow you
23 to plead straight up with a range of seven to 30.
24 I have already told them what my thoughts are. I
25 have told them that I think that life without the

1 possibility of parole is way too stringent. I have
2 told them that I plan to think about the
3 suppression motion overnight. It could really go
4 either way. I am leaning however -- but
5 nevertheless, that's a lot of exposure for you and
6 I don't want you -- I guess sometimes -- I don't
7 know any other way to deal with people but direct,
8 so I'm going to be direct with you.

9 I'm a great believer in the trial
10 system. That's why I do this job. It's exciting
11 to me every day to make decisions and apply the
12 law. The most stringent thing I am going to do
13 today is go home, and if the light is still out I
14 am going to go plant me some flowers; have me a
15 Coca-Cola. But you have got a lot more exposure
16 than that.

17 So what I am trying to -- I'm not --
18 again, I don't take the position one way or the
19 other because it doesn't affect my life at all. So
20 I don't want you to think that I have a position.
21 I don't. But when I see a young person appear
22 before me who has the exposure of life without the
23 possibility of parole, who has family -- and the
24 State has been generous enough, again, because I
25 have leaned on them to take that off the table and

1 to offer you a deal that they have already taken
2 off the table. And I can tell you once they have
3 taken it off the table, they don't generally put it
4 back on the table. That's just their policy.
5 I have leaned on them to put it back on the table
6 out of what I think is fair. Because that's
7 ultimately what they are all here for, is fairness
8 and to make sure -- even when people are wrong,
9 they are still entitled to be treated fair. So
10 your exposure right now would be seven years to 30
11 years. And they have, again, left it completely up
12 to me what sentence you should get.

13 Originally when we started out these
14 discussions they wanted a number of 17 years. They
15 said that's all they were going to think about. I
16 have leaned on them a little more and they have
17 backed off that, which is very uncharacteristic. I
18 would like to think it's my charm. But they have
19 taken it off the table and allowed me -- left it
20 solely within my discretion to sentence you.
21 That's a lot you have given up, and I just want to
22 make sure you fully comprehend, because in the
23 morning that is not going on the table. It is not
24 going to be an option. I just want to make sure
25 that you know that. I want to make sure that you

1 are fully informed and you truly understand what
2 you are giving up. Because once we go into
3 tomorrow, we go back into the life without the
4 possibility of parole range. That means forever.
5 We are not like other states where life means
6 something other than life. Life here means life.
7 Life means until you die. If you get sick they put
8 you in the infirmary. They attend to you. You
9 never get out.

10 So I need to make sure that you fully
11 comprehend that and you fully discussed that with
12 your lawyer.

13 Sir, are you telling me you fully
14 discussed that and are telling me you reject it?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. I feel comfortable then.
17 I can live with it if you can.

18 Please bring in the jury.

19 THE COURT CLERK: All are present, your
20 Honor.

21 THE COURT: Thank you very much.

22 Mr. Foreman, Ladies and Gentlemen, you all
23 have been exceedingly patient with us this afternoon.
24 I want you to know that we do not take your time for
25 granted and we do appreciate your patience. We have

1 been working diligently while you have been waiting;
2 and again, we want you to know that we do not take
3 your time for granted. We hope that most of this
4 time will save us a great deal of time in terms of
5 stopping and starting and sending you all out of the
6 courtroom during the process. So again, please know
7 that we appreciate you.

8 As I have indicated to you earlier, we are
9 about to try the case of the State versus Terrance D.
10 Johnson, the defendant. What I will now say to you
11 is intended to serve as an introduction to the trial
12 of this case. These remarks are not a charge on the
13 law in this case. I will instruct you on the law
14 applicable to this case at the end of this trial
15 before you retire to consider your verdict.
16 This is merely an explanation of the procedure that
17 we will follow in the trial of this case so that
18 you may better understand what is happening and how
19 we will be proceeding.

20 The defendant is charged by several
21 indictments during the commission of a violent
22 crime: Trafficking cocaine, unlawful carrying of a
23 pistol and possession of a stolen pistol, the
24 elements of which I will explain to you at a later
25 time at the conclusion of this case during the

1 Court's charge on the law.

2 The indictments are simply the charges
3 by which this case is brought into court and they
4 are not in any way or sense evidence of any of the
5 allegations they contain. The defendant has pled
6 not guilty to the indictments. The State therefore
7 has the burden of proving each of the elements of
8 the indictments beyond a reasonable doubt, and it
9 will be your duty, Ladies and Gentlemen, to decide
10 whether the State has met that burden or not.

11 Your purpose as jurors is to find and
12 determine facts as you are the sole judge of the
13 facts. You are to determine the facts from the
14 testimony you hear and the other evidence. It is
15 up to you to determine the inferences which you
16 feel may be properly drawn from the evidence. It
17 is especially important that you perform your duty
18 of determining the facts diligently and
19 consciously, because ordinarily there is no way to
20 correct an erroneous determination of facts made by
21 a trial juror. On the other hand and with the same
22 law, that makes you the judges of the facts.

23 I cannot tell you what the facts are
24 and you cannot disagree with me about what the law
25 is or the law should be. Your job is to take the

1 law as I give it to you and apply it to the facts
2 as you find them from the testimony of the
3 witnesses.

4 After the case is submitted to you you
5 must discuss it only in the jury room with your
6 fellow jurors. The attorneys and the parties have
7 been instructed not to speak with you at all, so if
8 you should see them around the courthouse or in the
9 parking garage or otherwise and they don't speak to
10 you, please don't think they are being unfriendly
11 or uncordial. They are simply following the
12 Court's instructions.

13 During the trial please do not read,
14 watch or listen to any news reports about this
15 case. This includes anything that may be in the
16 newspapers, on the internet, radio or television.
17 Also, you cannot do any independent research of any
18 type. That includes anything that you could find
19 on the internet. You must not consider anything
20 that you may have read or heard about this case
21 outside the courtroom, whether before or during the
22 trial.

23 It is important that you keep an open
24 mind and not decide any issue in the case until all
25 of the evidence has been presented, the parties

1 have made their closing arguments and I have
2 instructed you on the law in this case. It is your
3 solemn responsibility to determine the guilt or
4 innocence of the defendant, and your verdict must
5 be based solely on the evidence as it is presented
6 to you in this trial and on the law as I will
7 instruct you during and at the close of this trial.

8 In just a moment the solicitor will
9 make what is called an opening argument in which
10 the solicitor will explain to you the issues in
11 this case or at least what he believes the issues
12 to be in this case. The attorney for the defendant
13 may also make an opening statement, although she is
14 not required to do so.

15 What the attorneys tell you during
16 their opening statements is not evidence in this
17 case. It is only their contention as to what the
18 issues are. The evidence in this case will be
19 presented to you by the testimony of sworn
20 witnesses, from the witness stand and/or by
21 exhibits that may be introduced into evidence.

22 From time to time during the course of
23 the trial you may hear one of the attorneys say
24 something like: Your Honor, I object. Just like
25 in sports, business or any other structured

1 activity, there are rules of evidence and procedure
2 that we must follow in the presentation of
3 evidence. These rules have a definite purpose.
4 They ensure that you receive the most trustworthy
5 and reliable evidence available to you. An
6 objection is the procedure that attorneys use to
7 call a possible violation of these rules to my
8 attention as the judge of the Court, and for this
9 reason you should not hold an attorney's objection
10 against him or her, nor should you conclude from
11 the Court overruling or sustaining an objection
12 that I favor one side or the other.

13 Also from time to time you may hear one
14 of the attorneys say something like: Your Honor,
15 we have a matter of law to discuss, or they may ask
16 to approach the bench or I may ask them to approach
17 the bench, or as you have experienced today, it may
18 be necessary for us to excuse you from the
19 courtroom for a short while while we discuss
20 matters of law.

21 The reason we do this is because you
22 are the judges of the facts in this case, and
23 sometimes when I am discussing matters of law with
24 the attorneys it may be necessary for me to make
25 some comment about the facts in connection with

1 ruling whether or not a particular law applies. As
2 I have already indicated to you, I am not supposed
3 to tell you what my opinion about the facts are, so
4 I will excuse you from the courtroom while these
5 discussions take place so that in no way will you
6 be influenced by anything that I might say or do in
7 connection with the facts of this case.

8 In determining what the true facts are
9 in this case you must decide whether or not the
10 testimony of a witness is believable. It will
11 also be my responsibility to rule as a matter of
12 law as to whether certain testimony is admissible
13 at all, but once the testimony is admitted, whether
14 or not you believe it is solely for you, the jury,
15 to determine.

16 In deciding whether to believe a
17 witness you have the right to consider the interest
18 of any witness, the bias of any witness, the
19 prejudice of any witness, the opportunity for the
20 witness to have seen the matters and things about
21 which the witness may testify and the way the
22 witness acts on the witness stand. You have a
23 right to consider anything that is in the record
24 that will help you evaluate the testimony of the
25 witnesses. That means that it is your duty to pay

1 close attention to them, to observe them, to listen
2 to them and to pay close attention to the attorneys
3 and the Court.

4 Although we know at times it is very
5 difficult, please do not allow your thoughts to
6 wander, but give strict attention to the testimony
7 in this case so that at the end of all the
8 testimony after the arguments of counsel and the
9 charge on the law is given by the Court you will
10 then be in a position to determine what the true
11 facts are and to apply the law to those facts and
12 thus render a true and just verdict in this case.

13 It will be your added duty,
14 Mr. Foreman, to preside in the jury room and be the
15 jury spokesperson here in the Court as well as fill
16 out the verdict forms, but I will give you further
17 instructions regarding that at the conclusion of
18 the trial.

19 In order to preserve everyone's rights
20 I will give each party an opportunity to make any
21 exception to any of the Court's opening remarks.

22 Are there any exceptions from the State?

23 MR. BIANCHI: None, your Honor.

24 THE COURT: From defense?

25 MS. GAY: None, your Honor.

1 THE COURT: You may proceed.

2 MR. BIANCHI: On January 28, 2004, the
3 defendant, Lord Allah, also known as Terrance
4 Johnson, was pulled on Rivers Avenue. At that
5 traffic stop he was given a verbal warning and
6 released from his stop. Once he was released from
7 the stop the officers saw a gun in plain view on the
8 floorboard of that car. Once they arrested him for
9 that gun they also found drugs in the center console.

10 You are going to hear testimony from a few
11 different people in this case. You are going to hear
12 from Officer Troy Butler, who is the officer who
13 initiated the traffic stop and who also took the gun
14 and the drugs into evidence. You are going to hear
15 from Corporal Tony Middleton. Corporal Middleton
16 arrived as backup at Officer Butler's request and he
17 was also the first person to notice the gun in the
18 car.

19 You will also hear from the police evidence
20 custodian and the chemist from SLED in Columbia who
21 tested the drugs that were seized in the car.

22 Lastly you are going to hear from the
23 Enterprise Rent-A-Car agent who had rented the car to
24 the defendant, and he is going to testify briefly to
25 the rental agreement with the defendant and his

1 company's procedures on how to maintain their
2 vehicles.

3 Now, the defendant is charged with four
4 things here. He is charged with possession of a
5 stolen pistol, unlawful carrying of a gun,
6 trafficking cocaine and possession of a firearm
7 during a violent crime. South Carolina's law says
8 that trafficking cocaine is a violent crime, and to
9 find him guilty of trafficking cocaine you must find
10 that he knowingly possessed more than ten grams of
11 cocaine.

12 Ladies and Gentlemen, once you have heard all
13 of the testimony and seen all of the evidence in this
14 case I am competent that you will render a verdict of
15 guilty on all four charges.

16 Thank you.

17 THE COURT: You may proceed.

18 MS. GAY: Thank you, your Honor.

19 Ladies and Gentlemen, if you remember awhile
20 back, hours ago, I told you that I represent Terrance
21 Johnson, the defendant in this case, and one of the
22 main things that I would like to tell you at this
23 point is I would like to thank you for being here.
24 Jury duty is a very, very important part of the
25 American justice system. It is the most important

1 thing in our liberties and freedoms. For Mr. Johnson
2 today is the most important day of his life and you
3 are the most important people in his life today
4 because you are the people who are going to review
5 the facts. And as you know, he was formally
6 arraigned. He said he's not guilty of the charges in
7 this case, and you are the people who are going to
8 judge those facts and make an ultimate determination
9 as to guilt or innocence.

10 As the judge explained in her opening, she is
11 the judge of the law. There are certain legal things
12 that happen that the judge is in charge of, but
13 basically the facts you are in charge of, and those
14 facts -- whatever decisions you make will never
15 actually change. There is other things that may go
16 on in this case, but for all practical purposes your
17 decision about this case, about guilt or innocence,
18 will stand.

19 As the solicitor stated and as you know, the
20 State has the burden of proof, and the burden of
21 proof in a criminal case is proof beyond a reasonable
22 doubt. What is a reasonable doubt ? A reasonable
23 doubt is to hesitate to act. That's a reasonable
24 doubt. But what the burden is that it's actually
25 beyond that doubt. You have to go beyond any doubt

1 that would cause for y'all to decide that he's
2 guilty. Because Mr. Johnson is innocent until proven
3 guilty in this country and he is clothed in
4 innocence. He is an innocent man sitting right here
5 today just like everybody else in this room and until
6 such time as the State can provide facts or
7 circumstances such for you to determine that that
8 innocent cloak should be taken off and found guilty,
9 that's ultimately what we are here to decide, and can
10 the State meet their burden of proof.

11 In this case, as he stated, you will hear
12 evidence that what happened is that Mr. Johnson was
13 in a car owned by Enterprise Rent-A-Car -- it was a
14 Jaguar -- on the 28th day of January 2004 and that
15 ultimately what happened is a gun and some drugs were
16 found in that car.

17 The question is going to become whether or
18 not you determine as the jury that he possessed or
19 was owned or whatever that gun and those drugs, and
20 that's ultimately the question.

21 As I told you, Mr. Johnson said he is not
22 guilty of that charge. It was in the car. The gun
23 and the drugs were in the car. The question is going
24 to be whether or not the State can establish beyond a
25 reasonable doubt that they were his. And you will

1 find that there is going to be some stuff that is not
2 presented. You are not going to hear physical
3 evidence like fingerprints and things like that that
4 tie him to the gun. This was a silver chrome gun.
5 And you are not going to hear evidence that these
6 drugs in the bag had his fingerprints on it or
7 anything like that. What you are going to hear is it
8 was in the car. You are going to have to decide
9 whether or not he should be found guilty of that or
10 he should be innocent.

11 We appreciate your attention. It is the most
12 important day of Mr. Johnson's life and it's going to
13 be the most important event in his life. And we just
14 tell you that at the end of this case I believe that
15 after you hear all of the evidence that is presented
16 you will find that Mr. Johnson is not guilty of these
17 charges and that he is innocent.

18 Thank you very much.

19 THE COURT: You may proceed.

20 MR. KNISLEY: May we approach very briefly?

21 THE COURT: Yes.

22 MR. BIANCHI: The State calls Mr. Charlie
23 Harden.

24 MS. KNISLEY: Judge, can we approach one more
25 time?

1 THE COURT: Yes.

2 (Bench conference held in the presence but
3 out of the hearing of the jury.)

4 THE COURT CLERK: Sir, please walk around and
5 be sworn.

6 Please state your full name to the Court and
7 spell your last.

8 THE WITNESS: My name is Charles Wilson
9 Harden, H-A-R-D-E-N.

10 CHARLES W. HARDEN

11 being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. KNISLEY:

14 Q. Mr. Harden, where are you currently employed?
15 if you are employed.

16 A. I retired from North Charleston Police
17 Department January 2nd.

18 Q. What are you doing now?

19 A. I'm doing a lot of honey-do's; building an 18
20 X 12 in the backyard and in the process of working
21 for a federal agency.

22 Q. And were you employed by North Charleston
23 Police in January of 2004?

24 A. Yes, sir.

25 Q. And what was your position there at the time?

CHARLES W. HARDEN - DIRECT EX. BY MR. KNISLEY 113

1 A. I was responsible for all of the evidence
2 that came in from the North Charleston Police
3 Department.

4 Q. I show you what has been marked as State's
5 Exhibit 1 for identification. I ask you to examine
6 both sides of it and tell me if you recognize that
7 item.

8 A. Yes, sir.

9 Q. And what is that item?

10 A. It's a Best kit with cocaine that was turned
11 into the evidence room, and I transported it to SLED
12 and also picked it up from SLED.

13 Q. Does that item have any identifying numbers
14 or characteristics?

15 A. Yes, sir. A Best kit has two numbers. A lab
16 number is assigned to it and it also has a unique
17 number on it that starts with a B.

18 Q. And where did you receive that item from?

19 A. I received it out of the drop box at the
20 North Charleston Police Department evidence room.

21 Q. And again, briefly, what is the drop box?
22 What is the purpose of that?

23 A. The front part of the evidence room at the
24 North Charleston Police Department is constructed out
25 of steel. The doors are steel. There is three drop

1 boxes. The one that this was placed in is sort of
2 like a post office box. You pull a lever back and
3 drop it in, and it's impossible to retrieve anything
4 out of it until you unlock it.

5 Q. Once an item is placed in there who has
6 access to it?

7 A. If an officer turns in evidence, he can come
8 and check it out for court or if he wants to take
9 another look at it or if the defense -- the
10 prosecutors want to take a look at it, they can come
11 down, but only I had access to the evidence room. No
12 one else is allowed in there.

13 Q. It never leaves your custody when these other
14 people want to view it?

15 A. No, sir.

16 Q. And if that evidence that was left in the
17 drop box was tampered with in any way, would you know
18 that?

19 A. No, sir.

20 Q. Was that package sealed when you received it?

21 A. Yes.

22 Q. If that package had been damaged in any way,
23 would you have made some notation or report of that?

24 A. Yes, sir.

25 Q. And once you received that package that was

CHARLES W. HARDEN - DIRECT EX. BY MR. KNISLEY 115

1 not tampered with where did you take it?

2 A. Generally I would have a certain date to
3 transport drugs to SLED, for obvious reasons. In
4 this case I took this Best kit to SLED on February
5 the 5th of 2004.

6 Q. And when you took it to SLED, where did you
7 take it?

8 A. They have an evidence receiving area. All
9 evidence when taken up there by me is dropped in a
10 drop box similiar to ours, and the people that are
11 assigned to determine what it is come down and take
12 it out of the containers.

13 Q. And does this Best kit you testified earlier
14 have a number?

15 A. Yes, sir.

16 Q. What is the number on this Best kit?

17 A. The lab number is L04011227. The B number is
18 B159108.

19 MR. KNISLEY: Mr. Harden, that is all the
20 questions I have.

21 MS. GAY: I have no questions and I am not at
22 all imposed to him being excused.

23 THE COURT: You may call your next witness.

24 MR. KNISLEY: The State calls Jill Clark.

25 (State's Exhibit 3 marked for

1 identification.)

2 THE COURT CLERK: Please state your full name
3 to the Court and spell your last name.

4 THE WITNESS: Jill Clark, C-L-A-R-K.

5 JILL CLARK

6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KNISLEY:

9 Q. Miss Clark, are you employed?

10 A. I'm employed by the South Carolina Law
11 Enforcement Division.

12 Q. What is your position there?

13 A. I'm a criminologist in the drug analysis
14 department.

15 Q. Do you have any special training,
16 qualifications for that position?

17 A. Yes, I do. I have a Bachelor's degree in
18 chemistry and one year's worth of graduate school.
19 I have attended the South Carolina Criminal Justice
20 Academy; also attended training at the drug
21 enforcement agency and also completed SLED's
22 internal training course for the drug analysis
23 department.

24 Q. And when you talk about drug analysis, what
25 type of work does that encompass specifically?

JILL CLARK - DIRECT EX. BY MR. KNISLEY

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1 A. I test any drugs or anything that they
2 submit, law enforcement, to us for the presence of
3 controlled substances.

4 Q. Do you have any specialized laboratory
5 equipment or materials that you use to accomplish
6 that?

7 A. Yes, we do.

8 Q. And have you testified in court before
9 regarding this?

10 A. Yes, I have.

11 MR. KNISLEY: We would offer Jill Clark as an
12 expert in the field of identification of controlled
13 substances.

14 THE COURT: Any objection?

15 MS. GAY: No, your Honor, not at this time.

16 THE COURT: You may proceed. So admitted.

17 BY MR. KNISLEY:

18 Q. I show you what has been marked as State's
19 Exhibit 1 for identification and ask if you recognize
20 that.

21 A. Yes. These are some drugs I tested.

22 Q. And does that package have any identifying
23 characteristics?

24 A. Yes. The inside bag has the date, my
25 initials, and also after I test it and put it in the

1 outer heat sealed bag I dated it and initialed it.

2 Q. When you received that item was it tampered
3 with in any way?

4 A. No. It's a tamper evident bag, and that's
5 one of the things I check, and I put okay, my
6 initials, and the date.

7 Q. The tamper evident bag, that's the bag you
8 received from North Charleston Police?

9 A. Yes.

10 Q. If it had been tampered with would you make
11 some report or --

12 A. I would call the agency and tell them that I
13 would be unable to test the drugs.

14 Q. And did that occur in this case?

15 A. No, it did not.

16 Q. Miss Clark, as a result of your receipt of
17 that did you perform any testing?

18 A. Yes, I did.

19 Q. I want to show you what has been marked
20 State's Exhibit 3 for identification. I ask if you
21 recognize that form.

22 A. Yes. This is a report I prepared for this
23 case.

24 Q. What information does that form provide with
25 regard to the substances that you received from North

JILL CLARK - DIRECT EX. BY MR. KNISLEY

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1 Charleston Police?

2 A. It shows that I received a powder substance
3 and then the results of my testing. Cocaine was
4 found with a combined weight of 71.25 grams which
5 converts to 1,099.38 grams, and it's a Schedule 2
6 controlled substance.

7 Q. Who did you receive the Best kit from?

8 A. I received the Best kit -- I picked up the
9 drug kits from our drug box at SLED at this time.

10 Q. What is the drug box at SLED?

11 A. It's a box where the evidence custodian or
12 whoever brings it in if drugs are to be tested and
13 puts them in there and then it can only be -- once it
14 goes in there you can't take it back out unless you
15 unlock it, and I personally pick up the ones that I
16 have to test for myself.

17 Q. Does the Best kit have an identifying number?

18 A. Yes. The Best kit has a B number, is what we
19 call it. It's a six digit number, and each Best kit
20 has a different number.

21 MR. KNISLEY: Your Honor, at this time we
22 would offer the report prepared into evidence on the
23 condition upon any further or future objections that
24 may arise.

25 MS. GAY: I ask for him to admit it until

1 such time as the foundation is laid. I have no
2 objection. I just don't want it admitted at this
3 time.

4 THE COURT: The report is admitted subject to
5 the objection.

6 MR. KNISLEY: Beg the Court's indulgence one
7 moment.

8 THE COURT: Yes.

9 BY MR. KNISLEY:

10 Q. Miss Clark, the package that you have there,
11 the other package, is that something that you did?

12 A. Yes. After we open up the Best kit and you
13 take out the drugs or whatever substance is submitted
14 and you test it, you have to repackage it just to
15 keep everything sealed. We have an outer bag that we
16 use that I put a label on and heat seal it to kind of
17 secure the evidence.

18 Q. And that bag as it's heat sealed in front of
19 you, has it been tampered with in any way?

20 A. No. It's still sealed from when I originally
21 sealed it after testing of the drugs.

22 MR. KNISLEY: Thank you.

23 THE COURT: Any questions of the witness?

24 BY MS. GAY:

25 Q. You are merely here to explain what that

JILL CLARK - DIRECT EX. BY MR. KNISLEY

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1 stuff is?

2 A. That's correct.

3 Q. Not any connection whatsoever to who that
4 stuff might have come from or where it came from,
5 just what it is?

6 A. Right.

7 MS. GAY: That's all the questions I have.

8 I have no problem with her being excused,
9 your Honor.

10 THE COURT: Any redirect?

11 MR. KNISLEY: No, your Honor.

12 THE COURT: Ma'am, you are excused. Have a
13 good afternoon.

14 You may call your next witness.

15 MR. BIANCHI: The State calls Officer Troy
16 Butler.

17 MS. GAY: May I approach, your Honor?

18 THE COURT: You may.

19 (Bench conference held off the record.)

20 THE COURT: Please swear the witness,
21 please.

22 THE COURT CLERK: Please state your full name
23 to the Court and spell your last.

24 THE WITNESS: Troy Butler, North Charleston
25 Police Department. B-U-T-L-E-R.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 122

1 OFFICER TROY BUTLER

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. BIANCHI:

5 Q. May it please the Court.

6 Officer Butler, where do you work?

7 A. North Charleston Police Department, K-9
8 Division.

9 Q. How long have you worked there?

10 A. Approximately six years.

11 Q. What are your duties in your job?

12 A. Primarily my duties include taking care of a
13 canine. We answer calls for service just as a
14 regular patrol person would do. Our primary use is
15 for utilizing as back-up officers for other officers
16 and so forth as well as anything that a regular
17 patrol officer may do.

18 Q. And you were working there on January 28 of
19 2004?

20 A. Yes, sir. I was on patrol on Rivers Avenue
21 just doing selective enforcement as far as traffic
22 laws and so forth.

23 Q. And on January 28, 2004 did you have an
24 encounter with the defendant?

25 A. Yes, sir, I did.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 123

1 Q. And was this encounter in Charleston County?

2 A. Yes, sir. It was in Charleston County.

3 Q. If you could go ahead and tell the jury what
4 your encounter with the defendant entailed.

5 A. On the 28th of January at approximately
6 3 o'clock - 3:30 in the afternoon I observed the
7 defendant operating a 2003 silver-grayish colored
8 Jaguar with an equipment violation.

9 That equipment violation is basically
10 there is a traffic law that states you have to be
11 able to read the month and date sticker on the back
12 registration of the license tag of the vehicle.
13 Both the year and the month sticker were
14 obstructed. I couldn't observe it. So therefore I
15 initiated a traffic stop. That traffic stop went
16 fairly well. However, the defendant quickly exited
17 the vehicle, which just with -- the six years that
18 I have, it set off somewhat of a red flag to me
19 because normally everybody -- I have been stopped
20 by a police officer before prior --

21 MS. GAY: I would object to this answer.

22 THE COURT: Sustained. It is a narrative.

23 You need to ask a question and have it answered.

24 BY MR. BIANCHI:

25 Q. What happens when you pulled the defendant?

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 124

1 A. He actually exited the vehicle and started
2 approaching me, and we actually kind of met each
3 other in the middle area, at which time I asked him
4 for his driver's license, registration, proof of
5 insurance, and he went to the passenger side of the
6 vehicle from the driver's side of the vehicle. And I
7 have written down here in my narrative of my incident
8 report that Mr. Allah reached back over the driver's
9 side --

10 MS. GAY: Your Honor, I would ask that he
11 testify to his recollection as opposed to the report.

12 THE COURT: You need to ask a question. He
13 needs to answer.

14 BY MR. BIANCHI:

15 Q. Answer the question and --

16 THE COURT: He can elaborate.

17 A. Mr. Allah went to retrieve his wallet from
18 the driver's side of the vehicle from the passenger
19 side, which set up another red flag for me. It just
20 seemed kind of awkward and weird that he just
21 couldn't lean over to the glove box area, and at
22 which time his license and registration was provided
23 to me.

24 Q. So once he handed you his license and the car
25 registration what did you have him do then?

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 125

1 A. I had him sit -- I had him seated back in the
2 driver's side of the vehicle just for officer's
3 safety purposes.

4 Q. And then what did you do with the license and
5 the registration?

6 A. Per our general SOP and standards, we run
7 everybody that we stop -- or I do. Everybody that I
8 stop, that I encounter, I do a warrants check and to
9 see if their driver's license is in fact valid, at
10 which time that came back valid. The defendant did
11 not have any active warrants. And I had asked for a
12 back-up officer prior to this just, because of him
13 being out of the vehicle and some other furtive
14 movements that he was making.

15 Q. So once you ran his license and you ran the
16 registration and everything was clear what did you do
17 after that?

18 A. I ran my canine that I no longer have around
19 the vehicle. And he is an aggressive alerted canine,
20 which basically he scratches or bites at the vehicle
21 when he is on an odor of either marijuana,
22 methamphetamines, cocaine or crack cocaine. The drug
23 sniff was conducted around the vehicle. He did not
24 give what I believed to be a 100% positive aggressive
25 alert. So giving the benefit of the doubt to the

1 defendant, I issued him a verbal warning and stated
2 he could be on his way from that.

3 Q. And once you issued the defendant the verbal
4 warning and told him that he was free to go from the
5 stop what happened after that?

6 A. Basically the defendant walked into the
7 flower shop with his son that was accompanying him in
8 the passenger seat of the vehicle, at which time
9 myself as well as Corporal Middleton proceeded to
10 walk back to our vehicles.

11 Q. Where was this flower shop in relation to
12 where the defendant's car was parked?

13 A. Almost directly in front. Right in front of
14 the door or shortly thereabouts.

15 Q. So once the defendant and his son, you said,
16 went into the flower shop and went in after the stop
17 -- you were talking with Corporal Middleton?

18 A. Right. Exactly.

19 Q. What happened after that?

20 A. He was free to go; released from the stop.
21 "Have a nice day. Here is your verbal warning", at
22 which time he proceeded into the flower shop.

23 Mr. Middleton and I were walking back to the
24 vehicles and Corporal Middleton made a statement to
25 me as saying Officer Butler --

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 127

1 MS. GAY: I object to what the officer said.

2 THE COURT: Is the objection hearsay?

3 MS. GAY: Yes.

4 THE COURT: Sustained. Hearsay. You may
5 rephrase.

6 BY MR. BIANCHI:

7 Q. Without saying what he said to you what -- go
8 forward with what happened after --

9 A. There was a Taurus, which is the make of the
10 firearm, a chrome plated color Taurus 9 millimeter
11 located in plain view under the defendant's driver's
12 side seat in plain view of our -- what we observed.
13 It was loaded and in plain view.

14 Q. So you personally saw the gun from outside of
15 the car?

16 A. Once it was brought to my attention, yes,
17 sir.

18 Q. Where were you looking when you saw -- from
19 what angle were you looking when you saw the gun?

20 A. What angle was I? I was probably -- if you
21 are looking at the front of the vehicle, the left
22 side, meaning the left apex of the front windshield,
23 the right side meaning the driver's side, obviously,
24 apex of the front windshield, I was looking probably
25 diagonally into the vehicle from the front windshield

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 128

1 passenger window area.

2 Q. Once you saw this gun what did you do?

3 A. Basically at that time we had a crime. You
4 know, so the defendant started proceeding towards the
5 front door of the business, at which time we detained
6 him; placed him under arrest for unlawful carrying of
7 a firearm.

8 Q. You placed him under arrest right there for
9 the possession of a gun, unlawful carrying?

10 A. Absolutely, like we would have done anyone
11 else.

12 Q. Once you placed him under arrest for the
13 unlawful carrying of a gun what did you do from
14 there?

15 A. Basically the firearm per SOP was ran
16 through.

17 Q. How did you come in possession of the
18 firearm?

19 A. Corporal Middleton actually picked up the
20 firearm and handed it to me as I was conducting other
21 business: Records checks, rap sheets that needed to
22 be forwarded. There was some discrepancy and whatnot
23 with some name change and stuff.

24 Q. So when you got the gun from Corporal
25 Middleton what did you do with it?

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 129

1 A. I placed it into my custody and ran it
2 through NCI to see if it was -- what kind of status,
3 if it was registered to the defendant or if it was
4 stolen or not.

5 Q. What were the results of that NCIC report?

6 A. Our North Charleston dispatcher runs all of
7 our firearms that we come in contact with. They are
8 run via NCIC, which is a computer data system. And
9 basically that firearm came back in a stolen status
10 from Berkeley County, which I believe was stolen a
11 month or so prior. It had a stolen status. The
12 firearm that I had in my possession at the time that
13 I ran -- if you want to confirm the serial number.

14 Q. Let me stop you here. I want to show you
15 what has been marked as State's Exhibit 2 for
16 identification.

17 A. Yes, sir.

18 Q. Do you recognize this?

19 A. Absolutely.

20 Q. What is this?

21 A. That's the weapon that was located in the
22 defendant's vehicle.

23 Q. Can you tell us how you know this was the
24 exact weapon?

25 A. If we can verify a serial number on the

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 130

1 weapon, TMJ19378VY, and I have that same here.

2 Q. That's what you have in the report right
3 there?

4 A. Yes, sir.

5 MR. BIANCHI: Your Honor, I would move to put
6 State's Exhibit 2 into evidence.

7 THE COURT: Any objection?

8 MS. GAY: Your Honor, I would ask for him to
9 not do that until the next officer that testifies.
10 I think there may be some discrepancy as to who
11 found -- who handed it to who.

12 THE COURT: Reserved.

13 BY MR. BIANCHI:

14 Q. So where we just left off was that you ran
15 the gun and it came back as stolen, and let's move on
16 to the drugs.

17 I apologize. Once he was under arrest for
18 the gun and you had taken the gun out what did you do
19 next?

20 A. Basically there was an inventory conducted as
21 we do on every arrest that involves a vehicle where
22 the subject that is in the vehicle has to be taken to
23 jail. Somebody has to take custody of the vehicle.
24 There was an inventory conducted of the vehicle and
25 search of the car.

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 131

1 Q. What were the results of that inventory
2 search? Did you find anything in the car?

3 A. Basically we just do -- yes, sir, I did. We
4 located a substance that field tested positive for
5 cocaine base in the vehicle and weighed approximately
6 70 to 72 grams. Somewhere in there.

7 Q. Where in the car did you find that?

8 A. That was in the center console armrest area,
9 if everybody is familiar with that. Inside that.

10 Q. And you personally found the drugs yourself?
11 It wasn't Officer Middleton? You were the one that
12 found the drugs?

13 A. Yes, sir.

14 Q. I'm going to show you what has been marked as
15 State's Exhibit 1, I believe, for identification
16 purposes.

17 Do you recognize this?

18 A. Yes, sir, I do.

19 Q. And what is that?

20 A. This is the substance of narcotics that was
21 located in the defendant's vehicle that he was
22 operating at the time and date in question.

23 Q. How do you know that?

24 A. I was the one that --

25 Q. What did you do with the item when you got



1 it?

2 A. I placed it into my -- I actually placed it
3 in the trunk of my vehicle and secured it at that
4 time to be placed into evidence.

5 Q. What did you do from there?

6 A. I placed it into a Best kit, which is a
7 common thing we do for our standard operating
8 procedures that basically is placed in a Best kit to
9 be sent to SLED for analysis, analysis purposes, to
10 make sure it was cocaine.

11 Q. Did you make any markings on that Best kit?

12 A. Yes, I did. My initials -- I was the only
13 one that came in contact with the Best kit. My
14 initials were placed on everything, and there is a
15 heat seal actually on the Best kit area. If it's
16 tampered with in any way, SLED will let us know.

17 Q. Who did you transfer this Best kit to?

18 A. I transferred it to North Charleston Police
19 Department evidence locker, which I believe
20 Mr. Charlie Harden is one of . . .

21 Q. When did you transfer this?

22 A. It was on the same day.

23 Q. On the same date.

24 Transferring drugs from a crime scene to
25 evidence, putting it into the evidence box, is that

OFFICER TROY BUTLER - DIRECT EX. BY MR. BIANCHI 133

1 standard procedure?

2 A. Yes, sir, it is.

3 Q. And while the drugs were in your possession
4 did you change or alter them substantially as to
5 their form or content?

6 A. Absolutely not.

7 Q. Did you tamper with the item at all?

8 A. Absolutely not.

9 Q. Did you maintain the integrity of the item?

10 A. Yes, I did.

11 MR. BIANCHI: Your Honor, I would ask to move
12 State's Exhibit 1 into evidence.

13 MS. GAY: I just need to look at the other
14 documents that they had first, if you don't mind.

15 At this time I would like to object because I
16 don't think we have established a chain yet.

17 MR. BIANCHI: A moment of the Court's
18 indulgence, your Honor.

19 MR. KNISLEY: Your Honor, may I approach?

20 THE COURT: Yes.

21 (Bench conference held off the record.)

22 THE COURT: So you are withdrawing the
23 objection?

24 MS. GAY: Yes.

25 THE COURT: The objection is withdrawn.

1 Marked and admitted.

2 MR. BIANCHI: Thank you, your Honor. A
3 moment of the Court's indulgence.

4 I have no further questions, your Honor.
5 Please answer any questions the defense counsel has,
6 Officer Butler.

7 CROSS-EXAMINATION

8 BY MS. GAY:

9 Q. Good afternoon, Officer Butler.
10 How long have you worked for North
11 Charleston?

12 A. Approximately going on six years.

13 Q. Did you work for a different agency before
14 that?

15 A. Yes, ma'am, I did.

16 Q. What agency was that?

17 A. It was actually Charleston County Sheriff's
18 Department.

19 Q. How long did you work there?

20 A. Approximately a year.

21 Q. How about before that?

22 A. No prior officer experience.

23 Q. So before you worked for Charleston County is
24 that when you went to the police academy?

25 A. Yes, ma'am.

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY

135

1 Q. What year would that have been?

2 A. That would have been in 2000 sometime.

3 Q. So when you went to the academy, certainly
4 they taught you a number of different things related
5 to police activity.

6 A. Absolutely.

7 Q. And one of the things they would have had
8 classes on or done is writing incident reports.

9 A. Yes, ma'am.

10 Q. And certainly you would agree with me that
11 when you write an incident report they are usually
12 written around the same time as the incident itself,
13 within a short period of time.

14 A. Yes, ma'am.

15 Q. For instance, this incident happened on
16 January 28, 2004. Today we are in March 9, 2006,
17 which is over two years later. And so not only in
18 this particular case but as you have learned how to
19 write incident reports, things that would have been
20 important at the time of the incident is what you put
21 into the incident report.

22 A. Yes, ma'am.

23 Q. And so you would want to put anything in
24 there that would be significant, all the many things
25 that you can remember, as we said, that would be

1 closer to the incident than right now, over two years
2 later.

3 A. Correct.

4 Q. In this particular case there is an incident
5 report?

6 A. Yes, ma'am.

7 Q. And you created that incident report?

8 A. Yes, ma'am, I did.

9 Q. And it has your name on it and you are the
10 one who chose what to put on the incident report?

11 A. Yes, ma'am. It's entirely in my verbiage.

12 Q. And I know you have kind of looked at it and
13 you have one, so if you need to refresh your
14 recollection, that's fine with me.

15 But in looking at the incident report in this
16 case is there any point in this report where you
17 identify yourself as a K-9 officer?

18 A. No, ma'am.

19 Q. Or that there was a canine or a dog present
20 at this arrest?

21 A. No, ma'am.

22 Q. And so that's pretty significant because --

23 A. Yes, ma'am.

24 Q. That's not in your report?

25 A. We are not required to put that in our

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 137

1 incident report as far as what division we work for.

2 As long as we observe ourselves as -- we are

3 obviously police. It's not required.

4 Q. I understand that. But in this particular
5 case of note you actually had your dog do a drug
6 sniff of Mr. Johnson's car.

7 A. Yes, ma'am. That, as I stated, I sure did.

8 Q. But that's not mentioned in this report at
9 all?

10 A. No, ma'am.

11 THE WITNESS: If I can elaborate on that,
12 your Honor.

13 THE COURT: Explain your answer.

14 BY MS. GAY:

15 Q. You can explain your answer.

16 A. Basically there is a separate incident report
17 that's actually conducted and done when a canine is
18 utilized. I forwarded the defendant every single one
19 of his rights. I did not violate any of his rights.

20 MS. GAY: I would object to his statement.

21 THE COURT: Sustained. It's nonresponsive.
22 You are free to explain your answer as long as it's
23 responsive.

24 BY MS. GAY:

25 Q. Let me ask you a question.

1 The dog didn't find anything, so therefore
2 there was no need in your opinion to fill out this
3 additional report or to mention him?

4 Is it a he or she?

5 A. It's a male.

6 Q. Wouldn't you agree with me on that? Because
7 there was no alert at that time.

8 A. No, ma'am; I don't agree with you. In all
9 due respect, I don't agree with you.

10 With the training and everything I've had in
11 canine -- I've been a canine officer for about four
12 years. The truth be known, I probably pulled my
13 canine off a positive alert to the vehicle due to the
14 fact that I didn't want my dog scratching up
15 somebody's car. It was a 2003 Jaguar. It didn't
16 have a scratch or ding on it; and truth be known,
17 I probably pulled my dog off the possible alert.
18 My dog has been certified in locating narcotics;
19 and truth be known, I pulled my dog off a positive
20 alert. That was a handler error.

21 Am I trying to hide anything from the
22 Court? No, I'm not. I didn't find that it was
23 very important to place it in the incident report
24 solely because the defendant was released from the
25 traffic stop. He was released from the traffic

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 139

1 stop.

2 Q. I understand what you are saying. Once
3 again, I'm going to ask this question: There is
4 nothing in this report that indicates that the dog
5 alerted to drugs in this report?

6 A. No, ma'am, there is not.

7 Q. And so pursuant to the fact that you were
8 traveling down Rivers Avenue, you observed my
9 client --

10 A. Yes, ma'am.

11 Q. -- who is Terrance Johnson sitting at the
12 table today, driving a 2003 shiny Jaguar, basically a
13 new one?

14 A. Yes, ma'am.

15 Q. And it was at that time that you made some
16 decision to stop him on Rivers Avenue or to follow
17 him into a flower shop, the flower shop parking lot?

18 A. Yes. He was making a lot of furtive
19 movements in the car. I could actually observe him
20 from the passenger -- the driver's side mirrors of
21 the vehicle looking around, actually making furtive
22 movements in the car and whatnot. There was a lot of
23 observations that I made that kind of put up
24 indicators to me that there may be some possibility
25 of criminal activity going on.

1 Q. So based on the fact that you sat there and
2 said there might be something going on, I might need
3 to talk to this person, that's when he pulled off
4 Rivers Avenue into the parking lot of the flower shop
5 and you decided to get behind him and at that point
6 turn your blue light on?

7 A. No, ma'am. I found a legal and valid
8 equipment violation on his vehicle which I then
9 stopped him for.

10 Q. You stopped him in a parking lot on Rivers
11 Avenue at a flower shop?

12 A. Yes, ma'am.

13 Q. I am going to show you what has been marked
14 for demonstrative purposes at this time as
15 Defendant's Exhibit 4.

16 Do you recognize this?

17 A. Yes, ma'am, I do.

18 Q. What is this a picture of?

19 A. That is a picture of Rivers Avenue, actually
20 on the westbound side of Rivers Avenue near Columbia
21 Street around the 3000 block, 2000 block of Rivers
22 Avenue.

23 Q. This is a flower shop.

24 Is this the place in the parking lot where my
25 client pulled into before you pulled up behind him?

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 141

1 A. Yes, ma'am.

2 Q. And when you pulled up behind him, that's
3 when you turned your blue light on; right?

4 A. No, ma'am. My blue lights were on -- there
5 was a delay in time from where I had to actually
6 switch over in the lanes and actually get behind the
7 defendant's vehicle to turn on my blue lights.

8 Q. So you pulled over. You get out. You go up
9 to him. I think you testified that at that point he
10 had gotten out of the car and was walking around to
11 the passenger side of the car.

12 A. Yes, ma'am. He got out --

13 Q. Just yes or no.

14 A. He got out of the vehicle.

15 Q. And walked toward the passenger side of the
16 car?

17 A. Not at that time. When I asked him for his
18 information, he walked to the passenger side of the
19 vehicle to retrieve his wallet, which was on the
20 driver's side of the vehicle.

21 Q. I thought you said it was in the glove box.

22 A. No. His vehicle information, ma'am, as far
23 as paperwork and so forth and -- it's in the incident
24 report.

25 Q. Was that in the glove box?

1 A. That's in my incident report. Mr. Allah
2 reached back over to the driver's side to retrieve
3 his wallet.

4 Q. And his child was in the car in the passenger
5 seat at that time?

6 A. That's correct, yes, ma'am.

7 Q. So it was at that point, I believe, that you
8 said to Mr. Johnson: I need your paperwork. Will
9 you please sit back in the car?

10 A. Yes, ma'am.

11 Q. And isn't it true that between the time that
12 he walked from the passenger side of the car to the
13 driver's side that you did a pat down search, like a
14 pat down for officer safety?

15 A. Yes, ma'am.

16 Q. And didn't find anything?

17 A. No, ma'am. I just did a pat down for
18 weapons.

19 Q. And that would have been like bulges in his
20 pocket?

21 A. Yes.

22 Q. As an example, we've got this gun here; that
23 if this gun had been in his pocket, it is likely that
24 you would have felt it?

25 A. Certainly, yes, ma'am.

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 143

1 Q. Or if these drugs had been in his pocket,
2 this big package of drugs that we had, you very well
3 could have felt it?

4 A. Yes, ma'am, definitely.

5 Q. But that didn't happen, and so when he went
6 to get back into his car and cooperated with you, it
7 was at that time that you ran his driver's license
8 and any information about him.

9 A. Yes, ma'am.

10 Q. As you said, SOP, to see if he had any
11 outstanding warrants or what the status of his
12 license was?

13 A. That's correct, yes, ma'am.

14 Q. Backing up just a second.

15 When you were traveling down Rivers Avenue
16 with him, he had not done any moving violations.
17 There were no speeding violations, improper lane
18 changes, improper turning without signals, any of
19 that stuff? There were no moving violations that he
20 was doing?

21 A. I really don't recall.

22 Q. You didn't cite him for any and you didn't
23 put it in your incident report?

24 A. I try not to write people tickets as much as
25 I can.

1 Q. Is it in your police report?

2 A. No, ma'am.

3 Q. In the process of this process after you ran
4 his driver's license he didn't have a suspended
5 driver's license. It wasn't as if there was any
6 problem as to his license.

7 A. No, ma'am. There was no problem with -- his
8 driver's license came back clear.

9 Q. At that point is when you decided to run your
10 dog and do the drug sniff, and I believe you walked
11 up to the car and said: Will you sit here and put
12 your hands on the steering wheel while I let my dog
13 walk around your car?

14 A. Yes, ma'am. That was just for safety and our
15 safety, just so that a back-up officer could see his
16 hands and the dog didn't start jumping or anything
17 and bite him.

18 Q. Back to the back-up officer.

19 Corporal Middleton came on the scene of this
20 incident sometime around the time that you were first
21 talking with my client.

22 A. Yes, ma'am.

23 Q. And I believe that he was standing in the
24 area and that he was there during the period of time
25 that your dog walked around the car.

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 145

1 A. I believe so, yes, ma'am.

2 Q. Was he also there during the period of time
3 that you did the pat down of my client?

4 A. To be honest with you, ma'am, I don't recall.

5 Q. And so at that point is when you then told my
6 client: I'm going to give you a warning and you can
7 go now.

8 A. Yes, ma'am. I wanted to make it known to his
9 attention -- like if you have a brake light out: You
10 know, partner, you have got to be able to see your
11 month and year sticker on the car.

12 Q. I think from this picture the door of this
13 flower shop is right here and I believe the front of
14 the car was -- this pole right here, the front of the
15 car would have been towards the pole or this way or
16 that way?

17 A. To the best of my recollection, the car was
18 pretty much -- it was pulled into the front of the
19 store, to the best of my recollection.

20 Q. Like his taillights would have been facing
21 the door?

22 A. No, ma'am.

23 Q. Not taillights. Headlights.

24 A. Yes, ma'am.

25 Q. So at that point I believe that Mr. Johnson

1 walked into the door of the flower shop with his
2 child.

3 A. That was after he was let go, yes, ma'am.

4 Q. And so shortly thereafter is when Corporal
5 Middleton -- your position is Corporal Middleton made
6 it known to you that there was this firearm in the
7 car.

8 A. Yes, ma'am.

9 Q. And I believe you said at that point that
10 where you were standing was somewhere around the
11 front where the windshield was and so that you had to
12 look into the driver's side floorboard.

13 A. No. I was probably closer to you -- like if
14 you were standing right here showing me this picture,
15 we were probably that far.

16 Q. So am I the car or Corporal Middleton?

17 A. You are probably the car. Like I said, it
18 was -- the firearm was in plain view, ma'am.

19 Q. I understand that.

20 But you have looked in the windshield of the
21 car and saw the front of the car and saw it in the
22 driver's floorboard?

23 A. I only approached the vehicle to look in and
24 confirm what Corporal Middleton observed to be a
25 firearm.

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 147

1 Q. And so pursuant to that that's when y'all got
2 the keys from Mr. Johnson and basically went in;
3 opened up the door of the car and took the firearm?

4 A. Yes, ma'am.

5 Q. And your testimony is that ultimately
6 pursuant to an inventory of the car or as the car was
7 being processed that's when y'all found -- I believe
8 your testimony is you found the cocaine in the
9 armrest, the covered armrest in the car.

10 A. Yes, ma'am.

11 Q. And certainly we would agree that when you
12 look in a car and that armrest is closed and there
13 would not have been any -- it wasn't visible at all.

14 A. Yes, ma'am. We would have never actually
15 gotten that far had we not found the firearm.

16 Q. I understand that.

17 Basically what you would agree is that
18 looking into the car -- if you are sitting in the
19 car, if the armrest were down you would not have seen
20 the cocaine. Nobody could have seen the cocaine.

21 A. No, but I believe everyone in this courtroom
22 could have seen the firearm that was in the car,
23 ma'am.

24 Q. I understand that. I am talking about the
25 cocaine.

1 The cocaine was in a closed armrest in the
2 car.

3 A. Yes, ma'am. It was in a closed armrest.
4 Absolutely.

5 MS. GAY: One moment, your Honor.

6 BY MS. GAY:

7 Q. With regard to the gun, it was your job to
8 turn over the evidence to the evidence custodian at
9 North Charleston?

10 A. Yes, ma'am.

11 Q. So this gun and these drugs would have been
12 signed over to the gentleman who came who was the
13 evidence guy and it would have been locked up in the
14 evidence room?

15 A. No, ma'am.

16 Q. The gun doesn't get locked up in the evidence
17 room?

18 A. No, ma'am. We have a specific lock box in
19 our evidence area that only firearms go in and
20 handguns go into it. It's actually locked once it's
21 there.

22 Q. So the drugs go one place and the gun goes
23 into another?

24 A. Yes.

25 Q. Do you have any evidence to establish that

1 this gun right here had any fingerprints on it that
2 matched my client?

3 A. I don't have anything to do with that, ma'am.
4 That goes to our forensics people.

5 Q. You did the report on this case and you're
6 basically the one who did all of the information.

7 Is there anything in that report that says
8 that this gun was turned over to forensics?

9 A. I'm not able to do that.

10 Q. You're not able to do that, but is there
11 anything in your report that says it was turned over
12 to forensics?

13 A. No, ma'am, because I didn't do it.

14 Q. You didn't turn this over to forensics?

15 A. They sign it out. The only reason why I
16 didn't put anything about fingerprint is because I
17 didn't conduct the fingerprint.

18 Q. There is no evidence that you are presenting
19 to the jury today that there is any fingerprints to
20 the gun that establish that it's Mr. Johnson's
21 fingerprints on this gun?

22 A. No. All I am establishing for the jury today
23 is that the gun was under the driver's side seat that
24 the defendant was occupying at the time of the stop
25 in plain view.

1 Q. I understand that and we understand that
2 Mr. Johnson was sitting in the car and that this gun
3 at some point you found underneath the seat. That's
4 your testimony?

5 A. My testimony is Corporal Middleton -- as I
6 said earlier, I confirmed what he saw to be a
7 firearm. Yes, ma'am.

8 Q. And this bag, this Best evidence bag,
9 I believe you are the one who actually put it in
10 the Best evidence bag and filled out the paperwork
11 and dropped it in the drug box at the North
12 Charleston Police Department?

13 A. Yes, ma'am.

14 Q. We know what happens to this thing after it
15 gets dropped in the drop box.

16 Did you at any point pursuant to your
17 handling of this before you dropped it in the
18 evidence box have this bag tested for fingerprints to
19 see if Mr. Johnson had his fingerprints on it?

20 A. The plastic bag there?

21 Q. Yes.

22 A. No, ma'am.

23 Q. So once again, no testimony today, no
24 evidence before this jury that there is any
25 fingerprints on this bag that belong to Mr. Johnson?

OFFICER TROY BUTLER - CROSS-EX. BY MS. GAY 151

1 A. No, ma'am. He was just in possession of it.

2 Q. I understand that it was in the car with him,
3 but ultimately there is nothing that -- no physical
4 evidence of either the gun or the drugs that connect
5 to Mr. Johnson physically these items?

6 A. To the jurors of the Court, not to my
7 knowledge was there any kind of testing done to the
8 narcotics that would place it, or the firearm.

9 Q. Since you are the case agent and you know
10 what this is and you have done this report, there
11 were no people, witnesses, or anything like this came
12 forward to say: I saw Mr. Johnson with the gun or I
13 saw Mr. Johnson with drugs?

14 A. Yes, ma'am.

15 Can I make a statement that has to do with
16 what you are saying? Here I have a copy of the
17 Enterprise Rent-A-Car contract that the defendant
18 actually signed, and it states here that no other
19 driver be permitted to operate the vehicle.

20 Q. Can I ask you a question. Where did you get
21 that document?

22 A. From inside the car, the Enterprise
23 Rent-A-Car.

24 MS. GAY: I would object to him testifying to
25 the Enterprise Rent-A-Car document, your Honor.

1 THE COURT: Please approach.

2 (Bench conference held off the record.)

3 BY MS. GAY:

4 Q. Certainly at the time of your investigation
5 on the day -- on the 28th day of January of 2004
6 nobody was there -- no witnesses were there to say:
7 I saw Mr. Johnson with a gun or I saw Mr. Johnson
8 with drugs?

9 A. No, ma'am. I never questioned his son or
10 anything, so I don't know what he saw. The son was
11 like nine years old, eight or nine years old at the
12 time.

13 Q. In your report there is no information --
14 there is no other evidence that you are presenting to
15 this jury about anyone else seeing Mr. Johnson with
16 that gun or with those drugs?

17 A. No, ma'am.

18 Q. With regard to -- we have discussed the fact
19 that there is no physical evidence connecting that
20 stuff to my client. There is no witness statements
21 other than you and what happened in the car that day
22 connecting that stuff to my client.

23 Do you have any other evidence that you're
24 presenting before this jury, or you are not? No
25 other evidence?

OFFICER TROY BUTLER - REDIRECT EX. BY MR. BIANCHI₁₅₃

1 A. No, ma'am.

2 MS. GAY: No further questions of this
3 witness, your Honor.

4 THE COURT: Any redirect?

5 MR. BIANCHI: Very briefly, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BIANCHI:

8 Q. Officer Butler, as an officer with the North
9 Charleston Police Department are you aware of what
10 the rough street values of different drugs are?

11 A. Yes, sir. Being the K-9 Division, we roughly
12 estimate the value of narcotics based on street
13 value. I have here --

14 Q. What would be the street value of cocaine?

15 A. About a hundred dollars a gram.

16 Q. A hundred dollars a gram?

17 A. Correct.

18 Q. The last question: Did you stop the
19 defendant because he was driving a Jaguar, or did you
20 stop him because he had an obscured license tag?

21 A. No, sir. I wish I had a Jaguar.

22 Q. So you stopped him because he was driving a
23 Jaguar, or did you stop him because he had an
24 obscured license tag?

25 A. Equipment violation.

1 MR. BIANCHI: That's all I have.

2 THE COURT: Anything further?

3 MS. GAY: No, your Honor.

4 THE COURT: Sir, you may step down.

5 We are going to take advantage of this break.
6 We've gone a little beyond the time that I would
7 normally go today. I know that many of you have
8 other responsibilities, but I am trying to save us a
9 little bit of time on the back end tomorrow because I
10 have a docket meeting in the morning that will delay
11 our beginning of court. And so I'm going to ask that
12 y'all return -- on the outside of it being longer
13 than shorter, I ask that y'all return to the
14 courthouse in the morning by 10:15.

15 During this break please do not discuss this
16 case among yourselves or with anyone else. I know it
17 may seem very innocent. I have to catch myself
18 sometimes when I hear someone is on jury duty,
19 because the first national human question is to ask:
20 What are you hearing?

21 So fight the temptation to respond to that.
22 To begin to talk about it, to begin to process what
23 you have heard is by its very nature jury
24 deliberations because it requires you to process what
25 you heard and to draw conclusions based upon it.

1 So I would as well instruct you regarding
2 exposing yourselves to any media accounts about this
3 case as well as anything that you could find on the
4 internet by way of independent research. It is
5 essential that you maintain your impartiality as the
6 fact finders in this case.

7 I anticipate that we'll resume testimony in
8 the morning at 10:15. I anticipate that that
9 testimony will be short in its nature and that
10 shortly after that we will have closing arguments and
11 the Court's charge on the law.

12 I am going to go ahead and instruct the clerk
13 to take your lunch orders when you arrive in the
14 morning so that in the event that I need to order
15 lunch, we'll be in a position to do that without
16 having to interrupt the testimony. So if he is in
17 there in the morning to do that, if y'all could
18 accommodate him, I would greatly appreciate it.

19 If any of you feel uncomfortable going to
20 your cars, please let us know and I will have a
21 deputy escort you.

22 We'll see you in the morning at 10:15.

23 (Jury recessed at 5:45 p.m.)

24 THE COURT: Anything before we break for the
25 evening from the State?

1 MR. BIANCHI: Nothing, your Honor.

2 THE COURT: From the defense?

3 MS. GAY: No, your Honor. I have these two
4 items that I was going to have just for purposes of
5 demonstrative purposes. I don't know if we can open
6 up the suppression hearing just to ask you to look at
7 them. They are not the same car.

8 THE COURT: For the record, I will say that I
9 have taken the motion to suppress under advisement.
10 I am going to finish doing some research that I was
11 doing while listening to the testimony. I have been
12 doing a little more research, and also I shared this
13 with y'all during the chambers conference, but I have
14 taken a predominantly -- it's on-line. And so I
15 would imagine the State would have no problem with me
16 looking at those pictures. They are basically the
17 same as -- actually the pictures I have seen on-line
18 are far more in detail that take me through the
19 interior and exterior of the car.

20 MR. BIANCHI: We would object to the
21 introduction of those pictures. It is a completely
22 different car.

23 THE COURT: Is it similiar in type?

24 MS. GAY: Yes.

25 MR. BIANCHI: The tint on those windows, we

1 don't know if that is standard. And the lights --

2 THE COURT: I think I could take judicial
3 notice on their site that the windows come from the
4 factory with a particular tint.

5 She would have to tell me -- first of
6 all, you are going to have to lay a foundation as
7 to who took them, what model of car it is, is it
8 similiar in model to the car -- what does
9 Enterprise say the model of the car was?

10 MS. GAY: I just wanted to put a picture in
11 the record of what it is you were talking about.

12 MR. BIANCHI: It is a model XTY, your Honor,
13 platinum colored.

14 THE COURT: That's the sedan, four door?
15 What year was it?

16 MS. GAY: 2003, your Honor.

17 THE COURT: Does it give you any more detail
18 than that?

19 MR. BIANCHI: No, it doesn't, your Honor.

20 MS. GAY: He said the interior of it was
21 black.

22 MR. KNISLEY: Judge, we do plan to call
23 someone from the rental car company. I would just
24 ask your Honor that perhaps if you are --

25 THE COURT: I'm going to continue to have

1 it under advisement until I hear everything. I
2 need to do a little reading this evening.

3 MR. BIANCHI: The rental car manager, he will
4 testify to that particular car.

5 MS. GAY: Just in opening up -- because when
6 the officer testified this time, your Honor, he said:
7 I saw him wiggling around in the car and I thought
8 there might have been some criminal activity afoot.
9 That was kind of interesting.

10 THE COURT: I am going to base my decision on
11 the testimony I heard in the motion to suppress, but
12 I'm just going to take it under advisement.

13 To the extent that y'all agree that you want
14 me to take it from what the manager from Enterprise
15 says, you can do that.

16 MR. BIANCHI: We would just remind you that
17 this was a 2003 Jaguar.

18 THE COURT: They gave you the option to look
19 at all of that on line.

20 Court is adjourned.

21 (Recessed at 5:50 p.m.)

22 THE COURT: Please bring in the jury and then
23 I'll make a ruling on the motion to suppress.

24 Anything before we bring in the jury from the
25 State?

1 MR. BIANCHI: Nothing from the State, your
2 Honor.

3 THE COURT: Anything from the defense before
4 we proceed?

5 MS. GAY: No, your Honor.

6 THE COURT: Please bring in the jury.

7 (Jury panel brought into the courtroom at
8 11:30 a.m.)

9 THE COURT CLERK: Jury all present, your
10 Honor.

11 THE COURT: Thank you.

12 Ladies and Gentlemen, again we really
13 appreciate your patience. You have been so
14 cooperative with us this morning. We will now resume
15 the trial.

16 Mr. Bianchi, you may proceed when you are
17 ready.

18 MR. BIANCHI: Thank you, your Honor. The
19 State calls Corporal Middleton.

20 THE COURT: Sir, if you would come to the
21 witness stand to be sworn.

22 CORPORAL MIDDLETON

23 being first duly sworn, testified as follows:

24 THE COURT CLERK: Sir, please state
25 your full name to the court and spell your last

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1 name.

2 THE WITNESS: Tony Middleton,

3 M-I-D-D-L-E-T-O-N.

4 THE COURT: You may proceed.

5 MR. BIANCHI: Thank you, your Honor.

6 THE COURT: You are welcome.

7 DIRECT EXAMINATION

8 BY MR. BIANCHI:

9 Q. Good morning, Corporal Middleton. Where do
10 you work?

11 A. The city of North Charleston Police
12 Department.

13 Q. How long have you worked there?

14 A. 11 years.

15 Q. And what are the typical duties of your job
16 with the North Charleston Police Department?

17 A. I'm a training officer. I'm a patrolman,
18 calls for service, investigate traffic accidents.

19 Q. Were these your same duties on January 28 of
20 2004?

21 A. Yes, sir.

22 Q. So you were working for North Charleston
23 Police Department on January 28, 2004?

24 A. Yes, sir.

25 Q. And on that date did you have an encounter

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1 with the defendant?

2 A. Yes, sir.

3 Q. Very briefly tell me how this encounter with
4 the defendant began.

5 A. Officer Butler had conducted a traffic stop.
6 He requested for a backup unit. I responded to the
7 scene.

8 Q. Once you responded to the scene what did you
9 do?

10 A. I exited my vehicle. I approached Officer
11 Butler. He explained to me that he requested the
12 backup because the defendant was making movements --

13 MS. GAY: Your Honor, I would object to him
14 testifying as to what --

15 THE COURT: Is the objection hearsay?

16 MS. GAY: Hearsay.

17 THE COURT: Hearsay sustained.

18 BY MR. BIANCHI:

19 Q. Without saying what you were told by Officer
20 Butler what did you do -- once you got there, once
21 you arrived there, what is the first thing that you
22 did?

23 A. Well, I approached the rear of the vehicle.
24 I observed the defendant leaning over the driver's
25 seat, moving -- making movements with his hand, his

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1 right hand. At that time Officer Butler approached
2 him; asked him -- the defendant to exit the vehicle.
3 He asked if he had any weapons or --

4 MS. GAY: Once again, I would argue hearsay.

5 THE COURT: Sustained.

6 BY MR. BIANCHI:

7 Q. Please avoid saying anything that Officer
8 Butler said, if you would.

9 You say you went and stood at the rear of the
10 car.

11 A. Uh-huh.

12 Q. And why is that?

13 A. That's when I first arrived. I wanted to
14 observe to see what was going on.

15 Q. Is that typical for a backup officer to stand
16 at the rear of the car?

17 A. Yes.

18 Q. Take me to the next thing you did after
19 standing at the rear of the car. Again, without
20 saying anything that you heard Officer Butler say.

21 A. I walked to the passenger side of the
22 vehicle.

23 Q. And why did you do that?

24 A. Because Officer Butler was walking his canine
25 around the car.

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1 Q. And then after Officer Butler walked his
2 canine what is the next thing that you did?

3 A. Well, the defendant exited the vehicle and
4 went into a florist shop. At that time I saw a shiny
5 object on the floorboard in the -- near the driver
6 floorboard of the vehicle.

7 Q. What window of the car were you looking
8 through when you saw this shiny object?

9 A. It was the passenger.

10 Q. The front passenger window?

11 A. Yes.

12 Q. So you saw it through the front passenger
13 seat window?

14 A. Yes, sir.

15 Q. And then what did you do from there?

16 A. Well, I told Officer Butler -- I said: There
17 is a gun on the floorboard.

18 Q. And then did he see the gun after that?

19 A. Yes, sir, he did.

20 Q. So what did you and Officer Butler do once
21 you saw that there was the gun on the floor?

22 A. Well, the defendant walked out of the flower
23 shop and I grabbed his left wrist; Officer Butler
24 grabbed his right wrist. We walked him to the hood
25 of the vehicle and placed him in handcuffs.

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1 Q. I show you what has been marked for
2 identification as State's Exhibit 2.

3 Do you recognize this?

4 A. Yes, sir.

5 Q. And what is that?

6 A. That was the weapon that was on the
7 floorboard of the vehicle.

8 Q. And how do you know that?

9 A. It's the same color.

10 MR. BIANCHI: At this time I would ask to
11 move State's Exhibit 2 into evidence.

12 THE COURT: Any objection?

13 MS. GAY: No, your Honor.

14 THE COURT: Marked and admitted without
15 objection.

16 MR. BIANCHI: Thank you, your Honor.

17 BY MR. BIANCHI:

18 Q. Let's go back.

19 The last thing you told me was that you and
20 Officer Butler placed the defendant under arrest --

21 A. Yes.

22 Q. -- for the gun charge, and what did you do
23 after you placed him under arrest?

24 A. Officer Butler removed the car keys from the
25 defendant. He unlocked the door. He retrieved the

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1 weapon. He handed it to me. I made it safe by
2 dropping the clip and taking the round out of the
3 chamber and locking the slide back.

4 Q. So when you say "made it safe", take the
5 round out of the chamber, that means the gun was
6 loaded?

7 A. It was loaded, yes.

8 Q. So once you made the gun safe what is the
9 next thing you did?

10 A. Well, Officer Butler conducted a search of
11 the vehicle and he found a plastic bag containing
12 cocaine. It was a white powdery substance and it was
13 field tested positive for cocaine.

14 Q. After that did you do anything else at this
15 stop?

16 A. I filled out the booking report for him and
17 the tow sheet.

18 MR. BIANCHI: A moment of the Court's
19 indulgence.

20 THE COURT: Yes.

21 BY MR. BIANCHI:

22 Q. Was there anyone else in the car with the
23 defendant?

24 A. He had his son in the vehicle.

25 Q. And where was his son seated?

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1 A. The front passenger seat.

2 Q. So his son was in the front passenger seat
3 and this gun was sticking out from under the driver's
4 seat?

5 A. Yes, sir.

6 Q. And this gun was loaded at the time?

7 A. Yes, sir.

8 Q. At the same time his son was sitting in the
9 passenger seat?

10 A. Yes, sir.

11 Q. Now, from where you saw the gun what would
12 you say the chances of someone getting in that car in
13 the driver's seat, through the driver's seat -- what
14 would be their chances of seeing that gun when they
15 entered the car with the gun in the position it was
16 in?

17 MS. GAY: I would object.

18 THE COURT: Basis?

19 MS. GAY: Speculation.

20 THE COURT: I need you to rephrase the
21 question. It's actually leading.

22 BY MR. BIANCHI:

23 Q. Would someone getting in the driver's seat of
24 that car be able to clearly see that gun there?

25 A. Yes, sir.

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1 MS. GAY: I object again.

2 THE COURT: Sustained; leading. You may
3 rephrase.

4 MR. BIANCHI: A moment of the Court's
5 indulgence, please.

6 I have no further questions. Please
7 answer anything that defense counsel may have.

8 THE COURT: Ms. Gay, you may proceed.

9 MS. GAY: Thank you, your Honor.

10 THE COURT: You are welcome.

11 CROSS-EXAMINATION

12 BY MS. GAY:

13 Q. I believe -- it is my understanding that when
14 you arrived on the scene that my client, Mr. Johnson,
15 was sitting in the car.

16 A. Yes, ma'am.

17 Q. And I believe you testified that you observed
18 the canine walk around the car.

19 A. That was before everything. He was seated in
20 the vehicle when I arrived.

21 Q. That's not my question.

22 He was seated in the vehicle when you
23 arrived, and then while you were there the drug dog
24 went around the car?

25 A. Yes.

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1 Q. And I understand that at some point it was
2 your understanding that my client was told that the
3 basis for the stop had something to do with his tags
4 and that you couldn't see the month and the year on
5 his tags.

6 A. Yes, ma'am.

7 Q. And I believe that you said that at the time
8 that the car was opened the keys to the car were
9 actually on Mr. Johnson.

10 A. Yes, ma'am.

11 Q. And I believe your testimony is that Officer
12 Butler -- you all grabbed him and took the keys from
13 him and opened up the car.

14 A. Yes, ma'am.

15 Q. And when you were seeing in the car there was
16 no time at all when you observed this stuff, the
17 drugs in this case? You couldn't see that when you
18 were looking in the car?

19 A. Are you talking about when I observed the
20 weapon?

21 Q. Right.

22 When you were looking inside the car did you
23 see this?

24 A. The weapon was on the floorboard. That was
25 just in plain view.

CORPORAL TONY MIDDLETON - REDIRECT EX. BY MR. BIANCHI 169

1 Q. Right.

2 So the interior of the car -- was the
3 interior of the car black, dark? Do you remember?

4 A. I can't recall the color.

5 Q. But at no time was this visible anywhere in
6 the interior of the car?

7 A. That was in a closed area.

8 Q. So it wasn't visible?

9 A. No.

10 MS. GAY: One moment, your Honor.

11 I have no further questions for this witness.

12 THE COURT: Any redirect?

13 MR. BIANCHI: Very briefly, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BIANCHI:

16 Q. Corporal Middleton, when you had this
17 encounter with the defendant, was it daylight
18 outside?

19 A. Yes, sir.

20 Q. Was the sun shining?

21 A. Yes, sir.

22 Q. It wasn't covered by clouds or anything?

23 A. No. No, sir, it wasn't.

24 MR. BIANCHI: A moment of the Court's
25 indulgence, your Honor.

CORPORAL TONY MIDDLETON - REDIRECT EX. BY MR. BIANCHI 170

1 BY MR. BIANCHI:

2 Q. Now, you said you observed the gun, earlier
3 in your testimony.

4 A. Yes, sir.

5 Q. At the time of the stop if you were to open
6 the driver's side door of the vehicle and look down
7 before stepping in what would you see?

8 A. I would have seen the weapon, the handgun.

9 MR. BIANCHI: Thank you. No further
10 questions, your Honor.

11 THE COURT: Any objection to the witness
12 being excused?

13 MS. GAY: No, your Honor.

14 THE COURT: Sir, you may step down. You may
15 call your next witness.

16 MR. BIANCHI: The State calls John Crumbie.

17 JOHN CRUMBIE

18 being first duly sworn, testified as follows:

19 THE COURT CLERK: Please state your full name
20 to the Court and spell your last.

21 THE WITNESS: John Crumbie, C-R-U-M-B-I-E.

22 THE COURT: You may proceed. Thank you.

23 DIRECT EXAMINATION

24 BY MR. BIANCHI:

25 Q. Mr. Crumbie, where do you work?

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1 A. Enterprise Rent-A-Car.

2 Q. And what do you do at Enterprise Rent-A-Car?

3 A. I'm the branch manager; oversee the daily
4 operations of the local branch downtown.

5 Q. How long have you worked there?

6 A. A little over three and a half years, almost
7 four years.

8 Q. You said you were working at the downtown
9 office now.

10 Which Enterprise were you working at on
11 January 28, 2004?

12 A. I was the branch manager at the Enterprise at
13 Rick Hendrick Chevrolet on Savannah Highway.

14 Q. So over on Savannah Highway?

15 A. Yes.

16 Q. I'm going to show you what has been marked as
17 State's Exhibit 3 for identification.

18 MS. GAY: I would like to look at it, your
19 Honor.

20 BY MR. BIANCHI:

21 Q. I would like to show you what has been marked
22 as State's Exhibit 3 for identification.

23 Could you explain to me real briefly what
24 that is, and to the jury.

25 A. It's a standard rental contract. We write up

1 a contract. This is pretty much exactly what it
2 looks like.

3 Q. So that's something that is kept in the
4 ordinary course of your business?

5 A. Definitely, yes.

6 Q. On that rental contract who is the listed
7 driver on there?

8 A. It says Lord Allah.

9 Q. Lord Allah is the one that the car was rented
10 to?

11 A. Yes.

12 Q. And on that rental agreement who else is
13 given permission to drive that car?

14 A. It states here that no other driver is
15 permitted.

16 Q. So the rental agreement says no other driver
17 permitted on there?

18 A. Yes.

19 MR. BIANCHI: Your Honor, at this time I
20 would like to move State's Exhibit 3 into evidence.

21 THE COURT: Any objection?

22 MS. GAY: I have no objection.

23 THE COURT: Marked and admitted without
24 objection.

25 MR. BIANCHI: Thank you, your Honor.

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1 THE COURT: You are welcome.

2 BY MR. BIANCHI:

3 Q. Now, real quickly, Mr. Crumbie, I also show
4 you what has been marked as State's Exhibit 4 for
5 identification.

6 Do you recognize that sheet?

7 A. Yes, sir.

8 Q. And what is that sheet?

9 A. This is just kind of like a closed ticket
10 charges. It has the customer's name and information
11 on it, how much he paid during the rental, and the
12 make and model.

13 Q. And that's something that's kept in the
14 ordinary course of your business?

15 A. Yes, sir.

16 Q. And on that sheet right there who is the
17 driver listed on that?

18 A. Lord Allah.

19 Q. And does that sheet say anything about who
20 else is allowed to drive the vehicle?

21 A. It says: No other driver permitted.

22 MR. BIANCHI: Thank you very much.

23 At this time I would like to move State's
24 Exhibit 4 into evidence.

25 MS. GAY: Without objection, your Honor.

1 THE COURT: Marked and admitted without
2 objection.

3 MR. BIANCHI: Thank you, your Honor.

4 BY MR. BIANCHI:

5 Q. Mr. Crumbie, if I could, I would like to
6 briefly go through the process of how y'all maintain
7 your vehicles.

8 A. Okay.

9 Q. When someone returns a vehicle to Enterprise
10 Rent-A-Car, what is your standard procedure?

11 A. After we close out the contract with that
12 customer we have a gentleman who cleans the cars for
13 us and he takes the car back, cleans the car, parks
14 around in front, and it's then ready to be rented
15 again.

16 Q. Does he clean both the inside and the outside
17 of the car?

18 A. Yes. He take it around back. He'll vacuum
19 the inside completely and empty out any trash, check
20 the glove box, and then wash the outside as well.

21 Q. So does he check the center console as well?

22 A. Yes; for all trash.

23 Q. And so that's when the cars come in.

24 Before you rent out a car to somebody is
25 there any check of the car done?

JOHN CRUMBIE - DIRECT EX. BY MR. BIANCHI

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1 A. Oh, yes. With the customer we'll walk around
2 the vehicle and the Enterprise employee will go
3 inside the vehicle; get the gas and miles. Just make
4 a spot check as well. Make sure it's good to go for
5 the customer.

6 Q. And they'll go through the inside of the car
7 as well?

8 A. Exactly, yes.

9 Q. Do y'all have a few Jaguars at your business
10 that you rent out?

11 A. They do. At the time I was there we had ten.

12 Q. On those Jaguars, would you describe the
13 tinting on the windows for us.

14 A. From what I understand, it's just a regular
15 -- whatever comes standard from the factory. It
16 looks no different than any other vehicle. It's
17 Enterprise's policy not to have tinted windows on any
18 of their vehicles other than what comes standard.

19 Q. When this vehicle was returned, if the
20 windows had been tinted by whoever was driving it,
21 would that have been noted somewhere?

22 A. Definitely. We would have noticed that and
23 we would have to have done like a damage report, so
24 to speak, and have it corrected.

25 Q. And there was no notification made of that on

1 this car?

2 A. No, sir.

3 Q. And so with these 2003 Jaguars with the
4 factory tint or whatever it's called, can you still
5 see through all of the windows in the front
6 windshield --

7 A. Yes.

8 Q. -- inside the car?

9 A. Definitely.

10 MR. BIANCHI: A moment of the Court's
11 indulgence, your Honor.

12 BY MR. BIANCHI:

13 Q. And let me know if I need to give you Exhibit
14 3 to refresh your memory, but when was the car rented
15 by Lord Allah?

16 A. I believe it was at the December -- it was
17 rented December 22, 2003.

18 Q. And so that's December 22, 2003?

19 A. Right.

20 Q. And when was the car returned?

21 A. It looks like here January 16, 2004.

22 Q. So from December 22, 2003 to January -- what
23 was the date?

24 A. 16th.

25 Q. -- 16th, 2004 the defendant had the car, and

JOHN CRUMBIE - DIRECT EX. BY MR. BIANCHI

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1 how did you all get the car back? How did it come
2 back to you? Did he drive it back to your store?

3 A. He dropped it off at our Jaguar dealership.

4 Q. He dropped it off?

5 A. Yes.

6 Well, in this particular case I picked up the
7 vehicle from Jenny's Towing because it was impounded.

8 Q. So you picked up this particular vehicle?

9 A. I picked up this vehicle.

10 Q. And you were the one who picked it up?

11 A. Uh-huh.

12 MR. BIANCHI: A moment of the Court's
13 indulgence.

14 No further questions, your Honor.

15 THE COURT: Ms. Gay?

16 MS. GAY: I would like to get the exhibit
17 again, your Honor.

18 CROSS-EXAMINATION

19 BY MS. GAY:

20 Q. When this car was actually rented to
21 Mr. Johnson, it was rented through Palmetto Jaguar,
22 wasn't it?

23 A. Yes. Correct. They call us. Whenever they
24 need a rental we come down.

25 Q. So y'all have sort of an on-going

1 relationship with Palmetto Jaguar. Oftentimes they
2 are the ones who set you up with the people who want
3 to rent Jaguars?

4 A. Exactly, yes.

5 Q. And it is my understanding that the rental
6 cars, even though they are owned by Enterprise, they
7 oftentimes have one of those little holders for their
8 license plate that's a Palmetto Jaguar holder?

9 A. Yes. Some do. I don't remember if all of
10 them do or all of them did.

11 Q. So would you have remembered if this
12 particular one had one from Palmetto Jaguar on it?

13 A. No. I know that while we are getting the
14 license plates if there is a dealer tag on there,
15 like a Palmetto Jaguar dealer tag, it does have the
16 casing around it. When we get the license plates, I
17 don't know if we keep that on there or if it's
18 removed completely and just the license plate is put
19 on the vehicle.

20 Q. And do you have any specific recollection of
21 this particular car being pewter with black interior?

22 A. I do remember it being gray, like a dark
23 slate gray, I think, or something like that. A gray.
24 I do not remember the color of the interior.

25 Q. Now, in the many years that you worked at

1 Enterprise Rent-A-Car certainly you're aware that
2 oftentimes people when they drive out of your lot,
3 despite the fact that it says no one else is going to
4 drive their car; that other people do often use the
5 cars, drive the cars and are in the cars other than
6 the people you rent them to?

7 A. You know, it's our policy -- we tell them not
8 to have any other drivers drive the vehicle. On
9 other some instances other drivers return the
10 vehicle, and we have to put those customers on our do
11 not rent vehicle, and they know that they can't rent
12 from Enterprise again.

13 Q. But oftentimes they do let other people use
14 the cars?

15 A. They may or may not. I don't know what they
16 do after they rent the vehicle. All I know is what
17 we tell them they can and cannot do.

18 Q. As far as this case today, there is nothing
19 about your testimony that has anything specific to do
20 with Mr. Johnson and the stuff they found in the car?
21 You have absolutely no information for the jury about
22 that day?

23 A. No. When I rented him the car there was
24 nothing --

25 Q. Once you rented the car you have no idea what

1 happens after that?

2 A. No.

3 MS. GAY: Thank you. No further questions.

4 I do not have a problem with this witness
5 being excused.

6 THE COURT: Any redirect?

7 MR. BIANCHI: None, your Honor.

8 THE COURT: Sir, you are excused. Thank you.
9 Anything further from the State?

10 MR. KNISLEY: At this time we would move the
11 SLED laboratory report into evidence. I think that
12 was pending the testimony from yesterday.

13 THE COURT: Any objection?

14 MS. GAY: No, your Honor.

15 THE COURT: Marked and admitted without
16 objection.

17 Anything further the State?

18 MR. BIANCHI: Nothing, your Honor.

19 THE COURT: Does the State rest?

20 MR. KNISLEY: Can we review the exhibits
21 briefly?

22 THE COURT: You may.

23 MR. KNISLEY: All evidence has been entered
24 into evidence.

25 THE COURT: Does the State rest?

1 MR. BIANCHI: The State rests.

2 THE COURT: There are a few matters of law
3 I have to take up with the attorneys, and on my
4 honor this time it will take five minutes.

5 During this break -- I've already
6 instructed the clerk to order your lunches. I
7 anticipate that they will arrive by 12:30. I
8 anticipate that after we have the matters of law,
9 depending on my consultation with the attorneys,
10 that we may well be doing closing argument and
11 charge.

12 So again, we appreciate your patience.
13 If you would go with the bailiffs for me, and
14 please do not discuss the case during this break.
15 If you need anything let them know.

16 (Jury retires to the jury room at 11:57 a.m.)

17 THE COURT: I'm going to go ahead and rule
18 on the motion to suppress and then I will hear any
19 other motions. Then I will question the defendant
20 regarding his desire to testify in that order.

21 The defense has moved to suppress the
22 drugs found at the scene. The defendant made a
23 motion to suppress, which I gave all of the
24 original motions to the clerk's office to have
25 filed with his original file, and they were asking

1 for a determination of the admissibility of
2 evidence seized at the time of the defendant's
3 arrest.

4 The defendant contends that the
5 evidence should not be admitted in that it was
6 obtained in violation of his constitutional rights.
7 I assume that is a two-fold motion, dealing first
8 with the gun and then with the drugs that were
9 seized as a result of the inventory search of the
10 car after the gun was seized. I will first deal
11 with the motion in two parts.

12 As I indicated yesterday, I was going
13 to take the matter under advisement because I
14 needed some time to do some more research in small
15 part, but more so to really look at my notes, to
16 digest the evidence and to analyze what I heard
17 based on the prevailing case law. I just needed
18 more time to absorb that, and I appreciate y'all
19 giving me the evening recess to think about those
20 matters.

21 I indicated to y'all at that time that
22 I would consider the evidence that had been
23 presented for purposes of the suppression hearing.
24 The State of course would have to meet any burden
25 by a preponderance of the evidence.

1 Now, as I indicated, I'm going to deal
2 with it in parts. First, the 4th Amendment
3 guarantees the right of people to be secure in
4 their person, their houses, papers and effects
5 against unreasonable searches and seizures, and
6 that is pursuant to the United States Constitution
7 as well as State versus Woodruff which is found at
8 344 South Carolina 537 544 SE 2nd 290, which is a
9 2001 Court of Appeals decision.

10 The 4th Amendment of course protects
11 against unreasonable searches and seizures
12 including seizures that involve only a brief
13 detention. And that of course is based on the
14 United States versus Mendenhall, which is found at
15 446 U.S. 544, which of course is a 1980 United
16 States Supreme Court decision. The temporary
17 detention of individuals during the stop of an
18 automobile by the police even if only for a brief
19 period and for a limited purpose constitutes a
20 seizure of persons within the meaning of the 4th
21 Amendment, and that is based on Whren versus United
22 States which is found at 517 U.S. 806 1996 as well
23 as our state case, State versus Maybank, which is
24 found at 352 South Carolina 310, which is a 2002
25 Court of Appeals decision.

1 As we are aware, an automobile stop is
2 subject to the constitutional imperative that it
3 not be unreasonable under the circumstances. Where
4 probable cause exists to believe that a traffic
5 violation has occurred, the decision to stop the
6 automobile is reasonable per se. The police of
7 course may also stop and briefly detain a vehicle
8 if they have a reasonable suspicion that the
9 occupants are involved in criminal activity, and
10 that's pursuant to State versus Butler, which is
11 found at 343 South Carolina 198, which is a 2000
12 Court of Appeals decision.

13 The testimony for the purposes of the
14 suppression hearing -- and that is of Officer
15 Butler -- is that he stopped the vehicle of the
16 defendant because the tag was obscured and he could
17 not see the stickers on the tag, which -- I don't
18 know the statutory provisions, but I am certain
19 that he is correct in that there is a statute that
20 requires that automobile tags not be obscured such
21 that the police aren't able to determine not only
22 the tag numbers but also expiration dates on tags,
23 and that is for a lawful purpose to make sure they
24 can run your tags, make sure you pay property taxes
25 and make sure your car is insured and all of those

1 other legitimate state and county purposes.

2 Of course this evidence was not
3 challenged except to the extent that Ms. Gay argued
4 that she felt her client basically was being
5 profiled and that he was stopped just because he
6 was a black gentleman riding down Rivers Avenue in
7 a nice Jaguar, but there really is no evidence in
8 the record to support that. The vehicle was
9 legally stopped, and I really don't think there is
10 any contention as to that, and the defendant was
11 legally detained at that time.

12 Once the traffic stop was concluded the
13 defendant was free to go, and there is no
14 contention as to that. The testimony in the record
15 is that once all the activity had taken place that
16 Officer Butler told him that he was free to leave.
17 At that time the testimony is he exited the vehicle
18 and entered the floral shop and then locked the
19 vehicle.

20 Once a motor vehicle is detained
21 lawfully for a traffic violation the police may
22 order the driver to exit the vehicle without
23 violating the 4th Amendment prescriptions on
24 unreasonable searches and seizures, and that is
25 pursuant to Pennsylvania versus Mentz as well as

(1 State versus Williams. In carrying out the stop an
2 officer may request of course the driver's license,
3 vehicle registration, run a computer check and
4 issue a citation, and the evidence reflects
5 pursuant to the testimony that that is what Officer
6 Butler did. He carried out the stop. He requested
7 the defendant's driver's license and vehicle
8 registration. He ran a computer check and his
9 records reflect the computer check came back that
10 he had no outstanding warrants and that his license
11 was in proper order, and at that time he issued him
12 an oral citation regarding the tag on the vehicle.

(13 Of course we are all aware based on the
14 prevailing case law that any further detention for
15 questioning is beyond the scope of the stop and
16 therefore would be illegal unless the officer had a
17 reasonable suspicion of a serious crime. I don't
18 think that that is really applicable in this case
19 because the defendant was free to leave and no
20 further questioning took place. He was told "you
21 are free to leave", and in fact he did leave.

(22 Of course, again, we are all aware of
23 prevailing case law that an investigative detention
24 must be temporary and last no longer than is
25 necessary to effectuate the purpose of the stop and

1 the scope of the detention and must be carefully
2 tailored to its underlying justification, and that
3 is based on Florida versus Royer, 460 U.S. 491
4 1983.

5 The officer's purpose in an ordinary
6 traffic stop is to enforce the laws of the roadway
7 and ordinarily to investigate the manner of driving
8 with the intent to issue a citation or warning, and
9 once the purpose of that stop has been fulfilled
10 the continued detention of the car and the
11 occupants amount to a second detention.

12 Again, that would not be applicable in
13 this case because, as I indicated, the defendant
14 was free to leave. And that is uncontroverted in
15 this record, so there was no second detention.

16 This portion of the Court's ruling is
17 also based on State versus Pichardo-Reyes, 367
18 South Carolina 84 623 SE 2nd 840, which is a 2005
19 Court of Appeals decision, as well as State versus
20 Williams, which is found at 351 South Carolina 571
21 SE 2nd 703, which is a 2002 Court of Appeals
22 decision.

23 It is clear from the record, dealing
24 with the first portion of the stop, that the
25 vehicle was legally stopped and that once the

(1 legitimate purposes of the traffic stop, which was
2 to enforce the laws of the roadway and investigate
3 the manner of driving and to issue a citation or
4 warning, that that purpose of that stop had been
5 fulfilled and the defendant was free to leave.

6 We then deal with the second part of
7 the incident, which is the gun. Our law is very
8 clear that generally a warrant or a search is per
9 se unreasonable and thus a violation of the 4th
10 Amendment prohibition against unreasonable searches
11 and seizures. However, warrantless searches will
12 withstand constitutional scrutiny where the search
13 falls within one of the few specifically
14 established and well-delineated exceptions to the
15 4th Amendment exclusionary rule. And in this
16 instance based on the testimony of both of the
17 officers this portion of the stop become under the
18 plain view doctrine, and that doctrine is very
19 simplistic in its approach.

20 It indicates that under the plain view
21 doctrine any object falls within the plain view of
22 a law enforcement officer who is lawfully in a
23 position to view the object is subject to a lawful
24 seizure. And we have already established that the
25 original stop of the vehicle was lawful and that

1 that portion of it had already concluded, therefore
2 the officers were lawfully in a position to view
3 the object.

4 The plain view exception to the warrant
5 requirement requires three things: One, that the
6 initial intrusion which afforded the authority the
7 plain view was lawful -- and we have already
8 established that -- that the stop of the vehicle
9 was lawful.

10 The discovery of the evidence was
11 inadvertent. Based on the testimony of Corporal
12 Middleton, the discovery was in fact inadvertent.
13 He glanced over as the defendant was exiting the
14 vehicle and saw the gun. The incriminating nature
15 of the evidence was immediately apparent to the
16 seizing authorities. I don't think I need to give
17 that a great amount of analysis. Clearly a gun --
18 the incriminating nature of that would be
19 immediately apparent to the police.

20 The seizure of the gun evidence found
21 in the vehicle where the defendant was found is
22 permissible under the plain view exception to the
23 search warrant requirements.

24 The defendant was free to leave after a
25 lawful traffic stop, and while the defendant was

1 exiting the vehicle the officer testified that the
2 incriminating nature of the gun was immediately
3 apparent to him. Naturally from that after -- the
4 testimony reflects that the defendant was arrested,
5 and as a result the drugs were then found incident
6 to the gun after the arrest during the inventory
7 search of the vehicle. Therefore the motion to
8 suppress is denied based on the Court's ruling
9 regarding the stop as well as the gun and the plain
10 view portions of the Court's opinion are based on
11 State versus Abdullah found at 357 South Carolina
12 344 592 SE 2nd 344, a 2004 Court of Appeals
13 decision. Therefore the motion to suppress is
14 denied.

15 Is there anything further for the
16 record now that the State has rested?

17 MR. BIANCHI: Nothing from the State, your
18 Honor.

19 THE COURT: Ms. Gay?

20 MS. GAY: Your Honor, at this time I would
21 like to make a motion for a directed verdict on
22 behalf of my client.

23 I realize that you have just made this
24 ruling, but certainly we believe that that is -- we
25 continue our objection to that. We believe that the

1 evidence should have been suppressed.

2 For purposes of the record, in the light most
3 favorable to the State, I don't believe they have met
4 all the elements necessary for these charges against
5 my client, and I would make a motion for a directed
6 verdict.

7 THE COURT: Would you like to respond?

8 MR. BIANCHI: Yes, your Honor.

9 In viewing the evidence in the light most
10 favorable to the State, I think between the testimony
11 of the officers I think it's clear that the State has
12 met the elements and we would ask that you deny her
13 motion for a directed verdict.

14 THE COURT: Considering the evidence in the
15 light most favorable to the State, pursuant to Rule
16 19 the Court must determine whether there is any
17 direct evidence or any substantial circumstantial
18 evidence which reasonably tends to prove the guilt of
19 the accused or from which his guilt may be fairly and
20 logically deduced based on State versus Harry and
21 State versus Rowell.

22 The Court is concerned with the existence or
23 nonexistence of evidence, not its weight, and the
24 Court is not required to find that the evidence
25 infers guilt to the exclusion of any other reasonable

1 hypothesis. That is based on State versus Clerry.

2 The Court would find that the motion for
3 directed verdict is denied. There is substantial
4 circumstantial as well as direct evidence to prove
5 the guilt of the accused, and therefore the motion is
6 denied.

7 MS. GAY: Your Honor, I just would like to
8 state my client is talking to me about something here
9 and he wants me to bring something to the Court's
10 attention.

11 I heard your rationale and what you based
12 that on, your Honor; however, my client wants me to
13 bring your attention that Corporal Middleton's
14 testimony was he looked in the window inside.

15 THE COURT: We did some research on that.
16 And while there are no cases in South Carolina, there
17 are some other cases from other states that the
18 police can contort their bodies to look into their
19 car; that you have no expectation of the privacy of
20 your vehicle that is parked in a public place. The
21 only uncontroverted testimony is that he saw the
22 glimmer of the gun, what he believed to be a gun, and
23 that it was in plain view when your client exited the
24 vehicle.

25 MS. GAY: After my client exited the vehicle.

1 THE COURT: But it's a separate incident.

2 MS. GAY: I understand that. I wanted to
3 clarify that he believed what you said about what
4 Officer Middleton testified is not accurate. I
5 wanted to bring that to your attention.

6 THE COURT: His testimony was that the gun
7 was in plain view when your client exited the
8 vehicle.

9 MS. GAY: I need to explain to him what that
10 means.

11 THE COURT: As I understand, that was his
12 testimony.

13 MS. GAY: Your Honor, I have no witnesses at
14 this time. I know you wanted to talk with him about
15 his right to testify.

16 THE COURT: Sir, if you would stand for me
17 and raise your right hand to be sworn.

18 TERRANCE JOHNSON
19 being first duly sworn, testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. Sir, state your full name for the record.

23 A. Terrance A. Johnson.

24 Q. I am going to explain to you certain of your
25 rights. If you do not understand anything that I

1 say, please let me know. If you want me to explain
2 anything in more detail, please let me know.

3 Do you understand?

4 A. Yes, ma'am.

5 Q. Sir, we have now reached the stage of the
6 trial where you may present your defense. You have
7 the right to claim the protection given to you by the
8 5th Amendment to the Constitution of the United
9 States, and that amendment reads in part that no
10 person shall be compelled in any criminal case to be
11 a witness against himself. This means that you
12 cannot be required to testify in this case. You have
13 the right to testify on your own behalf; however, no
14 one can make you testify. This is a personal right
15 and no one can waive this right except you.

16 If you decide to testify, you will be subject
17 to the same rules that govern other witnesses and you
18 may be examined and cross-examined on any relevant
19 issue in this case.

20 In addition, if you have any convictions
21 involving dishonesty or false statement or for a
22 crimes punishable by imprisonment for more than one
23 year and this Court determines that the probative
24 value of admitting this evidence outweighs the
25 prejudicial effect to you, the solicitor will be able

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1 to introduce your record to attack your credibility.

2 If you decide to testify, this decision on
3 your part must be freely, voluntarily and
4 intelligently made with knowledge of the protections
5 given to you by the 5th Amendment and the
6 consequences of your decision to testify. If you
7 decide not to testify, I will instruct the jury that
8 they cannot give the fact that you did not testify
9 any consideration whatsoever and that there is to be
10 absolutely no prejudice to you because you did not
11 testify. It is left entirely up to you whether or
12 not you testify.

13 You may talk with your family members, your
14 friends, your attorney and anyone else, but the final
15 decision is left entirely up to you.

16 Sir, do you understand what I have just
17 explained to you?

18 A. Yes, ma'am.

19 Q. Do you have any questions about what I just
20 explained to you?

21 A. No, ma'am.

22 THE COURT: What would the State be seeking
23 to introduce in terms of his record?

24 I would imagine the '83 disorderly conduct
25 with a magistrate level would not be admissible.

1 MR. BIANCHI: Yes.

2 THE COURT: The '87 ADWICK.

3 MS. GAY: It is extremely remote.

4 THE COURT: Is that more than ten years old?

5 MR. BIANCHI: That is, your Honor.

6 MR. KNISLEY: And the life without parole
7 charge is clearly in there. The State intends to use
8 that.

9 THE COURT: What probative value would it
10 have and what specific facts can you present to the
11 Court that would tell me that those would outweigh
12 his prejudicial effect to him?

13 MR. KNISLEY: I think the probative value is
14 the 1987 conviction for assault and battery with
15 intent to kill --

16 THE COURT: He was 20 years old.

17 MR. KNISLEY: I think that would tend to
18 support that he is a violent person. It's probative
19 of the fact that --

20 THE COURT: Even if I let you ask him
21 about it, I wouldn't let you ask him what it was.
22 I think it's prejudicial.

23 MR. KNISLEY: So both convictions we follow
24 State versus Green?

25 THE COURT: If I decide that they're not too

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1 old. Because in another year -- that is a
2 20-year-old offense. I would imagine he was a
3 teenager then.

4 MS. GAY: You brought up a point, and that's
5 the reason why our Supreme Court has said drug
6 convictions and drug cases --

7 THE COURT: Well, I hadn't gotten down past
8 that.

9 MS. GAY: He basically just said he wants to
10 bring in a 19-year-old ADWICK to bring in his
11 character that he's a violent person, which, as you
12 said, was way too prejudicial in lights of the
13 charges he's on trial for, which is the gun.

14 MR. KNISLEY: Your Honor, the additional
15 grounds that would make this prior conviction
16 probative is simply by the virtue of the fact that
17 the prior conviction was a felony. We can simply
18 leave it at that. The defendant under state and
19 federal law is prohibited from owning a firearm.
20 That goes directly to the fact --

21 THE COURT: Well, you're not going to be able
22 to argue that or bring that up.

23 MR. KNISLEY: But then it becomes probative
24 to the fact of the stolen pistol charge. He cannot
25 lawfully possess a pistol nor purchase a pistol.

1 It's probative of the fact that he would have in his
2 possession a pistol owned by no other means than by
3 stealing it.

4 MS. GAY: I think that goes well beyond --
5 the number itself is a stolen -- it was stolen. It's
6 listed. When you read the serial number, it's been
7 stolen. There is no evidence presented at all in
8 this trial as to how he obtained the weapon. The
9 there is no evidence presented that he stole the
10 weapon.

11 I think what he's basically saying is he
12 wants to try to use this conviction to bolster the
13 facts in his case, which is completely inappropriate.

14 MR. KNISLEY: Judge, our simple argument is
15 the fact that he only explored his knowledge of the
16 fact that it was stolen, that he did have it in his
17 possession unlawfully, is supported by the fact that
18 he cannot lawfully possess a pistol by any other
19 means.

20 MS. GAY: This is not a charge where he's a
21 convicted felon in possession of a firearm.
22 Certainly if they brought some kind of charge like
23 that -- that's not what we are talking about, your
24 Honor. This is merely for the purposes of
25 credibility if he chooses to testify for impeachment

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1 purposes. If they bring it in, your Honor, I would
2 object completely to them --

3 THE COURT: Was the serial number on this gun
4 obliterated in any way?

5 MS. GAY: No.

6 MR. KNISLEY: No, your Honor.

7 THE COURT: The only part of the statute that
8 would be applicable to him would be 16 23 30: A
9 person shall not knowingly transport, receive or
10 possess any stolen handgun.

11 MS. GAY: Yes.

12 THE COURT: I don't know. I really kind of
13 doubt I would let that in. It's so remote. And if I
14 were to let it in, I would just ask you if he had a
15 felony in 1997.

16 1988 driving under suspension, how would that
17 be probative? That's another one that is almost 20
18 years old. The trafficking and heroin, again, almost
19 20 years old. That's from 1988. I would not allow
20 -- actually the Supreme Court has said that a
21 narcotics defense is not probative of the
22 truthfulness at all, so I don't think you would be
23 able to ask him about that one at all. It is not
24 considered probative. State versus Cheeseborough.
25 You have an '88 possession of cocaine. I think it

1 would fall within the same situation.

2 Now, this '96 regarding disregarding railroad
3 barriers, it only carries 30 days.

4 BY THE COURT:

5 Q. Sir, have you understood what I have just
6 explained to you?

7 A. Yes, ma'am.

8 Q. Do you have any questions about what I have
9 just explained to you?

10 A. No, ma'am.

11 Q. Have you discussed with your lawyer whether
12 you should or should not testify?

13 A. No. Can I do that?

14 Q. Yes. Do you need more time to talk with her?

15 A. Yes.

16 Q. Certainly I will give you that.

17 THE COURT: We'll be at ease for a moment.

18 MS. GAY: You are saying that none of his
19 drug convictions can be brought up, and have you
20 decided --

21 THE COURT: I am thinking right now about
22 whether the thing in 1998 were too remote in time to
23 allow them to ask him simply if he had been convicted
24 of a felony. I'm trying to think about what
25 probative value they would have bearing on his

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1 credibility based on the way subsection of 609 is
2 worded.

3 MS. GAY: I want to know that before I have
4 this conversation with him.

5 THE COURT: The disorderly conduct would not
6 be admissible because it's a magistrate's level
7 offense, as well as the '96, disregarding railroad
8 barriers.

9 You do not contest that they gave you
10 sufficient notice that they planned to use these
11 offenses that were more than ten years old; correct?
12 I just need that for the record.

13 MS. GAY: I don't think I can contest the
14 dates of his conviction. If I can, I would be more
15 than ready. I'll do that. I just don't know that it
16 is anything that can be contested pursuant to the
17 remoteness of convictions.

18 THE COURT: My question goes to Rule 609
19 Subsection B that says you need to be given written
20 notice of their intent to use the evidence, and I
21 need to know for the record whether you were given
22 that notice.

23 MS. GAY: I got the notice, your Honor, yes.

24 THE COURT: How old were you in 1987?

25 MS. GAY: He was 22, your Honor.

1 THE COURT: They can ask him as to whether he
2 was convicted of a felony in '87, '88, but they
3 cannot ask him the substance of what they were. It
4 would be too prejudicial. Any other drug offenses,
5 my concern is that the jury could potentially convict
6 him. The Supreme Court has said that they are not
7 probative -- actually the narcotics offenses are not
8 probative on the issue of the truthfulness. So you
9 wouldn't be asking him about the drug offenses at
10 all, but you can ask him in '87 if he was convicted
11 of a felony.

12 MR. KNISLEY: Thank you, your Honor.

13 THE COURT: You are welcome.

14 Ms. Gay, how much time do you need to talk to
15 your client?

16 MS. GAY: Only a few minutes, your Honor.

17 THE COURT: We'll be at ease for a few
18 moments. After that I will continue questioning your
19 client.

20 MS. GAY: After I talk with him for a
21 minute --

22 THE COURT: I'm bringing in lunch for the
23 jury, so I'm going to give you some time and we are
24 going to have closing argument and charge.

25 (Short recess taken.)

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1 MS. GAY: He doesn't want to testify.

2 BY THE COURT:

3 Q. Sir, please stand.

4 Have you fully discussed with your lawyer
5 whether you wish or do not wish to testify?

6 A. Yes, ma'am.

7 Q. Do you need to speak with her any further at
8 this time?

9 A. No, ma'am.

10 Q. Sir, do you wish to testify?

11 A. No, ma'am.

12 THE COURT: You may be seated.

13 Does the defense rest, Ms. Gay?

14 MS. GAY: Yes. We renew our motions to
15 suppress and renew our motion for directed verdict.

16 THE COURT: Any response from the State?

17 MR. BIANCHI: The State would just renew our
18 arguments from earlier in response to those motions.

19 THE COURT: The Court would deny the
20 motions based on its previous ruling. I'll allow
21 you to rest in the presence of the jury.

22 MS. GAY: Thank you.

23 THE COURT: You are welcome.

24 THE COURT: The Court charge will be as
25 follows: The Court will give a general charge

1 regarding the jury's function and my function; how
2 they are to judge witness's credibility and
3 believability, and give them a general charge on
4 expert witness testimony.

5 MS. GAY: Did we have any experts in this
6 case, your Honor?

7 THE COURT: We did from SLED.

8 MS. GAY: Oh, yes. Sorry.

9 THE COURT: We'll give a charge on direct and
10 circumstantial evidence. It's very brief. It's two
11 paragraphs. We'll give a charge that the arrest and
12 the indictment are not evidence. We'll give a charge
13 on the presumption of evidence; also charge Victor
14 versus Nebraska on reasonable doubt.

15 I will charge the jury to the fact that the
16 defendant did not testify cannot be considered in any
17 way and that it is not to be discussed in the jury
18 room at all. I will then charge the elements of
19 trafficking. I will give charge 44 53 370 ETB, which
20 is that the State must prove 28 grams and more or
21 less than 100 grams. I will charge the elements of
22 possession, which include actual and constructive
23 possession. I will then define for the jury deliver,
24 distribute and manufacture. I will then charge the
25 jury regarding the elements of possession of a stolen

1 pistol, which is indictment 3795.

2 Actually I will charge them in the order that
3 they were indicted. So I will charge the elements of
4 the possession of a stolen pistol, which is
5 indictment 2004 3795, and that's very short. It
6 comes directly from 16 23 30, which is the defendant
7 is charged with possession of a stolen pistol. The
8 State must prove beyond a reasonable doubt that the
9 defendant knowingly bought, sold, transported,
10 maintained, received or possessed a stolen gun.

11 I will then charge the elements of
12 trafficking, which is indictment 20043796. I will
13 then charge the elements of possession of a firearm
14 during the commission of a violent crime, which is
15 2004 3797. Trafficking is defined by 16 160 as a
16 violent offense. I will then charge the elements of
17 unlawful carrying of a pistol, which is 16 23 20, and
18 that is pursuant to indictment 2004 3794. I had them
19 out of order. I will charge the unlawful carrying
20 purposes because that's the first indictment. Then I
21 will charge the stolen gun, trafficking, and then
22 possession of a firearm during the commission of a
23 violent crime.

24 I will then give them some general language
25 regarding the multiple charges, and that would simply

1 say that in this case there are several different
2 offenses against the defendant, and I will list the
3 charges that each indictment are separate and
4 distinct offenses and they must be decided that way
5 uninfluenced and that they will be required to write
6 a separate verdict for each of the indictments.

7 Of course they will be charged that they
8 cannot convict him of possession of a fireman unless
9 they can convict him of the underlying offense, which
10 is the trafficking and cocaine.

11 I will then give them the possible forms of
12 the verdict, and what we will do -- I generally send
13 in the indictment with the verdict form. And I will
14 have the clerk take these attachments -- I will have
15 those taken off the indictments before they are sent
16 in to the jury.

17 MR. KNISLEY: Are you charging the
18 obstructive as well?

19 THE COURT: That is part of the definition of
20 trafficking. Here are the verdict forms.

21 MS. GAY: I would ask you to have a mere
22 presence charge, your Honor.

23 THE COURT: Any exception?

24 MR. KNISLEY: Your Honor, I don't believe
25 that any evidence would tend to support the

1 defendant's mere presence there.

2 Again, the testimony that the Court ruled
3 here clearly was that this weapon was in plain view
4 of the vehicle. The defendant was in possession of
5 this vehicle for a month. I just don't believe that
6 there is evidence to support the mere presence charge
7 in this case.

8 MS. GAY: The gun and the drugs are
9 completely separate. They are not together. They
10 are not both in plain view. They have completely
11 different views of how they were found, and I believe
12 my client could very easily be merely present in the
13 car where there was drugs.

14 MR. KNISLEY: I think, Judge, possession
15 could be inferred when the subject is found on the
16 property that is under his person and control. I
17 believe that -- I think under the evidence and the
18 facts that have been presented thus far is the mere
19 presence is appropriate.

20 MS. GAY: If I don't get to argue that it's
21 possibly not --

22 THE COURT: Whether I charge him or not
23 doesn't mean you get to argue it.

24 MS. GAY: Based on what he just said, just
25 because he's in the car with it and the car was in

1 his control that means it's automatic, and that's of
2 course not the law.

3 THE COURT: The is law that you can have
4 actual or constructive possession. You know what
5 actual and constructive possession is. I'm not going
6 to go through the definitions.

7 I might charge mere presence, and that would
8 read: Mere presence at the scene is not sufficient
9 to prove someone guilty of a crime. A defendant's
10 presence or mere association with a person who
11 commits a crime does not make a defendant an
12 accomplice or an aider and abetter of the person
13 committing the crime. The burden is on the State to
14 prove every element of the crime charged. After
15 reviewing all the evidence if the State has proved
16 that the defendant was only present at the scene of a
17 crime and they have not proved beyond a reasonable
18 doubt any other participation in the crime, then you
19 must find the defendant not guilty.

20 The law is that proof at the scene of the
21 crime is not suspicion upon someone's guilt. Proof
22 at the scene of a crime is not suspicion to find
23 someone guilty, and that is based on State versus
24 Green.

25 MR. KNISLEY: Judge, are you going to charge

1 also the defendant's knowledge of possession can be
2 inferred when the substance is found on property
3 under the defendant's control?

4 THE COURT: That comes within the definition
5 of constructive possession.

6 I'm going to charge the language directly
7 from the case, which constructive possession means
8 that the defendant had dominion and control of the
9 right to exercise dominion or control over the
10 cocaine itself or the property in which the cocaine
11 was found.

12 No. Actually my charge on mere presence --
13 mere presence at the scene where the drugs were found
14 is not enough to prove possession. So I'm not going
15 to charge --

16 MS. GAY: That's fine, your Honor.

17 THE COURT: Are there any exceptions to the
18 charges proposed from the State?

19 MR. BIANCHI: None, your Honor.

20 THE COURT: From the defense?

21 MS. GAY: Your Honor, we have no objections
22 at this time.

23 THE COURT: Please look at the forms of the
24 verdict for me, please, to see if y'all have any
25 exceptions to that.

1 Any exception to the forms of the verdict
2 from the State?

3 MR. BIANCHI: No, your Honor.

4 THE COURT: From the defense?

5 MS. GAY: No, your Honor.

6 THE COURT: Are you ready to proceed? From
7 the State?

8 MR. BIANCHI: Yes, your Honor.

9 THE COURT: From the defense?

10 MS. GAY: Yes, your Honor.

11 THE COURT: Please bring in the jury.

12 (Jury panel returned to the courtroom at
13 12:50 p.m.)

14 THE COURT CLERK: All present, your Honor.

15 THE COURT: Ladies and Gentlemen, we
16 appreciate your patience.

17 Ms. Gay, you may proceed.

18 MS. GAY: Your Honor, at this time the
19 defense has no witnesses and we would like to rest.

20 THE COURT: Ladies and Gentlemen, the defense
21 has now rested their case. We have now reached the
22 stage of the trial where we will have closing
23 arguments and the Court's charge on the law.

24 Is the State going to open and close?

25 MR. BIANCHI: Yes, your Honor.

1 THE COURT: Ladies and Gentlemen, you will
2 first hear from the State. You will then hear from
3 the defense and you will then again be addressed by
4 the State, after which I will give you the law
5 applicable to this case, after which you will then
6 begin your deliberations in this case. I would ask
7 that you give the attorneys -- please excuse me. You
8 will hear from the State. You are will then hear
9 from Ms. Gay. Please give the attorneys your
10 undivided attention.

11 You may proceed.

12 MR. BIANCHI: Thank you, your Honor. May it
13 please the Court.

14 THE COURT: Yes, sir.

15 MR. BIANCHI: His gun, his drugs. That's it.

16 Ladies and Gentlemen, before I get started I
17 would like to thank you for all the attention you
18 have given the State and our witnesses throughout
19 this trial. I know it's probably gone a little
20 longer than you originally anticipated, but I thank
21 you for all that you have done for us.

22 I'm going to try to keep this as brief as
23 possible, but I need to go through the evidence and
24 the charges against the defendant.

25 The first charge against the defendant is

1 unlawful carrying of a pistol, as we discussed
2 earlier. The judge will instruct you that to find
3 him guilty of unlawful carrying you have to find that
4 he knowingly possessed a pistol or that he had it
5 within his reach.

6 Where was the gun? Right there on the
7 floorboard of the car. As far as the "knowingly"
8 goes, where was Corporal Middleton when he first saw
9 the gun? Looking through the passenger side window.
10 What did the defendant do when he was pulled? He got
11 out of his car; went around to the same passenger
12 side to get something out of the glove box. Where
13 did the other officer see the gun? Through the front
14 windshield in plain view right there.

15 What did Corporal Middleton tell you at the
16 end of his testimony? Anybody getting in the
17 driver's seat of that car would have seen that gun.
18 So clearly he knew it was there, and it was right
19 within his reach.

20 The second charge is possession of a stolen
21 pistol. You heard from the first officer that the
22 gun came back stolen from Berkeley County about a
23 month before this. We would put to you that
24 obviously the defendant did not buy this gun at a gun
25 store. I believe you can make the connection there

1 that he knew this gun was stolen.

2 The last charge, possession of a gun during a
3 violent crime. As I told you in the opening, the
4 judge is going to instruct you that the State of
5 South Carolina has classified trafficking cocaine as
6 a violent crime, so the elements of that charge have
7 been met as well.

8 Let's talk about the drugs. Where were the
9 drugs? Right there in the center console, right by
10 the driver's seat. How long had the defendant had
11 that car? For over a month. And now the defense may
12 get up here and say he didn't know those drugs were
13 in the car.

14 Let's talk how much were those drugs worth?
15 You heard the testimony that cocaine has a street
16 value of a hundred dollars a gram. That's just over
17 71 grams of cocaine right there. So that gives you
18 over \$7,000 worth of drugs. Nobody in their right
19 mind would leave \$7,000 of cocaine in someone else's
20 car without saying a word. Who drives around with
21 \$7,000 worth of cocaine in the car? The same person
22 that drives around with their young son in the front
23 passenger seat and a loaded gun right under the
24 driver's seat. The defendant.

25 The judge is also going to instruct you about

1 the trafficking, actual and constructive possession,
2 and that if you find that he actually possessed or
3 constructively possessed the drugs, then you must
4 find him guilty of trafficking cocaine.

5 Actual possession I think is pretty clear to
6 everybody. Constructive possession the judge will
7 instruct you means that he had the right to exercise
8 control or did in fact exercise control over the
9 location of the drugs. Those drugs were right there
10 in the center console. It was his rental car. He
11 had been driving that car for over a month. So
12 clearly he was exercising control over that car and
13 that center console that was right there.

14 Now, the burden the State has to prove is
15 beyond a reasonable doubt. That doesn't mean beyond
16 any doubt. You just have to be firmly convinced of
17 the defendant's guilt.

18 I love when they come back from the last
19 commercial on C I and Law and Order and they wrap up
20 all the fancy DNA, fingerprints. But this isn't a
21 "who done it". The defendant was right there and had
22 possession of the gun and the drugs. This is no
23 mystery criminal. He is the only criminal. And
24 that's what you -- you will see that and find him
25 guilty.

1 Now, the defense is going to get up here in a
2 couple of minutes and try to do their best to muddy
3 the waters and get you all confused and try to create
4 some sort of reasonable doubt in your mind, but focus
5 on what the defense really is, is that he didn't know
6 the gun was there and he didn't know the drugs were
7 there, the gun that was sitting right there on the
8 floorboard and the drugs that were right there in the
9 center console.

10 You all came into this trial with your common
11 sense, and you still have it right now. I just ask
12 that when you go back to deliberate you take your
13 common sense with you and you focus on the facts that
14 were presented in the testimony, the evidence that
15 has been put in in this case, and then you find the
16 defendant guilty of all four charges, finding that
17 this is his gun and his drugs.

18 Thank you.

19 THE COURT: Ms. Gay?

20 MS. GAY: Thank you, your Honor.

21 This is one of those cases where you wish you
22 had more evidence so you could really make a better
23 decision. There is a lot of things we don't have in
24 this case. We don't have a videotape. A lot of
25 times cars have videotapes and you can actually watch

1 what happened in an arrest or during a stop and it's
2 kind of a like a little movie of what happened, so
3 that then later on you can come back and say: Hey,
4 there it is. I know exactly what happened right now.

5 That's not what happened. What happened in
6 this case is what we have to rely on is the testimony
7 of the people that testified here, the two police
8 officers that were involved in this arrest. What we
9 have in their testimony is a bunch of
10 inconsistencies. We have a bunch of inconsistencies
11 about how the gun was found. That's ultimately what
12 the issue in this case is. We know what ended up
13 happening is once the car was opened and once they
14 found the gun, that the drugs were found in the
15 center console. We know that, but what we don't know
16 is to what extent that gun was visible in the car.
17 And we basically have three versions of reality on
18 that. We have Officer Butler who said that there was
19 -- that he was told by Middleton that there was
20 something shiny, that he then looked in the
21 windshield. And he wrote a report that said you had
22 to look in the windshield, down into the driver's
23 floorboard before you could actually see that it was
24 actually a gun.

25 Now, we also then have Corporal Middleton's

1 testimony, a couple of different versions of it, that
2 said that he actually saw the whole gun poking out
3 from underneath the seat or that in other parts maybe
4 he only saw part of it and he was looking at some
5 point from the passenger side window as he looked
6 down into this low riding Jaguar.

7 So what we have is a bunch of several
8 different versions of reality about what was visible
9 in plain view, and that makes a significant
10 difference as to whether or not Mr. Johnson would
11 have known that the gun was present in the car that
12 he was driving.

13 Everybody came here in some form of a car,
14 either they drove themselves or they were driven by
15 someone else, and everybody knows -- and the
16 Enterprise guy admitted it that when there is a car,
17 other people have the ability to use it. When you
18 rent a car, even though you put on there that no one
19 else is going to use the car but you, oftentimes
20 there are people in your circle that will use the car
21 if you let them.

22 Now, if you let somebody use your car,
23 whatever car you parked here when you came in today
24 -- your cousin, your uncle, your friend -- and that
25 person puts something in your car and they maybe

1 thought they were going to get the car back from you
2 later that day or something, do you automatically
3 know what that person has put in your car?

4 Now, we probably all ought to take the
5 position that every single time we get out of a car
6 that someone else had that we have now gotten back
7 that we should search the entire interior of the car
8 to determine if there is stuff in it or anything in
9 it that we don't want to be responsible for, but on
10 average people don't do that. That isn't the
11 standard procedure in life. You don't say that:
12 Hey, let me search my entire car.

13 I heard something interesting recently. A
14 woman bought a car. She bought it as used. And she
15 actually told somebody that I was talking to who was
16 a police officer: You know, I really wish I could
17 get a drug dog to come sniff that car. Because it's
18 a nice car and I don't know what the person who had
19 the car behind me might have put in it. And she said
20 -- she was working in the court system, and she said:
21 The next time the drug dog is here, I want to see if
22 he will sniff my car. Because she was concerned that
23 there was the possibility that something was in that
24 car that she may not have been aware of. She bought
25 a used car.

1 So ultimately what we have is a situation
2 where on that day, on January 28, 2004, Terrance
3 Johnson is in an Enterprise Rent-A-Car. Yes; we
4 heard that they do clean the cars and all that stuff.
5 I'm not suggesting that that stuff got in the car
6 before he got the car. I'm suggesting that that
7 stuff got in the car beyond his knowledge and at a
8 time during the period of time that he had the rental
9 car when someone else is driving it.

10 Certainly, as we know, plenty of people could
11 have been driving that car. Plenty of people. And
12 he doesn't know what people bring into his car. He
13 could have had a passenger in his car that decided to
14 put something in it. But he's pled not guilty to
15 these charges. He's pled not guilty to be in
16 possession of a gun, and he's pled not guilty to
17 being in possession of the drugs.

18 The three versions of reality that we have
19 are how the gun was placed underneath the seat.
20 There is something that I want to bring to your
21 attention and think about when you go back in your
22 jury room. And the solicitor mentioned it. It's
23 like common sense. If somebody is stopped -- this
24 stop lasted 20-some minutes. If somebody is being
25 detained for some 20 minutes by the police and they

1 know a giant gun is under their seat, I would imagine
2 they're going to stuff that thing so far up
3 underneath the seat that there is no way you are
4 going to be able to see that or they are going to put
5 it somewhere, a glove box or something.

6 If you recall, the officer said: I walked my
7 dog around the car. And Officer Middleton said: I
8 hung back in the back of the car and was waiting.
9 None of these officers were sitting there at the
10 window staring at Mr. Johnson the entire time of this
11 stop. So there was plenty of opportunity for
12 Mr. Johnson to have hidden that gun a whole lot
13 better than it poking out underneath his seat.

14 Now, ultimately what happens is they say they
15 saw it. They say it was in plain view. There is no
16 doubt they found it. There is no doubt that once the
17 car was opened up the gun was found, but there is no
18 physical connection whatsoever to Mr. Johnson and
19 that gun. As you recall, there is no fingerprints.
20 There is no witness statements that said they saw him
21 picking up a weapon. There is nothing like that.
22 Ultimately he was present in the car when the gun was
23 found.

24 With regard to the drugs, Corporal Middleton
25 specifically testified that there was no way when he

1 looked in the interior of the car that you could have
2 seen the drugs. I mean, they weren't sitting on the
3 seat. They weren't underneath the seat next to the
4 gun. They were in an armrest that was closed.
5 Again, no physical evidence to connect Mr. Johnson to
6 the bag, no physical evidence -- one thing that
7 somebody brought to my mind as I was kind of thinking
8 this through was there was no even fingerprinting of
9 the armrest to see whether or not Mr. Johnson had
10 been the last person who touched the armrest. There
11 is plenty of opportunities for other people to have
12 put this in his car.

13 Ultimately what we have is a situation where
14 there is absolutely no connection, physical
15 connection, with the drugs to Mr. Johnson.

16 What the solicitor wants you to focus on is
17 the fact that he had control over the car. Yes; he
18 had control over the car. There is no doubt evidence
19 to support it, that he was the renter of the vehicle,
20 that he was the person present in the car that day,
21 but that is not enough. If you go back in your jury
22 room and you just decide he was in possession of the
23 car so therefore he's guilty, you have not given this
24 case the consideration that it deserves. You have
25 not given my client, who is presumed innocent at this

(1 point, the opportunity to have the State truly meet
2 its burden, because your car -- you are in your car;
3 you are traveling; you have got some people that came
4 in your car for some reason -- I'm not suggesting
5 they put 70 grams of cocaine in your car, but let's
6 say they put something that you didn't want in your
7 car. Oftentimes it's marijuana. Maybe your child is
8 driving your car and they are taking their friend
9 somewhere, and the next thing you know someone has
10 stuck their marijuana in the armrest or underneath
11 the seat or something like that and you are cleaning
12 out your car and you find some substance or something
13 and you confront your child and your child goes:
14 It's not mine. It's my friend's. I don't know. I
15 had Bob in my car. I have no idea what he put in
16 there.

17 There is so many different reasonable
18 opportunities to assume that the person who is in the
19 car is not necessarily the person who has got
20 dominion and control over what is found in the car,
21 and that is the issue.

(22 Did the State meet its burden in the case?
23 Is this enough? No physical evidence , no witnesses,
24 no actual connection for him to those drugs. It's
25 not enough just because he -- I submit to you that

1 it's not enough. It cannot be enough, because if
2 that were the case every person that was stopped at
3 any point in time that anything was found in their
4 car would automatically be guilty of everything
5 found. And I don't know about your life. I don't
6 know if you have had situations that I have described
7 about other people putting things in your car, but
8 it's very, very common. It's very common that when
9 people get stopped everybody gets arrested because
10 the police officers literally cannot determine from
11 the facts who should be the one responsible for it,
12 and that's the case in this case. We don't know who
13 that person was. They didn't present evidence to you
14 as to who that person was, but I'm telling you it's
15 not him. He's told you he's pled not guilty to this
16 charge.

17 One thing I read recently was -- I'm going to
18 try to say this right. A decision made by somebody
19 quickly is often one thing, but a decision made after
20 ample thought and consideration to the exact same
21 facts is often something completely different. And
22 so what I want you to do when you go back in your
23 jury room is you really want to think it through.
24 You want to think it through about whether or not the
25 State met their burden. Did they truly take away the

1 doubts that are in this case, create some reasonable
2 doubts for you? You don't create reasonable doubts.
3 They're there. You don't make it up. There are
4 plenty of options that you can think of that are
5 reasonable for why this man cannot be guilty of this
6 offense. I'm not asking you for some major stretch
7 here that is going to put you in a situation where
8 when you leave you are going to say: I should have
9 just jumped right on it and said it was his. I'm not
10 asking you that. I'm asking for you to stop as a
11 group -- I'm asking you to stop and do what I said:
12 Take the time. Really consider it. Are there
13 options here? There are reasonable doubts in this
14 case, and I believe after you look at what the three
15 versions of reality on the gun and where the drugs
16 were and the fact that there are no physical
17 connections to any of this stuff to Mr. Johnson,
18 I believe after you do all that you will find
19 Mr. Johnson not guilty.

20 Thank you.

21 THE COURT: During this trial, Ladies and
22 Gentlemen, you and I have certain duties to
23 perform. As the trial judge it is my
24 responsibility to preside over the trial of this
25 case, and I also have the duty to rule upon or pass

1 upon the admissibility of the evidence offered
2 during this trial. You are to consider only the
3 competent evidence that is before you, and you are
4 to disregard and disabuse from your mind any
5 testimony ordered stricken from the record in this
6 case during the progress of this trial, if there
7 has been any.

8 You are to consider only the testimony
9 which has been presented from the witness stand,
10 together with any exhibits which have been made a
11 part of the record in this case and any
12 stipulations of counsel made into the record, if
13 there have been any.

14 I have the additional duty to charge
15 you on the law applicable to this case. As the
16 presiding judge, I am the sole judge of the law of
17 this case, and it is your duty as jurors to accept
18 and apply the law as I now state it to you.

19 If you have a preconceived idea as to
20 what the law is or what the law ought to be in a
21 case or in this case and it should not agree with
22 what I now tell you the law is, you are obligated
23 under the oath which you have taken to abandon this
24 preconception because you are sworn to accept the
25 law and apply the law as I now state it to you.

1 In every case tried in this court
2 before a jury the jury becomes the sole and
3 exclusive judge of the facts in a case. You, the
4 jury, are the judge of the facts in this case. The
5 court is the judge of the law. The constitution of
6 our state has declared that a trial judge shall not
7 intimate, state, comment to a trial jury about the
8 facts in a case. Since you, the jury, are the sole
9 judges of the facts in this case, you are not to
10 infer anything from what I have said during the
11 progress of this trial in ruling upon the
12 admissibility of evidence or otherwise or anything
13 that I say now during the course of this
14 instruction to you that I have any opinion about
15 the facts in this case. The law does not permit me
16 to have an opinion about the facts. This is a
17 matter solely for you, the jury, to determine.

18 As jurors, then, it is your duty as I
19 have instructed you to determine the effect, the
20 value, the weight and the truth of the evidence
21 presented during this trial. Necessarily, you must
22 assess the credibility of witnesses who have
23 testified in this case.

24 Credibility is simply a legalistic term
25 meaning the believability of each witness who has

1 testified. It becomes your duty as jurors to
2 analyze and to evaluate the evidence and determine
3 that evidence which convinces you of its truth. I
4 instruct you that in determining the question of
5 the credibility or believability of witnesses who
6 have testified in this case you may believe one
7 witness as against several witnesses or several
8 witnesses as against one witness. You may believe
9 a part of the testimony of a witness and reject the
10 remaining part of the testimony of that same
11 witness. If you have a good and sound reason, you
12 may believe the testimony of a witness in its
13 entirety or reject the testimony of a witness in
14 its entirety. You may consider whether any witness
15 has exhibited to you any interest, any bias, any
16 prejudice or other motive in this case. You may
17 consider the demeanor of a witness; that is, the
18 appearance and manner of a witness from the witness
19 stand.

20 The rules of evidence ordinarily do not
21 permit witnesses to testify to opinions or
22 conclusions. An exception to this rule exists for
23 witnesses we call expert witnesses. A witness who
24 by education and experience has become an expert in
25 some art, science, profession or calling may state

1 an opinion as to relevant and material matters in
2 which the witness claims to be an expert and may
3 also state the reasons for that opinion. You
4 should consider any expert opinion received in
5 evidence in this case like any other evidence, give
6 it the weight you think it deserves. If you decide
7 that the opinion of an expert witness is not based
8 on sufficient education and experience or if you
9 conclude that the reasons given in support of the
10 opinion are not found or that the opinion is
11 outweighed by other evidence, you may disregard the
12 opinion entirely. An expert witness's testimony is
13 to be given no greater weight than that of other
14 witnesses simply because the witness is an expert.
15 Further, you are not required to accept an expert's
16 opinion even though it is not contradicted.

17 Ladies and Gentlemen, there are two
18 types of evidence which are generally presented
19 during a trial: Direct evidence and circumstantial
20 evidence. Direct evidence is the testimony of a
21 person who claims to have actual knowledge of a
22 fact, such as an eye witness. It is evidence which
23 immediately establishes the main point to be
24 proved.

25 Circumstantial evidence is proof of a

1 chain of facts and circumstances indicating the
2 existence of a fact. It is evidence which
3 immediately establishes collateral facts from which
4 the main fact may be inferred.

5 Circumstantial evidence is based on
6 inference and not on personal knowledge or
7 observation. The law makes absolutely no
8 distinction between the weight or value to be given
9 to either direct or circumstantial evidence, nor is
10 a greater degree of certainty required in
11 circumstantial evidence than of direct evidence.

12 You should weigh all of the evidence in
13 this case. After weighing all of the evidence if
14 you are not convinced of the guilt of the defendant
15 beyond a reasonable doubt, you must find the
16 defendant not guilty.

17 I instruct you that the fact that the
18 defendant was arrested, charged and indicted in
19 this case is not evidence and cannot be considered
20 by you as evidence of guilt in this case, nor does
21 it create any presumption or inference of guilt.

22 This documentation, Ladies and
23 Gentlemen, are simply the formal written
24 instruments which contain the charge or charges
25 made against a defendant. They serve as the formal

1 documents by which the case is processed and
2 brought into this court.

3 The defendant has pled not guilty to
4 the indictment, and that plea casts the burden on
5 the State to prove the defendant guilty. Because a
6 person charged with committing a criminal offense
7 in South Carolina is never required to prove
8 himself or herself innocent.

9 I charge you, Mr. Foreman, Ladies and
10 Gentlemen, that it is a cardinal -- an important
11 rule of the law of evidence that the defendant in a
12 criminal trial, no matter what the seriousness of
13 the charge made against him may be, will always be
14 presumed to be innocent of the crime for which he
15 is indicted unless his guilt has been proven by
16 evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 This presumption of innocence does not
19 cease when you retire, but it accompanies the
20 defendant from the time of his arraignment
21 throughout the trial until you reach that verdict
22 of guilt based upon evidence satisfying you of that
23 guilt beyond a reasonable doubt.

24 Our Supreme Court has said that the
25 presumption is like a robe of righteousness placed

1 about the shoulders of the defendant, and it
2 remains with him and assigns him to that class of
3 innocence until that presumptive robe of
4 righteousness has been stripped of his person by
5 evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 Ladies and Gentlemen, the presumption
8 of innocence is not merely legal theory. It is not
9 simply a legal phrase. It is a substantial right
10 to which every defendant is entitled unless you,
11 the jury, are satisfied from the evidence of his
12 guilt beyond a reasonable doubt.

13 You may ask: What is a reasonable
14 doubt in the law? The State has the burden of
15 proving the defendant guilty beyond a reasonable
16 doubt. Some of you may have served as jurors in
17 civil cases where you were told that it is only
18 necessary to prove that a fact is more likely true
19 than not true. In criminal cases the State's proof
20 must be more powerful than that. It must be beyond
21 a reasonable doubt.

22 Proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced of the
24 defendant's guilty. There are very few things in
25 this world that we know with absolute certainty,

1 and in criminal cases the law does not require
2 proof that overcomes every possible doubt.

3 If based on your consideration of the
4 evidence you are firmly convinced that the
5 defendant is guilty of a crime charged, you must
6 find him guilty. If on the other hand you think
7 there is a real possibility that he is not guilty,
8 you must give him the benefit of the doubt and find
9 him not guilty.

10 I instruct you and emphasize that the
11 fact that the defendant did not testify is not a
12 factor to be considered by you in any way during
13 your deliberations and in your consideration on the
14 question of the guilt or innocence of the
15 defendant. It must not be considered by you in any
16 manner whatsoever. A defendant has the
17 constitutional right to remain silent, and the
18 assertion of this right must not be considered by
19 you in your deliberations. I repeat: Under your
20 oath you are to draw no conclusion whatsoever from
21 the fact that the defendant in this case did not
22 testify. The fact that this defendant did not
23 testify should not even be discussed in the jury
24 room.

25 The burden of proof, as I have stated

1 to you, is on the State. The defendant is not
2 required to prove his innocence. The burden of
3 proof remains on the State to prove guilt beyond a
4 reasonable doubt.

5 The defendant is charged with unlawful
6 carrying of a pistol. The State must prove beyond
7 a reasonable doubt that the defendant carried a
8 pistol about his person, whether concealed or not.
9 A weapon is about the defendant's person if it is
10 readily accessible and convenient for immediate
11 use. The pistol need not be actually touching the
12 person of the defendant.

13 The defendant is charged with
14 possession of a stolen pistol. The State must
15 prove beyond a reasonable doubt that the defendant
16 knowingly bought, sold, transported, pawned,
17 received or possessed a stolen handgun.

18 The defendant is charged with
19 trafficking of cocaine. The State must prove
20 beyond a reasonable doubt that the defendant
21 knowingly sold, manufactured, cultivated,
22 delivered, purchased, brought into this state,
23 provided financial assistance or otherwise aided,
24 abetted, attempted or conspired to sell,
25 manufacture, cultivate, deliver, purchase or bring

1 into this state with knowingly and actual or
2 constructive possession or knowingly attempted to
3 become in actual or constructive possession of
4 cocaine.

5 The State must also prove beyond a
6 reasonable doubt that the amount of the cocaine or
7 any mixture containing cocaine was 28 grams or more
8 but less than 100 grams. To prove possession the
9 State must prove beyond a reasonable doubt that the
10 defendant had both the power and the intent to
11 control the disposition or use of the cocaine.

12 Possession may be either actual or
13 constructive. Actual possession means that the
14 cocaine was in the actual physical custody of the
15 defendant. Constructive possession means that the
16 defendant had dominion and control or the right to
17 exercise dominion or control over either the
18 cocaine itself or the property on which the cocaine
19 was found. Mere presence at the scene where the
20 drugs were found is not enough to prove possession.
21 Actual knowledge of the presence of the cocaine is
22 strong evidence of the defendant's intent to
23 control the disposition or use.

24 The defendant's knowledge and
25 possession may be inferred when a substance is

(1 found on the property under the defendant's
2 control. However, this inference is simply an
3 evidentiary fact to be taken into consideration by
4 you along with all the other evidence in the case
5 and to be given the weight you decide it should
6 have. Two or more persons may have joint
7 possession of a drug. To deliver means to
8 actually, constructively or attempt to transfer the
9 drug. Distribute means to deliver other than by
10 administering or dispensing a drug. Manufacture
11 means to produce, prepare, convert, process, plant,
12 cultivate, grow or harvest a drug naturally or
13 chemically. Manufacturing includes any packaging
14 or repackaging of the drug or labeling or
15 relabeling of the drug container.

16 The defendant is charged with
17 possession of a weapon during the commission of or
18 attempt to commit a violent crime. The State must
19 prove beyond a reasonable doubt that the defendant
20 was in possession of a firearm or visibly displayed
21 what appeared to be a firearm during the commission
22 of a violent crime. A firearm means any machine
23 gun, automatic rifle, revolver, pistol or any
24 weapon which is designed to or may be readily
25 converted to expel a projectile.

(1 In order to find the defendant guilty
2 of possession of a weapon during the commission of
3 a violent crime you must first find the defendant
4 guilty of either committing a violent crime or
5 attempting to commit a violent crime. I charge you
6 that drug trafficking is a violent crime as defined
7 by South Carolina Code Annotated 16-1-60.

8 Ladies and Gentlemen, the indictments
9 in this case allege several different offenses
10 against the defendant. I am referring to
11 indictments 2004-GS-10-3794, 3795, 3796 and 3797 as
12 follows: Unlawful carrying of a pistol, possession
13 of a stolen pistol, trafficking cocaine and
14 possession of a firearm during the commission of a
15 violent crime.

16 Each indictment charges a separate and
17 distinct offense. You must decide each indictment
18 separately on the evidence and the law applicable
19 to it uninfluenced by your decision as to any other
20 indictment. The defendant may be convicted or
21 acquitted on any or all of the offenses charged.
22 You will be asked to write a separate verdict of
23 guilty or not guilty for each indictment.

(24 Ladies and Gentlemen, there are eight
25 possible verdicts in this case. There is no

(1 significance whatsoever to the order in which I
2 state these possible verdicts. It is simply that
3 one must be stated first.

4 As to the unlawful carrying of a
5 pistol, we, the jury, by unanimous consent find the
6 defendant guilty or not guilty. As to the
7 possession of a stolen pistol, we, the jury, by
8 unanimous consent find the defendant guilty or not
9 guilty. As to the indictment for possession of a
10 firearm during the commission of a violent crime,
11 we, the jury, by unanimous consent find the
12 defendant guilty or not guilty. And as to
(13 trafficking and cocaine, we, the jury, find the
14 defendant guilty or not guilty.

15 Again, there is no significance
16 whatsoever to the order in which these possible
17 verdicts are stated.

18 Ladies and Gentlemen, your verdict must
19 be a unanimous one. Mr. Foreman, when the jury
20 agrees on a verdict it will be your responsibility
21 to write the verdict on the verdict form and to
22 sign the verdict form and to date it. It will also
23 be your responsibility to communicate with the
24 Court on behalf of the jury. If the jury has any
(25 questions, they need to be written out and provided

1 to the Court on the pad and paper that will be
2 provided to you in the jury room.

3 I will tell you all at the outset that
4 if you have any questions, there is a procedure
5 that we must follow in answering questions. So if
6 there is a delay, please don't think that we are
7 ignoring you. We are simply following that
8 procedure.

9 Mr. Foreman, it will also be your
10 responsibility to knock on the door and advise the
11 bailiffs when the jury has reached its verdict, and
12 at that time we will receive you back into the
13 courtroom. I will imagine that your lunch has
14 probably arrived, and if it has not I'm sure that
15 it's downstairs and Scott will be going to get it
16 for you.

17 At this time I'm going to ask that --
18 again, as I have indicated, your verdict must be a
19 unanimous one. At this time I am going to ask that
20 you return to your jury room, but please do not
21 begin your deliberations. There are some matters
22 of law that I need to take up with the attorneys,
23 and those matters of law may require further
24 instruction or clarification of an instruction.
25 However, if there is no further instruction, we

1 will send in the evidence and the verdict forms and
2 at that time you will be allowed to begin your
3 deliberations.

4 Mr. Foreman, also at the conclusion
5 once the jury has reached its verdict we will
6 instruct you how to fill out the actual
7 indictments.

8 If you will go with the bailiffs for
9 me.

10 (Jury retires to jury room at 1:30 p.m.)

11 THE COURT: Any exceptions from the State?

12 MR. BIANCHI: None from the State.

13 THE COURT: Any from defense?

14 MS. GAY: No, your Honor.

15 THE COURT: Let the record reflect the jury
16 began their deliberations at 1:30.

17 (Short recess taken.)

18 (Alternate juror brought into the courtroom.)

19 THE COURT: Ma'am, we appreciate your time
20 and attention to this case. Being an alternate is
21 such a thankless job. But if you would please stay
22 with us until your lunch arrives, because I don't
23 want you to leave without your lunch. That's the
24 least we can do.

25 Your jury service is concluded. You are free

1 to discuss this case, but I would ask that you not do
2 it until the jury has reached a verdict. And if you
3 don't want to discuss it and someone should persist
4 in trying to talk to you, please let us know so we
5 can protect your privacy.

6 You've been very patient. I have watched you
7 the entire time.

8 Do you need a work excuse or anything?

9 ALTERNATE JUROR: No, ma'am.

10 THE COURT: Your check and everything else
11 will be mailed to you today. Go with the bailiff.

12 (Alternate juror dismissed.)

13 THE COURT: I have two notes from the
14 jury. The first note: Whether or not statute
15 dealing with possession of stolen pistol requires
16 defendant to know pistol was stolen.

17 MR. KNISLEY: Yes.

18 THE COURT: Is there any exception to me
19 simply writing yes on the note?

20 MR. BIANCHI: None from the State.

21 MS. GAY: Nor from the defense, your Honor.

22 THE COURT: The second note: Clarify when
23 car was returned to Enterprise rental dealer. 16
24 January '04 or 29 January '04. What is on court
25 record?

1 MS. GAY: Your Honor, I would take the
2 position that what is on the record -- I don't know
3 what your piece of paper says, but the man testified
4 it was the 16th of January, which is rather odd.

5 THE COURT: I don't remember what he
6 testified to, but I can have the court reporter look
7 it up.

8 MR. BIANCHI: I think we made a mistake. If
9 you look at the date, it was due back -- obviously
10 that creates a confusion. I have where it was picked
11 up on the 29th. It was towed on the 28th and picked
12 up on the 29th.

13 THE COURT: They have the rental agreement
14 back there?

15 MS. GAY: They do.

16 THE COURT: Then what they are asking me for
17 is what the witness testified to, because they
18 specifically said: Clarify when car was returned to
19 Enterprise rental dealer. 16 January or 29 January
20 '04. When was it returned to the dealer?

21 He testified that it was returned on January
22 16th and then he testified that he picked it up from
23 Jennings on --

24 MS. GAY: He didn't say a date. He said I
25 picked it up from Jennings.

1 THE COURT: Is there any exception to the way
2 the Court has responded to the first note? I have
3 simply written yes.

4 MS. GAY: None from the State, your Honor.

5 THE COURT: It will be marked as a Court's
6 exhibit. I will send them into the jury and instruct
7 them not to destroy it because it's part of the
8 record.

9 MR. BIANCHI: Your Honor, he says the
10 defendant had the -- I don't believe he specifically
11 says that the car was returned on the 16th.

12 THE COURT: The question was asked directly
13 of him: And when was the car returned? He said
14 January 16, 2003.

15 MS. GAY: Yes, ma'am. That is exactly what
16 was said on the stand. The question, as I am reading
17 it from the jury, is: What are we supposed to be
18 doing here? They want to know was the testimony was
19 that it was returned on January 16, and the answer
20 would be yes.

21 MR. BIANCHI: I would answer that the jury
22 get to see the whole testimony where right after that
23 he says --

24 THE COURT: That's not what they asked me
25 for. I have to answer directly what they have

1 asked for. The question is: Clarify when car was
2 returned to Enterprise rental dealer. 16 January
3 '04 or 29 January '04? What is on court record?

4 I assume they mean what did the person
5 from Enterprise testify to. The record reflects he
6 said January 16. They have the rental agreement in
7 there. That's for them to hash out with what the
8 rental agreement says versus what he said. That's
9 a credibility issue for them to deal with with the
10 witness and I'm not going to get into -- when a
11 jury asks a question, they are not eliciting
12 additional argument. It's a cut and dry answer.
13 I'm not going to get into weight issues. I'm not
14 going to get into how you interpret the testimony.
15 I don't think that is proper.

16 So what I'm trying to determine is can
17 we just give them a simple answer, or do I need to
18 ask the foreman to come in and be more specific?
19 But I don't think the note is ambiguous, for
20 example.

21 MS. GAY: I would suggest that you say the
22 testimony was January 16th, 2004, because that was
23 the testimony.

24 MR. BIANCHI: The testimony of the Enterprise
25 Rent-A-Car --

1 THE COURT: I don't think I need to say all
2 that. I think you need to provide them whether it's
3 the 16th. They said: What is on court record?

4 MR. KNISLEY: Our position would be simply
5 that if we give a simple answer to that date in
6 response to a question, then we are basically -- the
7 court is basically putting a fact before the jury
8 that other evidence would contradict. We know that
9 that is not the truthful answer.

10 THE COURT: The jury didn't ask for that.
11 It's not my job to argue the case at this point. My
12 only job is to answer what the jury has asked me.

13 MR. KNISLEY: Can we see the note?

14 MR. BIANCHI: The rental agreement is
15 evidence.

16 THE COURT: If they --

17 MS. GAY: I think we are getting beyond --

18 THE COURT: I am trying to determine based on
19 what the jury asked how I need to respond to them.
20 They asked a very direct question which requires a
21 very direct answer.

22 Now, the fact that it could be subject to
23 different interpretations, subject to different
24 arguments, those are things y'all should have
25 anticipated in addressing your closing arguments. In

1 our rules there is no provision for additional
2 closing arguments once the jury is deliberating. I'm
3 just trying to figure out a clear and concise way to
4 answer them. And the question is very direct:
5 Clarify when car was returned to Enterprise rental
6 dealer. 16 January '04 or 29 January '04? What is
7 on the court record? And they don't use "the". They
8 just say: What is on court record?

9 They already have the agreement in there with
10 them. The only testimony in the record is that it
11 was returned on the 16th and that he later picked it
12 up from Jennings Towing. They didn't ask me for
13 that. I assume they are asking me what this guy
14 testified to as to when it was returned.

15 MR. KNISLEY: Just enter our objection.

16 THE COURT: I haven't decided if I'm not
17 going to answer it, so there is no exception for me
18 to note. I need to know how we are going to handle
19 the note. I am not going to get into additional
20 arguing this case with the jury. I need y'all to
21 focus --

22 MS. GAY: I would suggest you say the court
23 record said January 16th, 2004, because that is what
24 the record said.

25 MR. KNISLEY: I would ask that the jury be

1 able to hear the witness's full testimony in light of
2 the fact that one --

3 THE COURT: That's not what they requested.

4 MR. BIANCHI: The court record of the
5 Enterprise manager's testimony says the 16th.

6 THE COURT: Say that one more time. What did
7 you say, Mr. Bianchi?

8 MR. BIANCHI: Just that the court record make
9 sure it's the testimony of the Enterprise manager was
10 the 16th.

11 THE COURT: Get the foreman for me, please.

12 (Foreman brought into the courtroom at 2:50
13 p.m.)

14 THE COURT: Sir, we received your note to
15 clarify when car was returned to Enterprise rental
16 dealer, 16 January '04 or 29 January '04. What is on
17 court record?

18 Could you clarify for me exactly what the
19 inquiry is requesting.

20 THE FOREMAN: We had a couple of jurors
21 indicate that the -- I think it was Mr. Crumbie. He
22 indicated that the car was returned on the 16th.
23 Where I think it was on the record it was the 28th or
24 the 29th. I can't recall. So that was the question.
25 We could not deliberate and come to a conclusion on

1 that.

2 THE COURT: Okay. Thank you very much. We
3 are going to do our best to answer your question.

4 (Foreman returned to jury room.)

5 THE COURT: I think that is a factual issue
6 for their determination. I don't think we can
7 respond to it at all except that this is a factual
8 issue and that the fact finders will have to resolve
9 that based on the weight and value that they give the
10 testimony.

11 MS. GAY: I think we can tell them, your
12 Honor, that in the record it does say that --

13 THE COURT: I don't think there is any
14 question that they heard Mr. Crumbie's testimony. He
15 said Mr. Crumbly testified it was returned on January
16 16th. There was other documentation it was returned
17 on the 29th.

18 What that raises is a conflict between a
19 factual issue as to what they believe or do not
20 believe, and I am not going to get into arguing with
21 that. That is a matter solely within their
22 prerogative to determine, and for us to interject
23 ourselves into it at all now that I have clarified
24 would be improper. It would require us to have
25 additional -- not we. Y'all to reargue this case,

1 and that's improper.

2 So what I would do would be to instruct the
3 jury that as the fact finders this is a factual
4 matter for them to resolve and it's for them to weigh
5 the testimony and the evidence. I can instruct the
6 foreperson of that or I can bring them all back out
7 and instruct them of that. I'll leave that option to
8 y'all.

9 MS. GAY: I don't have a problem with you
10 just telling the foreman.

11 MR. BIANCHI: We are fine with just the
12 foreman.

13 THE COURT: If you could bring the foreman to
14 me, please.

15 (Foreman returned to courtroom.)

16 THE COURT: Sir, in response to the note --
17 I'll repeat it again: Clarify when car was returned
18 to Enterprise rental dealer. 16 January '04 or 29
19 January '04? What is on court record?

20 You indicated that basically there was a
21 dispute -- I wouldn't say "dispute". That's too
22 strong a word. That Mr. Crumbie testified it was
23 returned on January 16, 2004 and that there is other
24 items in the record that indicate it was returned on
25 January 29, 2004.

1 What I would instruct the jury is that as the
2 fact finders, these are factual issues that y'all
3 have to resolve within the province of y'all being
4 fact finders, and we cannot make any additional
5 comment regarding that. Thank you.

6 (Foreman returned to jury room at 3:55 p.m.)

7 THE COURT: I'm also going to tell them that
8 if there is any testimony that they want to rehear,
9 that we will accommodate them.

10 (Foreman returned to courtroom.)

11 THE COURT: Sir, I'm sorry. I would also
12 advise you that if there is any testimony that y'all
13 desire to rehear, you can just let us know and we'll
14 accommodate you.

15 THE FOREMAN: Thank you.

16 (Foreman returned to jury room.)

17 THE COURT: Are there any exceptions to the
18 Court's response from the State?

19 MR. BIANCHI: None from the State.

20 THE COURT: From the defense?

21 MS. GAY: I still think, your Honor, we could
22 have answered that by just saying: The Court record
23 said blank.

24 THE COURT: That would not have been
25 accurate: The court record says. The witness said

1 two things, and there is a document in evidence that
2 says something else.

3 MS. GAY: I don't know that there is a --

4 THE COURT: Yes, there is. The Enterprise
5 agreement is in the record. And that's a factual
6 issue for the jury to resolve.

7 The jury's note will be marked as a court's
8 exhibit.

9 The jury has sent us a note that they have
10 reached a verdict.

11 Is there anything before we bring in the jury
12 from the State?

13 MR. BIANCHI: Nothing, your Honor.

14 THE COURT: From the defense?

15 MS. GAY: I don't think there is any motions
16 or supplemental things I need to do.

17 THE COURT: I just asked just in case.

18 (Jury brought into the courtroom at 3:44
19 p.m.)

20 THE COURT: Is it correct that the jury has
21 reached a verdict?

22 THE FOREMAN: Yes, ma'am.

23 THE COURT: If you would give the verdict
24 forms to the bailiff for me.

25 THE FOREMAN: May I say one thing? I haven't

1 filled the forms out yet because I thought you were
2 going to give us direction. That's what I indicated
3 to the bailiff.

4 THE COURT: The only thing we can give you is
5 directions on how to fill out the indictment. So I
6 need you to check the applicable verdict on each of
7 the verdict forms, guilty or not guilty.

8 Do y'all need to go back out to do that?

9 THE FOREMAN: Yes, ma'am.

10 (Jury retires to jury room at 3:45 p.m.)

11 THE COURT: Bring them in.

12 (Jury returns to courtroom at 3:48 p.m.)

13 THE COURT CLERK: All present, your Honor.

14 THE COURT: Wonderful.

15 Mr. Foreman, has the jury reached a verdict?

16 THE FOREMAN: Yes, ma'am.

17 THE COURT: If you would give the verdict
18 forms to the bailiff.

19 If you would publish the verdict.

20 THE COURT CLERK: Defendant please stand.

21 As to indictment 2004-GS-10-3794, the State
22 of South Carolina versus Terrance Johnson, indicted
23 for unlawful carrying of a pistol, we, the jury, by
24 unanimous consent find the defendant guilty of the
25 unlawful carrying of a pistol, signed by Ronald

1 DeWitt, dated March 10, 2006.

2 Ladies and Gentleman of the Jury, if this is
3 your verdict, please reply by raising your right
4 hand.

5 JUROR: Can I ask a question?

6 THE COURT: Go ahead and ask your question.

7 JUROR: When this possession -- when they
8 said "possession", does that mean he has to know --
9 as long as it's in the car that means possession?

10 THE COURT: On which offense, sir?

11 JUROR: The one he just read.

12 THE COURT CLERK: That was for unlawful
13 carrying of a pistol.

14 THE COURT: I believe the Court already
15 answered that question. That question was sent out
16 in the form of a jury note.

17 JUROR: No. That was another one.

18 THE COURT: Repeat your question again, sir.

19 JUROR: I'm half-twisted on it, but I don't
20 want to make the final decision. I do not fully
21 understand.

22 When they said "possession", does he have to
23 know that it was in there or the officers found it in
24 the car, that automatically says that's in the
25 possession?

1 THE COURT: You are talking about the
2 possession of a stolen gun?

3 JUROR: Yes.

4 THE COURT: At this point y'all have found
5 him -- have you already read the indictment on that.

6 THE COURT CLERK: Yes, I have, your Honor.

7 THE COURT: On the possession?

8 I think that your question at this point
9 would not be relevant to the inquiry because -- and I
10 hate to jump ahead if the jury has found him not
11 guilty on possession of the stolen gun.

12 JUROR: That's not my question.

13 THE COURT: The question that you are asking
14 me relates to possession of a stolen gun? You asked
15 if he had to know --

16 JUROR: No. When I asked myself: Does that
17 mean automatically that it's in your possession if
18 it's found in the car?

19 MS. GAY: May we approach, your Honor.

20 THE COURT: Can you hold that. You are going
21 to finish publishing the verdict and then we're going
22 to deal with it. Start over.

23 THE COURT CLERK: The same indictments, your
24 Honor?

25 THE COURT: Yes.

1 MS. GAY: I would ask to approach at this
2 point, your Honor.

3 THE COURT: Listen to the verdict.

4 THE COURT CLERK: As to Indictment
5 2004-GS-10-3795, the State of South Carolina versus
6 Terrance Johnson as to possession of a stolen pistol,
7 we, the jury, by unanimous consent find the defendant
8 not guilty, signed by Ronald DeWitt, dated March 10,
9 2006.

10 Ladies and Gentlemen, if this is your verdict
11 please reply by raising your right hand?

12 THE COURT: Do the first one again, because
13 it's not clear that everyone raised their hand.

14 THE COURT CLERK: As to indictment
15 2004-GS-10-3794, the State of South Carolina versus
16 Terrance Johnson, indicted for unlawful carrying of a
17 pistol, we, the jury, by unanimous consent find the
18 defendant guilty of the unlawful carrying of a
19 pistol, signed by Ronald DeWitt dated March 10, 2006.

20 Ladies and Gentlemen, if this is your
21 verdict, please reply by raising your right hand.

22 (All except one juror raised their hand.)

23 THE COURT: I need to know if this is your
24 verdict. It's a yes or no question.

25 JUROR: I did answer that I don't understand.

1 THE COURT: Answer the question. Is this your
2 verdict?

3 THE COURT CLERK: Is this your verdict, sir?

4 JUROR: I don't have a true understanding of
5 it. I think I should have that right. I don't --

6 THE COURT: The jury has rendered a verdict
7 of guilty on that offense. As a part of polling the
8 jury, I have to make sure that it was a unanimous
9 verdict.

10 If this is your verdict, please indicate by
11 raising your right hand.

12 (All except one juror raised their hand.)

13 JUROR: I'm going --

14 THE COURT: No. I need to know if this is in
15 fact your verdict.

16 JUROR: I don't understand.

17 THE COURT: It's a yes or no question.

18 JUROR: No.

19 THE COURT: Then we'll deal with that as a
20 matter of law after we've heard the publishing of the
21 rest of the verdict.

22 THE COURT CLERK: As to indictment
23 2004-GS-10-3797, the State of South Carolina versus
24 Terrance Johnson, the indictment for possession of a
25 firearm during the commission of a violent crime, we,

1 the jury, by unanimous consent find the defendant
2 guilty of possession of a firearm during the
3 commission of a violent crime, and it is signed by
4 Ronald DeWitt, dated March 10, 2006.

5 Ladies and Gentlemen, if this is your
6 verdict, please reply by raising your right hand.

7 JUROR: Can I say something?

8 THE COURT: I need you to raise your hand,
9 sir.

10 JUROR: I would say yes, but I didn't
11 understand.

12 THE COURT CLERK: Thank you. You may put it
13 down.

14 THE COURT: You may proceed.

15 THE COURT CLERK: As to indictment
16 2004-GS-10-3796, the State of South Carolina versus
17 Terrance Johnson, indictment for trafficking cocaine,
18 we, the jury, by unanimous consent find the defendant
19 guilty of trafficking cocaine, signed by Ronald
20 DeWitt, dated March 10, 2006.

21 Again, Ladies and Gentlemen, if this is your
22 verdict, please reply by raising your right hand.

23 (All except one juror raised their hand.)

24 JUROR: The same as before.

25 THE COURT: Okay. Ladies and Gentlemen, I am

1 going to need you to return to your jury room.
2 During this break please do not have any discussions
3 whatsoever about this case. It is evident that the
4 Court may need to give you further instruction
5 regarding this matter.

6 You are instructed that your verdict has to
7 be unanimous, which means that you are supposed to
8 engage in fully spirited deliberations and come to
9 one decision, which means a decision that all 12 of
10 you agree upon. If there -- I'll deal with that
11 subsequently, but right now I need to deal with this
12 matter. But during the break please have no
13 discussion about the case. Do not deliberate in any
14 way. If you need anything, please let the bailiffs
15 know.

16 If you would go with them for me, please.

17 (Jury retires to jury room at 3:55 p.m.)

18 THE COURT: Basically what has happened is
19 that the jury has found the defendant guilty -- I
20 misspoke. The jury has found the defendant not
21 guilty of the stolen pistol 2004-GS-10-3795. That
22 verdict will stand.

23 As regards the other offenses, which is
24 unlawful carrying of a pistol, which is
25 2004-GS-10-3794; trafficking, 2004-GS-10-3796 and

(1 2004-GS-10-3797, which is possession of a firearm
2 during the commission of a violent crime, it is
3 apparent to the Court that this was not the unanimous
4 verdict in that I have had a juror raise his hand and
5 say basically to the Court that there is some
6 elements of the offense that he does not understand
7 and that he needs to make sure he understands them,
8 which makes me wonder if -- I'm not certain he
9 understood the instruction.

10 I am inclined to again instruct them that
11 their verdict must be a unanimous one, that if there
12 are any questions regarding the elements of the
13 offenses and what is required that -- actually what I
14 may do -- and that might be a lot quicker instead of
15 having to send them back in -- is simply recharge
16 them on the element of unlawful carrying, trafficking
17 and possession of a firearm during the commission of
18 a violent crime, because I think that would answer
19 all the jurors' questions. Because what he asked me
20 was: Does he have to know that the gun was stolen?
21 I can't remember his exact question.

(22 MS. GAY: There was a point earlier where he
23 says does he have to know -- that was the first
24 question he asked. Then he subsequently said
25 something else.

1 THE COURT: Let me simply recharge them on
2 the elements and tell them if they have any questions
3 about the elements -- if there is any testimony they
4 need reheard, they need to make us aware of it. They
5 need to engage in deliberations and truly determine
6 that their verdict is a unanimous one and explain to
7 them that unanimous. "All" means all 12 of you must
8 agree.

9 Is there any exception to the Court
10 proceeding in that manner from the State?

11 MR. KNISLEY: No, your Honor.

12 THE COURT: From the defense?

13 MS. GAY: What is the charge where they are
14 hanging and you want to tell them something about --
15 the Allen charge.

16 THE COURT: The Allen charge would not be
17 appropriate because I don't think they understood the
18 basic foundation on the instructions that their
19 verdict had to be unanimous. He basically told me he
20 basically voted without understanding what the
21 elements of the offense were.

22 I think the starting point is to reinstruct
23 them. If they tell me they can't agree, then I'll
24 give my Allen charge. I don't think they have
25 reached a point where they have told me they cannot

1 agree. Apparently they were on the same page.
2 Because he is very slow in raising his hand and they
3 were communicating with one another, that basically
4 he didn't understand either. So I think that that is
5 the most prudent course of action to take.

6 One of the jurors needs to make arrangements
7 to pick up their children, and then we will proceed
8 with me giving them further instructions.

9 MR. KNISLEY: Your additional instructions
10 still include the charge on --

11 THE COURT: I'm going to give the exact
12 charge I gave them to begin with. I will charge
13 them on unlawful carrying of a pistol, trafficking
14 and possession of a firearm during the commission
15 of a violent crime.

16 (Short recess taken.)

17 (Court resumed at 4:15 p.m.)

18 MS. GAY: I have something I want to say.

19 THE COURT: Sure.

20 MS. GAY: Your Honor, I would like to make a
21 motion for mistrial on behalf of Mr. Johnson at this
22 point. I believe that based on the fact that they
23 came out -- and obviously it was a nonunanimous
24 verdict. I don't believe that it's sufficient just
25 to send them back in there and/or give them some more

1 instruction, your Honor.

2 I believe at this point the trial has been
3 tainted by the fact that that man has now openly and
4 aggressively --

5 THE COURT: I think it clearly inures to your
6 client's benefit.

7 MS. GAY: Well, I'm just making a motion for
8 a mistrial at this time, your Honor.

9 THE COURT: Would the State like to comment?

10 MR. KNISLEY: Your Honor, I don't believe a
11 mistrial is appropriate at this point. That's the
12 purpose of polling the jury. In this case I think we
13 had a juror who very clearly stated he still had some
14 confusion as to the Court's charge and elements of
15 the crime. I think the appropriate thing to do is
16 send them back and instruct them to deliberate
17 further in the hopes of an unanimous decision.

18 THE COURT: A motion for mistrial really
19 should be rarely invoked unless the Court has no
20 other alternative. I have no doubt that I feel --
21 quite frankly, I find it refreshing what happened
22 because I have a juror -- apparently two jurors who
23 have indicated instead of going along with -- what
24 they could have done was simply raise their hand and
25 say: Yes; I voted for a guilty verdict.

1 They have indicated that they still have
2 questions about the elements of the offenses and
3 basically have indicated that they have not reached a
4 unanimous verdict. That's the whole reason we poll a
5 jury. That's why we ask them to raise their hand, so
6 that we can make sure it's a unanimous verdict.

7 I see this as no different than if we had a
8 hung jury and if I were to explain to them to
9 continue deliberating further in effort to reach a
10 unanimous verdict. Quite frankly, I think it's even
11 a little extreme situation than when you have a hung
12 jury; and quite frankly, I think what has happened
13 clearly inures to the benefit of the defendant.

14 I see no benefit for declaring a mistrial for
15 him or for the State. I think it would be -- in
16 terms of judicial economy, I don't see that being
17 beneficial to either the State or the defense. But
18 even more importantly, what the juror has indicated
19 to me is that he needs to understand what the
20 elements of the offenses are. There has been no
21 showing of prejudice to the defendant and there is no
22 indication of taint. Quite frankly, if anything, it
23 shows to me his strength of character. Either he
24 will understand the elements of the offense and the
25 jury will be able to reach the unanimous verdict or

1 they will differ in their opinion as 12 people often
2 do and they will indicate to me that they cannot
3 reach a unanimous verdict, in which case I will cross
4 that bridge when I come to it.

5 At this point the case law is very clear that
6 a mistrial should really be very cautiously invoked
7 unless there is no other way, especially in light --
8 unless there is no other way the Court can cure the
9 situation, and I think in this case it's very easily
10 cured. So the motion for mistrial is denied.

11 Please bring in the jury.

12 (Jury returned to courtroom at 4:20 p.m.)

13 THE COURT CLERK: All present, your Honor.

14 THE COURT: Ladies and Gentlemen, in response
15 to the polling of the jury and the inquiry of the two
16 individual jurors the Court has determined that it
17 would be appropriate to recharge you on the elements
18 of the offenses and then instruct you regarding the
19 fact that your jury verdict must be unanimous, which
20 means that all 12 of you must agree upon a verdict,
21 after which I will give you the opportunity to
22 continue your deliberations, and then of course we'll
23 follow the same procedure if there are any further
24 questions from you during the course of your
25 deliberations.

1 The defendant is charged with unlawful
2 carrying of a pistol. The State must prove beyond a
3 reasonable doubt that the defendant carried a pistol
4 about his person, whether concealed or not. A weapon
5 is about the defendant's person if it is readily
6 accessible and convenient for immediate use. The
7 pistol need not be actually touching the person of
8 the defendant.

9 The defendant is charged with trafficking and
10 cocaine. The State must prove beyond a reasonable
11 doubt that the defendant knowingly sold,
12 manufactured, cultivated, delivered, purchased,
13 brought into this state, provided financial
14 assistance or otherwise aided, abetted, attempted or
15 conspired to sell, manufacture, cultivate, deliver,
16 purchase or bring into this state, was knowingly in
17 actual or constructive possession or knowingly
18 attempted to become in actual or constructive
19 possession of cocaine.

20 The State must also prove beyond a reasonable
21 doubt that the amount of the cocaine or any mixture
22 containing cocaine was 28 grams or more but less than
23 100 grams. To prove possession the State must prove
24 beyond a reasonable doubt that the defendant had both
25 the power and the intent to control the disposition

1 or use of the cocaine.

2 Possession may be either actual or
3 constructive. Actual possession means that the
4 cocaine was in the actual physical custody of the
5 defendant. Constructive possession means that the
6 defendant had dominion and control or the right to
7 exercise dominion or control over either the cocaine
8 itself or the property on which the cocaine was
9 found.

10 Mere presence at the scene where the drugs
11 were found is not enough to prove possession. Actual
12 knowledge of the presence of the cocaine is strong
13 evidence of the defendant's intent to control its
14 disposition or use. The defendant's knowledge and
15 possession may be inferred when a substance is found
16 on the property under the defendant's control.
17 However, this inference is simply an evidentiary fact
18 to be taken into consideration by you along with the
19 other evidence in the case and to be given the weight
20 you decide it should have. Two or more persons may
21 have joint possession of a drug.

22 To deliver means to actually, constructively
23 or attempt to transfer the drug. Distribute means to
24 deliver other than by administering or dispensing a
25 drug. Manufacture means to produce, prepare,

1 convert, process, plant, cultivate, grow or harvest a
2 drug naturally or chemically. Manufacturing includes
3 any packaging or repackaging of the drug or labelling
4 or relabelling of the drug's container.

5 The defendant is charged with possession of a
6 weapon during the commission of or attempt to commit
7 a violent crime. The State must prove beyond a
8 reasonable doubt that the defendant was in possession
9 of a firearm or visibly displayed what appeared to be
10 a firearm during the commission of a violent crime.

11 A firearm means any machine gun, automatic, rifle,
12 revolver, pistol or any weapon which is designed to
13 or may be readily converted to expel a projectile.

14 In order to find the defendant guilty of
15 possession of a weapon during the commission of a
16 violent crime you must first find the defendant
17 guilty of either committing a violent crime or
18 attempting to commit a violent crime.

19 I charge you that drug trafficking is a
20 violent crime as defined by South Carolina Code of
21 Laws 16-1-60.

22 Ladies and Gentlemen, each indictment charges
23 a separate and distinct offense. You must decide
24 each indictment separately on the evidence and the
25 law applicable to it uninfluenced by your decision as

1 to any other indictment. The defendant may be
2 convicted or acquitted on any or all of the offenses
3 charged.

4 As I have indicated, you will write a
5 separate verdict on each of the offenses. There are
6 two possible verdicts for each of the offenses. As
7 to the 2004-GS-10-3794, unlawful carrying of a
8 pistol, the options are guilty of the unlawful
9 carrying of a pistol or not guilty.

10 On the indictment for trafficking cocaine,
11 the options are guilty of trafficking cocaine or not
12 guilty. And on possession of a firearm during the
13 commission of a violent crime, the options are guilty
14 of possession of a firearm during the commission of a
15 violent crime or not guilty.

16 Ladies and Gentlemen, there is no
17 significance whatsoever to the order in which I have
18 stated these possible verdicts.

19 Ladies and Gentlemen, your verdict must be a
20 unanimous one, which all 12 of you must agree on the
21 verdict.

22 I'm going to excuse you from the courtroom.
23 Please do not begin your deliberations. I have
24 matters of law I need to take up with the attorneys
25 that may require further instruction or clarification

1 of an instruction. Additionally, if there are any
2 questions during your deliberations regarding what
3 the law is, what it means or how I have explained it
4 to you, please make sure that you make the Court
5 aware of those questions so that we can provide you
6 with additional instruction where applicable and
7 appropriate.

8 If you would go with the bailiffs.

9 (Jury retires to the jury room at 4:30 p.m.)

10 THE COURT: Any exceptions from the State?

11 MR. BIANCHI: None from the State, your
12 Honor.

13 THE COURT: From the defense?

14 MS. GAY: Your Honor, after you ruled about
15 my mistrial motion I assumed -- I have no objection
16 to what you just did.

17 THE COURT: Now, what I'm going to do is my
18 clerk is going to reprint verdict forms for each of
19 these for indictments 3794, 3796 and 3797, which are
20 unlawful carrying of a pistol, trafficking cocaine,
21 possession of a firearm during the commission of a
22 violent crime, and I'm going to take the other
23 verdict forms off and have them marked as one package
24 as a Court's exhibit and then I'm going to attach the
25 new ones to these.

1 Is there any exception to that from the
2 State?

3 MR. BIANCHI: None from the State, your
4 Honor.

5 THE COURT: From the defense?

6 MS. GAY: None, your Honor.

7 (Short recess taken.)

8 THE COURT: You may be seated. We have a
9 verdict.

10 Is there anything before we bring in
11 the jury?

12 MR. BIANCHI: Nothing from the State.

13 MS. GAY: I would like to renew my motion for
14 mistrial based on the circumstances.

15 THE COURT: The Court notes your objection,
16 and I stand by my earlier issue regarding the issue.

17 Please bring in the jury.

18 (Jury returned to courtroom at 5:15 p.m.)

19 THE COURT CLERK: All seated, your Honor.

20 THE COURT: Mr. Foreman, has the jury reached
21 a verdict.

22 THE FOREMAN: Yes, ma'am.

23 THE COURT: Give the verdict forms to the
24 bailiff for me.

25 Mr. Clerk, if you would publish the verdict

1 for me.

2 THE COURT CLERK: Yes, your Honor. The State
3 of South Carolina versus Terrance Johnson. As to the
4 indictment 2004-GS-10-3797, we, the jury, by
5 unanimous consent find the defendant guilty of
6 possession of a firearm during the commission of a
7 violent crime, signed by Ronald DeWitt dated March
8 10, 2006.

9 Ladies and Gentlemen of the jury, if this is
10 your verdict, please reply by raising your right
11 hand.

12 (All jurors raised their hand.)

13 THE COURT CLERK: The State of South Carolina
14 versus Terrance Johnson, as to the indictment No.
15 2004-GS-10-3796, we, the jury, by unanimous consent
16 find the defendant guilty of trafficking cocaine,
17 signed by Ronald DeWitt dated March 10, 2006.

18 Again, Ladies and Gentlemen, if this is your
19 verdict, please reply by raising your right hand.

20 (All jurors raised their hand.)

21 THE COURT CLERK: As to indictment
22 2004-GS-10-3794, we, the jury, by unanimous consent
23 find the defendant guilty of the unlawful carrying of
24 a pistol, signed by Ronald DeWitt dated March 10,
25 2006.

1 If this is your verdict, reply by raising
2 your right hand.

3 (All jurors raised their hand.)

4 THE COURT: Any request to poll the jury from
5 the State?

6 MR. BIANCHI: No, your Honor.

7 THE COURT: From the defense?

8 MS. GAY: Yes, your Honor.

9 THE COURT: Poll the jury.

10 THE COURT CLERK: Ladies and Gentlemen, I
11 will be asking you two questions: Are these your
12 verdicts? And again, are these your verdicts?

13 As I call your name and juror number will you
14 please stand.

15 Juror No. 57 Ronald DeWitt, are these your
16 verdicts?

17 THE JUROR: Yes.

18 THE COURT CLERK: Are they still your
19 verdicts?

20 THE JUROR: Yes.

21 THE COURT CLERK: Juror 226, Sheryl Teerman,
22 are these your verdicts?

23 THE JUROR: Yes.

24 THE COURT CLERK: Are they still your
25 verdicts?

1 THE JUROR: Yes.

2 THE COURT CLERK: Thank you. Please be
3 seated.

4 Juror 265, Charlotte Newman, are these your
5 verdicts?

6 THE JUROR: Yes.

7 THE COURT CLERK: Are they still your
8 verdicts?

9 THE JUROR: Yes.

10 THE COURT CLERK: Juror No. 163, James Neipp,
11 are these your verdicts?

12 THE JUROR: Yes.

13 THE COURT CLERK: Are they still your
14 verdicts?

15 THE JUROR: Yes.

16 THE COURT CLERK: Juror 269, Bobby Sessman,
17 Jr., are these your verdicts?

18 THE JUROR: Yes.

19 THE COURT CLERK: Are they still your
20 verdicts?

21 THE JUROR: Yes, sir.

22 THE COURT CLERK: Juror 72, Gary Ford, are
23 these your verdicts?

24 THE JUROR: Yes.

25 THE COURT CLERK: Are they still your

1 verdicts?

2 THE JUROR: Yes.

3 THE COURT CLERK: Juror No. 266, Terry
4 O'Connell, are these your verdicts?

5 THE JUROR: Yes.

6 THE COURT CLERK: Are they still your
7 verdicts?

8 THE JUROR: Yes.

9 THE COURT CLERK: Juror 192, Timothy Rush,
10 are these your verdicts?

11 THE JUROR: Yes.

12 THE COURT CLERK: Are they still your
13 verdicts?

14 THE JUROR: Yes.

15 THE COURT CLERK: Juror 217, John St. Jean,
16 are these your verdicts?

17 THE JUROR: Yes.

18 THE COURT CLERK: Are they still your
19 verdicts?

20 THE JUROR: Yes.

21 THE COURT CLERK: Juror 223, David Taylor,
22 are these your verdicts?

23 THE JUROR: Yes.

24 THE COURT CLERK: Are they still your
25 verdicts?

1 THE JUROR: Yes.

2 THE COURT CLERK: 227, Henry Thompson, are
3 these your verdicts?

4 THE JUROR: Yes.

5 THE COURT CLERK: Are they still your
6 verdicts?

7 THE JUROR: Yes.

8 THE COURT CLERK: Juror 196 Kelly Sams, are
9 these your verdicts?

10 THE JUROR: Yes.

11 THE COURT: Is there anyone's name I have
12 missed?

13 Your Honor, the verdict stands.

14 THE COURT: Mr. Foreman, Ladies and
15 Gentlemen, on behalf of the State as well as the
16 defendant and defense counsel we thank you for your
17 time and your attention to this case. We know that
18 jury service is a great sacrifice both to your
19 personal and your professional lives, and I hope
20 however that this week has been educational for you
21 and I hope that you have learned that your system
22 could not operate without you giving your time and
23 your attention to this case.

24 If you need any work excuses before you leave
25 today, we'll provide those for you. However, if you

1 do not need them, they will be mailed to you and
2 mailed out sometime today or Monday.

3 THE COURT CLERK: They will be mailed out
4 Monday, your Honor.

5 THE COURT: They will be mailed out on
6 Monday, so you should receive them by Tuesday,
7 probably based on how quickly the mail is delivered.

8 You are free to discuss this case. By the
9 same token, you do not have to discuss this case. If
10 anyone should persist in trying to speak with you,
11 please get their name and report that to the clerk
12 and we will make sure that your privacy is protected.

13 We have already accepted the verdicts. The
14 defendant will be sentenced. If any of you wish to
15 stay for that procedure, please let the bailiffs know
16 and we will escort you through the gallery of the
17 courtroom.

18 With the Court's thanks, you are excused.
19 We'll be at ease for a moment after which we'll hear
20 any motion for handling the sentencing.

21 (Short recess taken.)

22 THE COURT: You may be seated. Is there
23 anything further from the State?

24 MR. BIANCHI: No, your Honor.

25 THE COURT: Anything further from the

1 defense?

2 MS. GAY: Your Honor, at this time we would
3 make a motion for -- we renew all of our motions,
4 specifically the motion to suppress that we believe
5 was erroneous, the directed verdict motion, the new
6 trial motion and specifically the mistrial motion
7 that I made within the last hour or so, your Honor.

8 THE COURT: Anything from the State?

9 MR. KNISLEY: Your Honor, the State would
10 simply renew its arguments earlier as to the
11 sufficiency of the evidence and ask the Court to let
12 the jury's verdict stand.

13 THE COURT: The Court would note the motion
14 for the record and denied and based on the Court's
15 previous ruling, so I don't think we need to rehash
16 them.

17 For the record, the juror that had the
18 question was No. 72, Gary Ford, and the other
19 gentleman that I referred to that seemed a little
20 hesitant was 223, David Taylor.

21 Anything further from the record?

22 MS. GAY: No, your Honor, other than all the
23 motions that I have made.

24 THE COURT: How long did your client serve --

25 MS. GAY: Before he made bond? How much did

1 did you spend in jail?

2 He said approximately 30 days, your Honor,
3 and I know the county jail will have record of that.

4 MR. KNISLEY: Would you like us to make a
5 prior certified convictions for the purpose of the
6 record?

7 THE COURT: Yes. They will be marked as a
8 Court's exhibit.

9 Anything further from the State?

10 MR. BIANCHI: Nothing from the State.

11 MS. GAY: No, your Honor.

12 THE COURT: Sir, if you would stand for the
13 imposition of sentence.

14 Sir, is there anything you would like to
15 state for the record?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Sir, as I indicated to you at the
18 beginning of these proceedings, if you are convicted
19 that the court had no discretionary power in your
20 sentencing, and so based on the jury's verdict and in
21 regards to unlawful carrying of a pistol you are
22 sentenced to one year concurrent, 2004-GS-10-3796.
23 The State Department of Corrections will give you any
24 credit that you are entitled to pursuant to 24 13 40
25 to be calculated and applied by them.

1 On the charge of possession of a firearm
2 during the commission of a violent crime, sir, I am
3 not imposing any sentence pursuant to 16 23 490
4 Subsection A which provides that if a life or death
5 sentence is applicable, than no sentence can be
6 imposed.

7 And on the offense of tracking cocaine 28 to
8 100 grams, second offense, sir, you are sentenced to
9 the State Department of Corrections for a period of
10 life. The sentence is concurrent with
11 2004-GS-10-3794, and you will get any credit for time
12 that you served pursuant to 24 13 40.

13 Thank you very much.

14 (Trial concluded at 5:50 p.m.)

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1 CERTIFICATE OF REPORTER.

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I, Patricia Thompson-Morrison, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 4th day of October 2006 at
Charleston, Charleston County, South Carolina.



Patricia Thompson-Morrison

Registered Professional Reporter

My Commission Expires

October 19, 2015

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

Terrance Johnson #156066)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2011-CP-10-9193
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2011 DEC 13 PM 1:01
JULIE J. ARNOLD
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Institution, P.O. Box 205
Ridgeville, SC. 29472
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) (2004-GS-10-3796) trafficking cocaine;

- (b) (2004-GS-10-3797), weapons offense
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 10, 2006 (LWOP) 2-strikes
- (b) March 10, 2006 (one year) concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed convictions and sentences
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 29, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2011-UP-411
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel;
- (b) Due Process violations to include, Fourth, Fifth, Sixth
- (c) and Fourteenth Amendment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to challenge the stop, and
- (b) numerous other ineffective assistance of counsel
- (c) claims. Petitioner reserves the right to amend his PCR
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing of PCR

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) first filing of post conviction relief
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? no
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Melisa Gay, Esq.
Charleston County Bar
- ii. same as above
- iii. Robert Dudek, Esq.
South Carolina Office of Appellate Defense
- (b) the proceedings at which each such attorney represented you:
- i. trial and sentencing
- ii. same as above
- iii. direct appeal

19. State clearly the relief you seek in filing this application:

vacate sentences and convictions and remand for new trial
or in the alternative whatever relief this Court deems
just and appropriate

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Darchester)

VERIFICATION

I, Terrance D. Johnson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terrance Johnson

SWORN to and subscribed before me this 8th
 day of December, 2011.

Sylvia Jones (L.S.)
 Notary Public

My Commission Expires: 1/24/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Terrance D. Johnson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terrance D. Johnson
Applicant

SWORN or affirmed to and subscribed before me this
24th day of December, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Terrance D. Johnson,)
S.C.D.C. No. 156066,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-10-9193

RETURN

FILED
2012 JUN 20 PM 3:20
JESSIE J. ARMSTRONG
CLERK OF COURT

In response to the post-conviction relief application filed December 13, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted at the June 2004 term of the Charleston County Grand Jury for trafficking cocaine (2004-GS-10-3796) and possession of a firearm during the commission of a violent crime (2004-GS-10-3797). Melissa Gay, Esquire represented the Applicant.

The State took the case to trial, and on March 10, 2006 the Applicant was found guilty. The Honorable Deadra L. Jefferson sentenced the Applicant to life imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Terrance D. Johnson, Op. No. 2011-UP-411 (S.C. Ct. App. filed August 29, 2011). The Remittitur was sent on September 14, 2011.

Attached herewith and incorporated herein by reference are the records of the Charleston

County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to challenge the stop, and numerous other ineffective assistance of counsel claims."
2. "Due Process violations to include, Fourth, Fifth, Sixth and Fourteenth Amendment."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant also alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires

that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

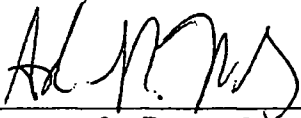
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Chief Deputy Attorney General

SALLEY W. ELLIOTT
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ASHLEIGH WILSON
Assistant Attorney General

P.O. Box 11549
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By:


Attorneys for Respondent

_____, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2012-CP-10-9193

TERRANCE D. JOHNSON, #156066)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

BY

JULIE J. ARTHUR
CLERK OF COURT

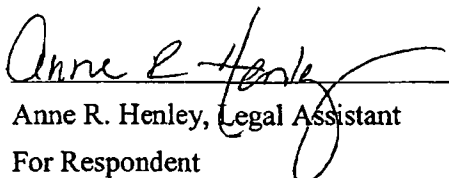
2012 JUN 20 PM 3:20

FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donald Jay Budman, Esquire
PO Box 30280
Charleston, SC 29417

DATED this 19th day of June, 2012


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
_____)

IN THE COURT OF
COMMON PLEAS
NINTH CIRCUIT

TERRANCE JOHNSON,)
APPLICANT,)
V.)

TRANSCRIPT OF RECORD
2011-CP-10-9193

STATE OF SOUTH CAROLINA,)
RESPONDENT.)
_____)

November 21, 2013
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD, PRESIDING
JUDGE

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

CHRISTOPHER L. MURPHY, ESQUIRE
ATTORNEY FOR APPLICANT

ASHLEIGH R. WILSON, ESQUIRE
ASSISTANT ATTORNEY GENERAL

SHARON L. VIZER
CIRCUIT COURT REPORTER

I N D E X

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1 * * * P R O C E E D I N G S * * *

2 _____
3 THE COURT: Mr. Murphy, you represent Terrance
4 Johnson?

5 MR. MURPHY: Yes, Your Honor.

6 THE COURT: Let's go ahead and take the Smalls
7 matter -- so, Mr. Murphy, just have a seat and we can
8 wait until Ms. Gay gets here.

9 (Pause.)

10 THE COURT: All right. We're back on the record
11 for Terrance Johnson.

12 MR. MURPHY: And, Judge, if I could just have one
13 or two minutes to talk --

14 THE COURT: I'm sorry.

15 MR. MURPHY: If I could just have one or two
16 minutes to talk to him.

17 THE COURT: Sure.

18 (Pause.)

19 MR. MURPHY: We are ready, Your Honor. Thank you.

20 THE COURT: Yes, sir. I'm happy to hear from you.

21 MR. MURPHY: We would call Mr. Johnson.

22 THE COURT: All right. Mr. Johnson, come on up
23 and we'll swear you in.

24 TERRANCE JOHNSON, after having
25 been duly sworn, testified as follows:

T. JOHNSON -- DIRECT BY MR. MURPHY

1 THE CLERK: If you could please have a seat and
2 state your full name, spelling your last name for the
3 record.

4 THE WITNESS: Terrance Johnson, J-o-h-n-s-o-n.

5 THE COURT: Thank you, sir.

6 MR. MURPHY: May it please the Court.

7 DIRECT EXAMINATION BY MR. MURPHY:

8 Q. Mr. Johnson, just by way of background, you
9 were indicted in Charleston County; is that correct?

10 A. Yes.

11 Q. And that was for trafficking cocaine and
12 possession of a weapon during a violent crime?

13 A. Yes.

14 Q. And you were represented by Melisa Gay?

15 A. Yes.

16 Q. And do you see her in this courtroom today?

17 A. Yes.

18 Q. And you ultimately went to trial -- decided to
19 go to trial in this case?

20 A. Yes.

21 Q. And prior to going to trial, were there still
22 any plea offers or negotiations that you recall?

23 A. Yes.

24 Q. And did you -- what were those negotiations?

25 A. They offered me a plea of three years at

T. JOHNSON -- DIRECT BY MR. MURPHY

1 first.

2 Q. Okay. And did you discuss your case with Ms.
3 Gay about that plea offer?

4 A. Yes. I told her I didn't want to take the
5 plea because I didn't feel I did nothing wrong.

6 Q. Okay. And when you say you "did nothing
7 wrong", what do you mean by that?

8 A. Well, what the officer said he arrested me
9 for, I feel that he lied.

10 Q. Okay.

11 A. If she had did her job, she could have proved
12 that he did.

13 Q. Okay. And, ultimately, prior to going to
14 trial, was -- the plea offers, were they on-going?

15 A. No, just that one. During the trial, they
16 tried to get me to plea.

17 Q. Okay. And we'll get to that in just a second.
18 So you ultimately decided to go to trial in March of
19 2006; is that correct?

20 A. Yes.

21 Q. And then you talked about a plea offer in the
22 middle of the trial?

23 A. Yes.

24 Q. And what was that?

25 A. I think it was like 15 or 30, something like

T. JOHNSON -- DIRECT BY MR. MURPHY

1 that. I can't remember.

2 Q. 15 years or 30 years?

3 A. Yeah, something like that.

4 Q. Okay. And did you discuss that plea offer
5 with Ms. Gay?

6 A. Yes.

7 Q. And what was the substance of those
8 conversations?

9 A. She was just telling me that's what they was
10 offering.

11 Q. And I assume that you had the same position at
12 trial that you had prior to when you were offered that
13 three year deal, that you felt like you did nothing
14 wrong?

15 A. Right.

16 Q. And you were ultimately convicted; is that
17 correct?

18 A. Yes.

19 Q. And you appealed your conviction; correct?

20 A. Yes.

21 Q. And the substance of your appeal was the
22 denial of the suppression hearing you had?

23 A. Right.

24 Q. And after that appeal was affirmed -- the
25 conviction was affirmed, you filed this PCR

T. JOHNSON -- DIRECT BY MR. MURPHY

1 application?

2 A. Yes.

3 Q. Now, let's talk about the facts surrounding
4 your arrest. Tell me where you were, what -- first of
5 all, what time of day was it?

6 A. It was about maybe 3:00.

7 Q. And you were on Rivers Avenue?

8 A. I was on Rivers Avenue.

9 Q. And where on Rivers Avenue?

10 A. The corner of Durant and Rivers.

11 Q. Okay.

12 A. When I first saw the officer.

13 Q. Okay. And was that -- were you at a
14 stoplight?

15 A. Yeah. I was at a stoplight.

16 Q. And when you say you first saw the officer,
17 what do you mean?

18 A. I was actually at the stoplight and he pulled
19 up beside me.

20 Q. Okay. And when he pulled up beside you, did
21 you look over at him at all?

22 A. Not really. I was interacting with my son who
23 was sitting in the passenger seat.

24 Q. What were you driving? What type of car?

25 A. A gray Jag.

T. JOHNSON -- DIRECT BY MR. MURPHY

1 Q. And what -- what year was it, that Jaguar?

2 A. I think it was a 2004.

3 Q. Okay. And when the traffic light turned
4 green, what happened?

5 A. I continued down Rivers Avenue. The officer
6 continued side-by-side with me all the way down Rivers
7 Avenue.

8 Q. And at any point, was the officer behind you?

9 A. No.

10 Q. And you eventually pulled into a parking lot
11 of a flower shop?

12 A. Yes.

13 Q. And why did you do that?

14 A. It was my son's mother's birthday, and we were
15 going to get some flowers so he could give it to her.

16 Q. You were going to buy flowers for mom?

17 A. Yeah.

18 Q. And at that point, what did the officer do?

19 A. I really didn't see what he did. Because when
20 I pulled in, he kept going straight. But when I got
21 out of the car to go around the car to get my son out,
22 I looked up he was there.

23 Q. Okay.

24 A. And he approached me on feet.

25 Q. All right. You were in the parking lot when

T. JOHNSON -- DIRECT BY MR. MURPHY

1 the officer pulled into the parking lot?

2 A. Yes.

3 Q. Okay. Were you in the car or out of the car?

4 A. I was getting out of the car to retrieve my
5 son.

6 Q. Okay. So once you got out of the car and you
7 saw the police officer walk towards you, what happened?

8 A. He asked me for my license and registration.

9 Q. Okay. And did you give it to him?

10 A. Yes. I got the registration out of the glove
11 compartment. And I reached over and got my wallet and
12 gave him my license.

13 Q. Okay. And then what happened?

14 A. He told me to get back in the car.

15 Q. Okay. And you complied?

16 A. Yes.

17 Q. Okay. And after that, what happened?

18 A. He ran the license check. And then he came
19 back and told me the reason he stopped me was the tag
20 obstruction.

21 Q. Okay. And you're talking about a license
22 plate obstruction?

23 A. Yeah.

24 Q. And that would have been what, one of those --
25 it's like a plastic outlines that said "Jaguar" or

T. JOHNSON -- DIRECT BY MR. MURPHY

1 something?

2 A. Yeah. I have a picture of it in -- in my
3 paperwork over there.

4 Q. Okay. We don't need that right now. Okay.
5 So he said he pulled you over for a license tag
6 obstruction?

7 A. Uh-huh.

8 Q. And then after he ran your license through and
9 your registration through, what happened?

10 A. And it came back clean. And when he told me
11 that, I said, well, officer, I have no control over the
12 tag obstruction because it's a rental vehicle that the
13 Jaguar dealer gave to me while my car was being fixed.

14 Q. Okay. And after you told him that, what
15 happened?

16 A. He asked could he search the vehicle.

17 Q. He asked you to search the vehicle?

18 A. Yeah.

19 Q. Or could he search the vehicle?

20 A. Right.

21 Q. And what did you say?

22 A. I said no.

23 Q. And did he search the vehicle?

24 A. No. He walked the dog around the vehicle.

25 Q. Okay. He had a dog -- did he have a dog with

T. JOHNSON -- DIRECT BY MR. MURPHY

1 him?

2 A. Yeah. He was a K 9 Unit.

3 Q. All right. So he was a K 9 Unit and he walked
4 the dog around your car?

5 A. Right.

6 Q. And what happened with that?

7 A. The dog didn't hit nothing and he put the dog
8 back in his car.

9 Q. All right.

10 A. And just before that, he had called a backup
11 officer.

12 Q. Okay. And did the backup -- backup officer
13 arrive?

14 A. Yes.

15 Q. Okay. And at that point, what happened? Were
16 you still in your car?

17 A. Yeah. He asked me to get out of the car when
18 the backup officer came, and he patted me down, and he
19 asked me to get back in the car. And then we talked
20 for a while. And then he came and gave me a verbal
21 warning.

22 Q. Okay. So he gave you a warning -- a verbal
23 warning for the license tag obstruction?

24 A. Right.

25 Q. And he said you're free to go?

T. JOHNSON -- DIRECT BY MR. MURPHY

1 A. Yes.

2 Q. Okay. And then after that, what did you do
3 once you were told you were free to go?

4 A. I got out of the car with my son and went in
5 the flower shop.

6 Q. Okay. And when you did that, what happened?

7 A. They -- they had walked around from the front
8 of the car and started looking into the vehicle.

9 Q. The officers started looking into the vehicle?

10 A. Right.

11 Q. Okay. And eventually they found -- what did
12 they see?

13 A. He said he saw what looked like a -- looked
14 like a gun. And then the other officer went to the
15 front of the vehicle, and he looked down into it, and
16 he claimed that it was a gun. And then I came back out
17 of the flower shop, and they apprehended me and took
18 the keys out of my pocket and went into the vehicle.

19 Q. Okay. And they arrested you?

20 A. Yes.

21 Q. Okay. And then the officer took you down to
22 jail?

23 A. Right.

24 Q. For booking. Okay. And you discussed this
25 case with your -- with Ms. Gay?

T. JOHNSON -- DIRECT BY MR. MURPHY

1 A. Yes.

2 Q. And was Ms. Gay appointed or retained?

3 A. I retained her.

4 Q. Okay. And how many times did you meet with
5 Ms. Gay to discuss your case?

6 A. Probably about four.

7 Q. Okay. And prior to going to trial, did you
8 feel like you had talked with her enough about your
9 case?

10 A. Yes, I talked to her. On several occasions, I
11 was asking her what was she going to argue.

12 Q. Okay.

13 A. And I was asking her to argue the stop. And
14 she said she didn't need to argue the stop because the
15 officer let me go.

16 Q. Okay. And that was the initial stop?

17 A. Right.

18 Q. And you believe that stop was pretextual?

19 A. True.

20 Q. And you wanted Ms. Gay to argue that?

21 A. Right.

22 Q. Okay. And she would not argue that; is that
23 the case?

24 A. That's what she kept telling me.

25 Q. Okay. And you alleged errors that Ms. Gay

T. JOHNSON -- DIRECT BY MR. MURPHY

1 committed and -- and -- is that one of the errors you
2 allege?

3 A. Yes.

4 Q. Okay. And you actually did have a suppression
5 hearing before Judge Jefferson; do you recall that?

6 A. Yes.

7 Q. Okay. And Ms. Gay, is it your position, did
8 not argue that the stop was pretextual?

9 A. No. She argued circumstances surrounding the
10 stop, but she didn't argue the stop itself?

11 Q. Okay. And she also failed -- you allege that
12 she failed to call certain witnesses that were --

13 A. Yeah. She failed to call a witness that would
14 -- showed that the officer was never behind me.

15 Q. Okay. And what witness is that?

16 A. Fauntain Judun, I think that's the name.

17 Q. Fauntain Judun?

18 A. Judun.

19 Q. And I can hand you up an affidavit. And do
20 you recognize that affidavit?

21 A. Yes.

22 Q. And who obtained that affidavit?

23 A. It was someone that worked for her, and got it
24 and gave it to me.

25 THE COURT: Works for who?

T. JOHNSON -- DIRECT BY MR. MURPHY

1 BY MR. MURPHY:

2 Q. It was Ms. Gay's investigator?

3 A. Yes.

4 Q. Okay. And she obtained that -- she -- she
5 went out and interviewed the witnesses?

6 A. Right.

7 Q. Okay. And you believe that witness would have
8 helped your case at the suppression hearing?

9 A. Yes.

10 Q. Okay. And that witness was never called?

11 A. Never called.

12 Q. And do you know why that witness was not
13 called?

14 A. No.

15 MR. MURPHY: And, Your Honor, we would move that
16 as a court's exhibit.

17 THE COURT: Okay. That would be Court's 1. Yes.

18 MS. WILSON: Your Honor, the State had an
19 objection based on the fact that Ms. Judun isn't here
20 to be cross examined on her affidavit.

21 THE COURT: Well, let me take a look at it. I
22 mean, I'm not necessarily going to admit it for the
23 truth of what's in the affidavit.

24 MS. WILSON: Okay.

25 THE COURT: But we need to admit it for purposes

T. JOHNSON -- DIRECT BY MR. MURPHY

1 of whether the witness should have been called. And
2 had you provided this to the Attorney General before
3 this hearing, Mr. Murphy?

4 MR. MURPHY: She saw it. I just got it today,
5 Your Honor, and I presented it to Ms. Wilson.

6 MS. WILSON: I just don't have a copy.

7 THE COURT: You haven't been given a copy of it?

8 MS. WILSON: No, ma'am, not yet.

9 (Pause.)

10 THE COURT: "As she was looking for my children
11 outside of the business" -- okay. I'm not sure that it
12 says very much, but I'll admit it just for purposes as
13 Court's 1.

14 MR. MURPHY: Thank you, Your Honor.

15 THE COURT: If we need to hear from that witness,
16 we may need to get her here.

17 MR. MURPHY: And that's -- I don't believe -- if
18 we can find her, Your Honor, at this point.

19 (Whereupon, Court's Exhibit No. 1 marked.)

20 THE COURT: Okay. It's Court's 1.

21 BY MR. MURPHY:

22 Q. And what testimony do you believe this witness
23 would have provided?

24 A. She was suspecting that the officer was never
25 behind me for his alleged claim that he stopped me for

T. JOHNSON -- DIRECT BY MR. MURPHY

1 a tag obstruction, nor did the officer never blue
2 lighted or pulled me for this traffic stop that he said
3 he made on me.

4 Q. And how would that have made a difference in
5 your case?

6 A. It would show that he was lying.

7 Q. Okay.

8 A. And show that the stop was a pretextual stop,
9 and he used that for whatever other means he wanted to
10 do to stop me.

11 Q. And if the stop was pretextual, obviously the
12 gun and the drugs would have been suppressed?

13 A. They would have been suppressed.

14 THE COURT: Well, let's ask him another
15 question -- I'm just curious. She is standing in the
16 parking lot, how would she know whether the officer was
17 ever behind him or not if they were farther down Rivers
18 Avenue? I mean, they were beside each other and then
19 in traffic for a while before they got to the flower
20 shop, correct?

21 MR. MURPHY: That's correct, Your Honor.

22 THE COURT: Okay.

23 A. We're -- on Rivers Avenue, it's a -- it's like
24 an open highway.

25 THE COURT: Yes, sir.

T. JOHNSON -- DIRECT BY MR. MURPHY

1 A. And if you're standing in one spot, you can
2 look directly down. It's a straight run.

3 THE COURT: Okay.

4 A. And you can see -- see him come from either
5 way.

6 BY MR. MURPHY:

7 Q. And other than failure to call this witness at
8 the suppression hearing, do you allege any other errors
9 that Ms. Gay committed?

10 A. Well, she failed to argue the stop itself.

11 Q. We've already talked about the stop and
12 established that failure to argue the stop itself, what
13 you allege was in error. But is there anything else --
14 any other witnesses that she failed to call or anything
15 that she failed to investigate?

16 A. I just -- I just really feel like she failed
17 to properly investigate from the beginning; did she
18 call to see did the officer had a camera in his car,
19 that could verify that he was behind me with the camera
20 on.

21 Q. Okay.

22 A. You know, things of this matter. Did she
23 check and see when he called -- did he call my license
24 plate, did he check the license plate to verify he was
25 pulling me, things of that matter, which he testified

T. JOHNSON -- DIRECT BY MR. MURPHY

1 that he never was behind me, he never blue lighted me,
2 and he never had a chance to pull me. This what the
3 officer testified to and -- due to the fact that that
4 alone should have made her argue the stop more.

5 Q. Okay. And what you're saying, if I hear you,
6 is saying that Ms. Gay did not get the camera that was
7 in the police car?

8 A. Right.

9 Q. Okay. And you believe that that existed?

10 A. It should.

11 Q. Okay. I understand.

12 A. Don't they have cameras in the car.

13 THE COURT: Some cars.

14 A. Some cars. She -- here's my thing, did she
15 investigate to even find out.

16 Q. And tell me how that would have made a
17 difference if she found -- if there was a camera in the
18 cruiser?

19 A. The camera would have shown that he was behind
20 me and his intention was to stop me for this tag -- tag
21 obstruction.

22 Q. And --

23 A. And he would have called in and blue lighted
24 me and pulled me over.

25 Q. And that would be assuming that the camera was

T. JOHNSON -- DIRECT BY MR. MURPHY

1 turned on?

2 A. Right.

3 Q. Right. Okay. Anything -- other specific
4 allegations of -- that -- of the errors that Ms. Gay
5 committed that you allege?

6 A. When she allowed the judge to go into the jury
7 room.

8 Q. And that was prior to the trial starting?

9 A. Right.

10 Q. And the judge went into the jury room to tell
11 them that they would be able to go to lunch?

12 A. I can't say what the judge told them.

13 Q. And you allege that was an error because of
14 what?

15 A. I didn't feel that the judge should have went
16 back there by himself and dealt with the jury at all.

17 Q. And Ms. Gay did not object to that?

18 A. No.

19 Q. Is there any other specific allegations that
20 you want to put on the record in today's hearing?

21 A. There was another issue in reference to a
22 witness -- I mean, a juror asking what did the witness
23 testify to on the stand. And it was two questions; and
24 they asked the first. And the second, they had to pull
25 up off the record. And when they pulled it up off of

T. JOHNSON -- DIRECT BY MR. MURPHY

1 the record, there was a problem sending it back to the
2 jury.

3 Q. Okay. This was when the jury was
4 deliberating?

5 A. Right.

6 Q. They presented some questions?

7 A. Right.

8 Q. And the judge pulled the jury out to respond
9 to those questions?

10 A. Yeah. He pulled the juror out to respond to
11 the questions, even though she said that he asked a
12 specific question, I must give them a specific answer.
13 And she had the answer. And then they had a problem
14 with sending the answer back all of a sudden.

15 Q. Okay. And was that issue raised on appeal?

16 A. I don't -- I don't -- no -- on my direct
17 appeal?

18 Q. Correct. Yes.

19 A. No.

20 Q. And was there any objections to those -- to
21 those instructions at the time, or the way the jury
22 dealt with -- the judge dealt with those questions?

23 A. I think -- I think she did objected to it, but
24 I'm not real sure.

25 Q. And you allege that was an error?

T. JOHNSON -- CROSS BY MS. WILSON

1 A. Yes.

2 Q. And what -- had she objected or had the judge
3 not dealt with the issues in such a way, what
4 difference would that have made in your trial?

5 A. The date that he gave me didn't put me in
6 possession of the vehicle.

7 Q. Okay. Is there anything else, sir, that you
8 want to present?

9 A. No.

10 MR. MURPHY: That would be all we have, Your
11 Honor.

12 THE COURT: Okay. Cross examination.

13 MS. WILSON: Thank you, Your Honor.

14 **CROSS EXAMINATION BY MS. WILSON:**

15 Q. Mr. Johnson, how many times did you say you
16 met with Ms. Gay again?

17 A. About four -- about four.

18 Q. And did you go over with her the evidence that
19 the State had against you and the discovery she
20 received from the State?

21 A. Did I go over her with the evidence -- I'm not
22 understanding.

23 Q. Did you go over the evidence that she received
24 from the State, the evidence against you? Did y'all
25 review that?

T. JOHNSON -- CROSS BY MS. WILSON

1 A. Yes.

2 Q. Did she talk with you about possible defenses
3 and the things that she could challenge at trial?

4 A. Yes. I asked her to challenge the stop, but
5 she said she wasn't going to do that.

6 Q. Did she give you a reason for that?

7 A. She said that because they turned me loose,
8 she doesn't need to argue the stop. And I'm saying,
9 well, the stop is the whole reason I'm here, so that
10 should be what you challenge. If it wasn't for the
11 stop, I wouldn't be here.

12 Q. Did you give her any witnesses or people to
13 investigate?

14 A. The two witnesses that I had.

15 Q. And it was your decision to proceed to trial,
16 right?

17 A. Yes.

18 Q. And your -- your testimony here today is that
19 you wanted her to argue that the stop from police was
20 pretextual; is that correct?

21 A. Right.

22 Q. And you had a suppression hearing during your
23 trial, didn't you?

24 A. Yes.

25 Q. And she argued that the stop was pretextual

T. JOHNSON -- CROSS BY MS. WILSON

1 during that suppression hearing; do you recall that?

2 A. No, not my understanding, no.

3 Q. Okay. Do you recall her telling -- arguing to
4 the court that you were stopped because you are a black
5 man driving a nice car?

6 A. Yes.

7 Q. And what, again, did you say that if she had
8 investigated and found -- found that the officer had a
9 camera, what would the camera have shown?

10 A. The camera would have shown that he was at
11 least behind me. But due to the fact that he wasn't
12 behind me, she didn't even ask about the camera. She
13 didn't even ask about the tape to him calling in,
14 saying that he was going to pull me or nothing.

15 MS. WILSON: Thank you.

16 MR. MURPHY: Nothing further, Your Honor.

17 THE COURT: Thank you. Sir, you may step down.
18 All right. Next witness.

19 MR. MURPHY: We call Melisa Gay, Your Honor.

20 THE COURT: All right. Ms. Gay, come on up and
21 I'll swear you in. I think I'm on appeal right now for
22 granting one of Mr. Gay's motion to suppress in
23 Berkeley County. Huh?

24 MS. GAY: I think you know that I know what to
25 say.

M. GAY -- DIRECT BY MR. MURPHY

1 THE COURT: I have heard her argue many times.

2 MELISA GAY, after having
3 been duly sworn, testified as follows:

4 THE CLERK: If you could please have a seat and
5 state your name, spelling your last name for the
6 record.

7 THE WITNESS: My name is Melisa Gay. It's
8 M-e-l-i-s-a. G-a-y.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION BY MR. MURPHY:

11 Q. Ms. Gay, you remember Mr. Johnson?

12 A. Yes.

13 Q. Okay. And do you -- you don't have your file
14 with you today, do you?

15 A. No. It's in storage, but I'm familiar with
16 the case.

17 Q. And you recall representing him for these
18 charges?

19 A. Yes.

20 Q. And do you recall how many -- let me ask you
21 this: How many times did you meet with him to discuss
22 this case; do you recall?

23 A. Well, Mr. Johnson was out of jail if I recall,
24 so he came to my office and we met several times.
25 Right, Mr. Johnson.

M. GAY -- DIRECT BY MR. MURPHY

1 Q. And you went over the evidence with him, that
2 the State has against him?

3 A. Yes.

4 Q. And in terms of -- do you recall a three year
5 deal being offered to him?

6 A. It's possible. I recall him not wanting a
7 deal.

8 Q. Okay.

9 A. And wanting to go to trial and me explaining
10 to him that if he lost, he would be able to appeal the
11 issue, but that he would still be sentenced.

12 Q. Okay. And you went over obviously the
13 pitfalls of losing that trial?

14 A. Yes.

15 Q. If you lost the suppression hearing -- and if
16 he lost that suppression hearing, he would be
17 sentenced?

18 A. Yes.

19 Q. And most likely it would be affirmed on
20 appeal?

21 A. I wouldn't have told him that. I believe
22 people do have appeals that get overturned.

23 Q. Okay. And at any point did you sit Mr.
24 Johnson down, say -- recommend that he take a plea
25 deal?

M. GAY -- DIRECT BY MR. MURPHY

1 A. I don't recall one way or the other --

2 Q. Okay.

3 A. But I do generally try to get my clients to
4 take pleas if I think that they have exposure -- larger
5 exposure in this trial. I remember discussing that
6 there was a point where we sort of took a break a
7 little bit, and re-entered into some plea negotiations
8 to see what his options could be. My position is
9 always try to create as many options as you can for the
10 person.

11 Q. And that would have been during the trial?

12 A. Yes.

13 Q. Okay. And then it was prior to Judge
14 Jefferson ruling on the suppression hearing motion?

15 A. I think it was in the beginning of the trial,
16 yes. Judge Jefferson tends to want to see if she can
17 help people out and make decisions if this -- this
18 sentence is going to be really bad, she does that
19 often.

20 Q. And I'm going to hand you up what's been
21 marked as Court's Exhibit No. 1, and ask if you recall
22 that?

23 A. I don't really recall, but what he describes
24 and what the person in my office usually can do -- I
25 believe that this is a fact that we did take a

M. GAY -- DIRECT BY MR. MURPHY

1 statement. I also know all the Judun -- so they live
2 in North Charleston. I'm familiar with a bunch of
3 them. And so this is probably a sister of three or
4 four different people that I have represented, so.

5 Q. And would that have been obtained from your
6 investigator?

7 A. I believe so.

8 Q. And do you remember talking to any of the
9 Juduns?

10 A. I would have talked to her and/or my
11 investigator would have.

12 Q. Okay. And would there be a reason why you
13 would not have called Ms. Judun at the suppression
14 hearing?

15 A. Probably because I wouldn't have thought it
16 was relevant to the actual issues of the suppression
17 hearing. That would have been my thoughts. Because,
18 you know, suppression hearings are about police
19 officers and searches and things. I don't recall -- I
20 don't know -- think about something that may not be
21 true, but we may not have been able to find her at the
22 last minute or something. I think that might have been
23 something. But I -- I don't know that a person who is
24 in a flower shop was necessarily relevant to a search
25 issue. That would have -- maybe been my decision.

M. GAY -- DIRECT BY MR. MURPHY

1 Q. And you heard Mr. Johnson testify that he
2 wanted you to argue that the stop itself was
3 pretextual?

4 A. I do.

5 Q. And do you recall those conversations with
6 him?

7 A. Yes.

8 Q. And what was the substance of those
9 conversations?

10 A. The same stuff that's in the record. We
11 argued that we believed that it was an unconstitutional
12 stop. More than that, an unconstitutional search of
13 his car.

14 Q. Okay. And --

15 A. Because there were two separate type things
16 that happened.

17 Q. And those two separate type things were what?

18 A. Well, I believe that he had a traffic stop and
19 there was things that happened during the course of the
20 traffic stop. And if I remember somebody telling me
21 that -- I didn't read the court opinion on his appeal,
22 but apparently they determined that the traffic stop
23 was finished. And then they claimed view search in his
24 car was something different. So I would have argued in
25 my motion, I would have started from the very

M. GAY -- DIRECT BY MR. MURPHY

1 beginning, which is the first contact that he had with
2 the police officers, and argued that anything that was
3 happening along the way would have been either
4 completely unconstitutional, fruit of the poisonous
5 tree, of some kind of bad conduct.

6 Q. And that issue was raised on appeal?

7 A. Yes.

8 Q. And did you represent him on the appeal?

9 A. No.

10 Q. You also heard Mr. Johnson talk about the
11 failure to obtain the camera in the cruiser?

12 A. I would have provided -- I would have
13 requested discovery. And if there had been a camera in
14 the cruiser, that would have been provided to me. I
15 would have never gone beyond the scope of what the
16 officer -- of what the solicitor had given me, to go
17 see if there was a camera; because that's part of
18 discovery in my opinion. That's exculpatory --
19 possibly exculpatory. They would have been required to
20 give it to me.

21 I don't have any information that there was
22 additional evidence that was exculpatory or potentially
23 exculpatory that was not provided to me.

24 Q. And you also heard some testimony about the
25 judge entering the jury room prior to trial starting;

M. GAY -- DIRECT BY MR. MURPHY

1 do you recall that?

2 A. Prior to the trial starting or prior to the
3 verdict?

4 Q. Prior to the verdict -- well, I'm sorry, prior
5 to the verdict. It would have been -- the jury -- the
6 jury would have been selected, but they had not been
7 called out yet.

8 A. I don't remember. I -- I remember that we
9 talked about -- the Attorney General and I talked about
10 it, and there was something about or -- even you just
11 asked him if I made an objection. If, at the time I
12 felt like the judge had done something inappropriate
13 with the jury panel, I would have objected.

14 Q. Okay.

15 A. But I don't really distinctly remember that
16 one.

17 Q. Okay. And do recall any questions that the
18 jury submitted to the judge during deliberations?

19 A. I think there was a question.

20 Q. Okay. And do you recall what the substance of
21 that question was?

22 A. No.

23 Q. And we talked about the camera that you relied
24 on, with the prosecutor to provide you exculpatory or
25 all evidence obtained in this case. And you have the

M. GAY -- DIRECT BY MR. MURPHY

1 right to subpoena records from -- would it be North
2 Charleston Police that made this arrest?

3 A. Yes.

4 Q. And you would have had the option to subpoena
5 videotapes from them?

6 A. I've never subpoenaed a videotape separately
7 from asking a prosecutor if there was any kind of
8 evidence to the case. They always give it to me. I
9 guess, we had a pretty nice Solicitor's Office around
10 here, but I've never known them to not give me
11 something that would be, in their opinion -- especially
12 since they won, you know, in their opinion supporting
13 their position.

14 Q. And assuming that the cruiser had a camera,
15 and assuming the camera was on, would you agree that
16 would have provided some substantial -- that would have
17 been -- could have been very beneficial to his case in
18 terms of why he was initially pulled over?

19 A. It could have been, but I don't think it
20 existed, but --

21 THE COURT: Well, let me ask you this: Do we know
22 whether there was a camera and whether there was a
23 video?

24 MR. MURPHY: We don't know that, Judge.

25 THE COURT: Okay. Well --

M. GAY -- CROSS BY MS. WILSON

1 MR. MURPHY: And that would be all I have, Your
2 Honor.

3 THE COURT: Okay. I think that would be relevant
4 to any discussion, but.

5 CROSS EXAMINATION BY MS. WILSON:

6 Q. Ms. Gay, how long have you been practicing
7 law?

8 A. Since 1991.

9 Q. And how much of your experience has been in
10 criminal law?

11 A. Since 1991.

12 Q. So all of it. Okay.

13 A. All of it. I mean, not -- other things, too.

14 Q. And you were -- do you recall exactly when you
15 were retained to represent Mr. Johnson?

16 A. No, but it would have been a good time, maybe
17 a year before his trial.

18 Q. So you would say close to his arrest, after
19 his arrest?

20 A. I don't remember. After his arrest, before
21 his trial.

22 Q. Okay. And did you discuss with him the
23 elements of the charges he was facing and what the
24 State had to prove to find him guilty?

25 A. Yes, ma'am.

M. GAY -- CROSS BY MS. WILSON

1 Q. And did you discuss with him his version of
2 the facts and what he thought went on that day?

3 A. Yes.

4 Q. Did you discuss with him possible defenses
5 that he could present at trial and that you ultimately
6 did present?

7 A. Yes.

8 Q. Did you file a Brady, Rule 5 motion with the
9 State?

10 A. Yes, ma'am.

11 Q. And did you receive everything that you
12 thought you were entitled to?

13 A. Yes, ma'am.

14 Q. And did you review the material that you
15 received with Mr. Johnson?

16 A. Yes, ma'am.

17 Q. And could you briefly characterize the
18 evidence against Mr. Johnson, what evidence the State
19 had against him?

20 A. They had an officer, maybe even more than one,
21 that made the initial contact with him. And they had
22 facts to establish that there had been some type of
23 problem, which was I'm sure pretextual.. I mean -- I
24 mean, I'm not suggesting that it wasn't. I argued that
25 it was; that he was driving around in a Jaguar. They

M. GAY -- CROSS BY MS. WILSON

1 were -- they stopped him. They wanted to mess with him
2 basically. They -- he definitely did, you know, give
3 no consent for search. Denied consent for search.

4 He -- they had a dog. The dog, I believe,
5 didn't alert. And then they -- they said, okay. He
6 goes into the flower shop or -- with his child. Walks
7 away from the officer, which was a big point in this
8 case. So they -- the State argued that the whole
9 initial traffic stop thing had sort of ended at that
10 point.

11 And then the officer claimed that he looked in
12 the window of the car and saw a gun in plain view,
13 which caused him to be able to have a further search.
14 And then then I believe Mr. Johnson testified that they
15 came and took the keys out of his hand, or something.
16 I mean, he didn't give up the keys voluntarily. They
17 opened the car door. In the course of the searching of
18 the car, they found a bunch of drugs.

19 Q. And what was the theory that you presented at
20 trial?

21 A. That it was a pretextual stop. And that they
22 had no right to either stop him and/or use the dog --
23 but that wasn't really the issue. What was the issue
24 was -- is that they had, you know, there was nothing in
25 the encounter with him that would have made them then

M. GAY -- CROSS BY MS. WILSON

1 go peek in the windows of his car. And that the
2 peeking in the windows of his car really wasn't in
3 plain view, but it was beyond the scope of just a plain
4 view. Because they were -- you know, it was all sort
5 of -- I guess you call it -- like I said, fruit of the
6 poisonous tree or re-enforced by this pretextual stop.
7 So then what they found would have been -- should have
8 been suppressed.

9 Q. And did he give you any potential witnesses or
10 leads to investigate?

11 A. Well, you all provided this statement which
12 this lady said some stuff about -- that she saw. I
13 mean, there's not a lot in here, but we talked to her.
14 I don't have any -- I don't remember why she wasn't
15 called or not called; I don't remember. Looking at
16 this right here, I doubt what she would have said to me
17 would have been relevant to what I needed to argue
18 for -- for the legal issues in a suppression hearing.

19 Q. And what kind of investigation did you have to
20 do in this case?

21 A. This case was about a search warrant or
22 searches, so there was really no investigation much
23 that you do for that. You -- you -- and pretty much,
24 if you lose that, you lose pretty much everything
25 because you know -- the other thing was is that -- I

M. GAY -- CROSS BY MS. WILSON

1 can't -- this is a vague memory, but there was maybe
2 some argument -- I can't remember who owned the car.
3 But, you know, there's always arguments that maybe it
4 wasn't his car or something. I can't remember if that
5 was relevant in this case or not. But, you know,
6 everything about this case was about the -- the in
7 camera suppression hearing.

8 Q. Okay. And did you feel like you had ample
9 time to prepare for trial?

10 A. Yes.

11 Q. And at some point throughout your
12 representation of Mr. Johnson, did you enter plea
13 negotiations with the State?

14 A. Yes.

15 Q. Did he reject every offer that was presented
16 or numerous offers presented?

17 A. Well, we talked about it. He didn't want to
18 do it, he wanted to a plea (sic). And then we --
19 during the course of the trial, we had more
20 negotiations or discussions and he didn't want to do
21 that either.

22 Q. As far as you know, there was never a video --
23 an in camera video from the police car presented by the
24 State or at trial or anything?

25 A. No. I don't ever remember that being an issue

M. GAY -- REDIRECT BY MR. MURPHY

1 or discussed or even thought about.

2 THE COURT: Hold up one second. Hold on one
3 second.

4 MS. WILSON: I'm sorry.

5 THE COURT: That's okay. No problem. (Pause.)
6 Yes, ma'am.

7 MS. WILSON: Thank you.

8 BY MS. WILSON:

9 Q. One of Mr. Johnson's allegations is that you
10 keep up -- like the judge did something inappropriate
11 or responded to one of the juror questions, would you
12 have made some type of objection if you thought the
13 court's response to a jury question was inappropriate?

14 A. Yes.

15 MS. WILSON: Thank you.

16 MR. MURPHY: Just very -- very briefly.

17 **REDIRECT EXAMINATION BY MR. MURPHY:**

18 Q. You touched on it wasn't his car. It was
19 actually a rental car by Enterprise?

20 A. Uh-huh.

21 Q. And did you try to contact Enterprise at all
22 to see who had previously had that car?

23 A. No.

24 Q. Okay. And in terms of Mr. Johnson being
25 prosecuted under the three strikes rule, he was looking

1 at life upon conviction?

2 A. Uh-huh, yes, sir.

3 Q. Do you remember that -- and did you have a
4 conversation with him that if he lost the suppression
5 hearing, he would not have any defense to this case?

6 A. Yes.

7 Q. Okay. So basically, like you said, if he lost
8 the suppression hearing, he's getting convicted?

9 A. Right. Well, then we argued that maybe he
10 would not have been in control because -- or, you know,
11 because of the fact that the car was a rental, but that
12 didn't go over very far.

13 Q. Okay. And after the suppression hearing was
14 ruled upon, did you have any additional plea
15 negotiations that you recall?

16 A. I think it was over at that point. I don't
17 think there was an option to have -- who was the
18 prosecutor? I can't remember.

19 Q. It was Mr. Bianchi (ph) and Mr. Knisley.

20 A. Okay. Yeah, I don't remember them wanting to
21 be very friendly after that.

22 MR. MURPHY: Okay. That's all I have.

23 THE COURT: Okay. Could y'all direct me in the
24 transcript to the part about Judge Jefferson's
25 answering the jurors questions or -- I certainly don't

1 have a problem with her going in the jury room to tell
2 them she was letting them go to lunch. But I have --

3 MS. WILSON: I have in my notes that the jury had
4 a question about possession, but this was after -- the
5 question was after the verdict was read. Oh, I got
6 another note from a jury on page 240.

7 THE COURT: Well, see, here's the problem. What I
8 have got is the record on appeal, and that --

9 MS. WILSON: Is it incomplete? I can give you --

10 THE COURT: Yeah. I need the transcript from the
11 trial.

12 MS. WILSON: I can give you a full copy.

13 THE COURT: That would be great. And I'm not
14 indicating that I'm going to find anything
15 inappropriate, I just didn't -- that wasn't in the
16 packet of information that I had.

17 MS. WILSON: No, I understand. Is there a record
18 -- not a full copy?

19 THE COURT: Well, the record on appeal is what the
20 lawyer is arguing about the suppression --

21 MS. WILSON: Right.

22 THE COURT: -- ruling, submitting to the Court of
23 Appeals.

24 MS. WILSON: So, it's only the suppression portion
25 of --

1 THE COURT: Most -- well, it's got others in it,
2 but it's not a full transcript.

3 MS. WILSON: I'm sorry about that.

4 THE COURT: That's okay..

5 MS. WILSON: I have a full copy for you. Usually,
6 it's a full copy, but every now and again they --

7 THE COURT: A lot of times the record on appeal is
8 not a full transcript, because somebody has to pay for
9 it, many copies of it. All right. Any other witnesses
10 from the petitioner?

11 MR. MURPHY: None, Your Honor.

12 THE COURT: All right. Can Ms. Gay step down and
13 be excused?

14 MR. MURPHY: She can be dismissed, yes.

15 THE COURT: All right. Keep me posted on our
16 appeal.

17 (Discussion off-record.)

18 THE COURT: All right. Any witnesses for the
19 State?

20 MS. WILSON: Nothing from the State, Your Honor.

21 THE COURT: Okay. I need to obviously see the
22 transcript with the part about the juror questions, so
23 I'll keep that portion under advisement.

24 With respect to the traffic stop itself,
25 although I don't necessarily agree with the Court of

1 Appeals opinion that was unpublished from Judges Huff,
2 Pieper and Lockemy, because I see issues with this --
3 they are correct, that the traffic stop stopped before
4 the officers apparently saw the gun in plain view in
5 the floorboard of the car.

6 You know, the fourth amendment jurisprudence is
7 changing a little bit in the last couple of years, so
8 it's interesting to watch. But I can't say that Ms.
9 Gay erred or was ineffective in any way in the way that
10 she argued it. She did argue about the stop. She did
11 argue about taking the drug dog out, even though it
12 didn't alert -- I don't know that that was appropriate,
13 but it didn't alert, so that wasn't an issue. And the
14 gun was, according to the evidence presented, in plain
15 view.

16 The information from the witness, from Court's
17 Exhibit 1, that Mr. Murphy offered was certainly Ms. --
18 sir, he did a great job presenting your case, that
19 would not have made a difference one way or another
20 about the plain view of the gun. Some lady standing
21 with her children in the parking lot, that's not an
22 issue based on what was in that information.

23 With respect to the video and under Strickland,
24 you know, Mr. Murphy, if y'all came forward this
25 morning with a video from the dashboard -- if there

1 even was one, that was -- showed that the result would
2 have been different, that might be a situation for me
3 to consider. But, again, a dash cam video would not
4 have gone to the plain view issue of the gun on the
5 floor. And that's what the Court of Appeals affirmed
6 the case on, so there's just no prejudice to the
7 applicant on the search issue, and the way Ms. Gay
8 argued it. And, quite frankly, she argues those well.
9 She argued it as best she could.

10 I will keep under advisement the part about the
11 Judge's question -- because I have not read that
12 portion of the transcript yet, and let y'all know about
13 that as soon as I have a chance to review it. Okay.
14 If y'all want to e-mail me anything in the meantime,
15 I'm happy to have it.

16 MS. WILSON: Thank you, Your Honor.

17 MR. MURPHY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (Whereupon, the hearing adjourned.)
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2

3

4 I, SHARON D. JONES, CERTIFIED
5 COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING IS
6 A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
8 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
9 COURT OF COMMON PLEAS FOR CHARLESTON COUNTY, SOUTH
10 CAROLINA, ON THE DAY OF 21ST DAY OF NOVEMBER, 2013.

11 I DO FURTHER CERTIFY THAT I AM
12 NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY
13 HERETO.

14

3.26.15

15

16

SDJ

17

18

SHARON D. JONES,
CERTIFIED COURT REPORTER

19

20

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22

23

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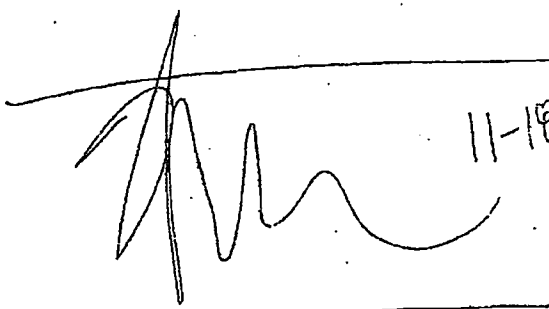
AFFADAVIT of FAUNTAIN JUDON

DATE: November 18, 05

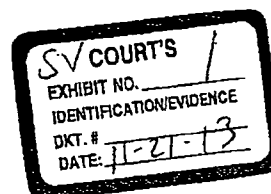
Re: Witness to incident on January 28, 04

Involving the detention and arrest of Terrance Johnson

As I was looking for my children outside of our family business, Judon's Sewing & Alterations, I observed on Rivers Ave, a grey Jaguar in the near lane and a North Charleston police office in the far lane coming towards me. As I turned to walk back in the business I saw the Jaguar pull into the florist next door and the police car make an illegal turn to the side of the Jaguar.


Signature

11-18-05

7008 Coney Dr. N. Chas
330-3333 S.C. 294

cc
AG
1/7
EU
SDC

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Terrance Johnson, #156066,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-10-9193

ORDER OF DISMISSAL

FILED
2014 DEC -1 AM 9:26
JULIE J. ARBUTHNOT
CLERK OF COURT
BY _____

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable Stephanie P. McDonald
Christopher L. Murphy, Esquire
Ashleigh R. Wilson, Esquire
Melissa W. Gay, Esquire
November 21, 2013
Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 13, 2011. The Respondent made its Return on June 19, 2012. An evidentiary hearing on the matter was convened on November 21, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Melissa W. Gay, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the post-conviction relief application, the Respondent's Return, the Applicant's appellate records, and Court's Exhibit 1¹.

¹ Court's Exhibit 1 was an Affidavit from Fauntain Judon dated November 18, 2004.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the June 2004 term of the Charleston County Grand Jury for trafficking cocaine 28-100 grams- 2nd offense (2004-GS-10-3796), possession of a weapon during the commission of a violent crime (2004-GS-10-3797), possession of a stolen pistol (2004-GS-10-3795), and unlawful carrying of a gun (2004-GS-10-3794). Applicant was represented by Melissa W. Gay, Esquire.

Applicant proceeded to trial on March 9-10, 2006. He was acquitted of possession of a stolen pistol and convicted of the three remaining charges. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for life for trafficking cocaine and one year for unlawful carrying of a gun.² The sentences were to run concurrently.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Johnson, Op. No. 2011-UP-411 (S.C. Ct. App. August 29, 2011).

ALLEGATIONS

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to challenge the stop and other claims.

² The Court did not impose a sentence for the possession of a weapon during the commission of a violent crime conviction pursuant to S.C. Code Section 16-23-490(a).

At the hearing, the Applicant proceeded solely on the following allegations:

1. Ineffective assistance of counsel.
 - a. Counsel failed to challenge the traffic stop.
 - b. Counsel failed to call Fauntain Judon as a witness at Applicant's suppression hearing.
 - c. Counsel failed to properly investigate whether a camera was in the police car.
 - d. Counsel failed to object to the judge going into the jury room.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of the Testimony

The Applicant was present and testified that he was represented at trial by Melissa Gay. Applicant testified he retained Gay to represent him and met with her four times prior to trial. He testified he wanted counsel to argue that the stop by police was a pretextual stop, but he was told by counsel they did not need to argue about the initial stop because the police let him go.

The Applicant testified that he was offered a guilty plea deal, but he told counsel that he did not want to plead guilty. Applicant testified the State offered a plea to fifteen years in the middle of trial. He discussed the plea offer with counsel and rejected it because he felt he did not do anything wrong.

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The Applicant testified that counsel also failed to call Fauntain Judon as a witness at his suppression hearing. He testified counsel's investigator obtained a statement from Judon. The Applicant testified that Judon's testimony would have shown that the officer was not behind him to see the tag obstruction before the stop.

The Applicant also testified that counsel failed to properly investigate his case. He testified counsel never investigated whether the officer who stopped him had a camera in his car. He testified that a camera should exist and it would show that the officer was not really behind him. Lastly, the Applicant testified the judge was allowed to go to the jury room.

Melissa Gay, Esquire, was also present and testified that she has been practicing criminal law since 1991. She testified that she was retained to represent the Applicant and they met several times prior to his trial. Counsel testified she filed Brady and Rule 5 motions on Applicant's behalf. Counsel testified she reviewed the evidence with the Applicant and they discussed the elements of the Applicant's charges and what the State was required to prove. She testified they also discussed the Applicant's version of the facts and the possible defenses.

Counsel testified that she did not recall the statement of Fauntain Judon, but it looks like it was probably taken by her investigator. She testified she knows all the Judons and would have spoken with all of the witnesses. Counsel testified that Judon's statement simply was not relevant to the issues presented at the suppression hearing.

Counsel testified she had ample time to prepare for trial. She testified that the Applicant did not want to plead guilty and wanted to go to trial. Counsel testified she did not recall recommending that Applicant take a plea offer, but that she generally tries to get defendants to take a plea if there is a high risk of conviction.

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Counsel testified that she discussed challenging the traffic stop with the Applicant prior to trial. Counsel testified she told the Applicant if they lost the suppression motion, they would have no defense at trial. She testified she argued at trial that the stop and search of Applicant's car was unconstitutional. She testified that she also argued that Applicant's first contact with law enforcement was problematic. Counsel testified that the suppression issue was also raised on appeal.

Counsel testified she reviewed the Applicant's discovery and would have been provided with the video from the police car camera had there been a video. She testified that she would not have gone beyond the scope of what was already given by the police and that there was no evidence that footage from the police car camera was available. Counsel testified that she did not subpoena any specific police car video and that if there had been a video, the solicitor would have turned it over.

Counsel testified that she did not recall the judge going into the jury room, but if she felt that the judge had done something inappropriate with the jury, she would have objected.

Ineffective Assistance of Counsel

Applicant alleges that he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show that "there

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is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668).

This Court finds the Applicant's testimony at the evidentiary hearing was not credible. This Court also finds that counsel's testimony at the evidentiary hearing was credible. Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges that counsel was ineffective for failing to challenge the traffic stop which resulted in his arrest. The Court finds this allegation to be without merit. The Court finds that counsel provided credible testimony that she discussed challenging the traffic stop with the Applicant prior to trial. The Court finds and the record reflects that counsel vigorously challenged the traffic stop which resulted in Applicant's arrest during a suppression hearing held at the start of trial. (T. 3:13-95:22). After extensive cross-examination of the State's witnesses, counsel argued to the court during the suppression hearing that the traffic stop was pretextual based on the fact that the Applicant was a black man driving a nice car and that he had not

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committed any moving violation warranting the stop. Counsel argued further that the finding of the gun in the Applicant's car was not a separate event from the stop and both the gun and drugs found after the traffic stop should be suppressed as "fruit of the poisonous tree". (T. 75:25-92:13, 94:6-95:22). After the Court denied Applicant's motion to suppress (T. 181:17-190:14), counsel renewed her motion to further insure that the issue was properly preserved for appellate review (T. 190:20-25). This Court finds that Applicant has failed to carry his burden of proving counsel was deficient in failing to challenge the traffic stop. As there was no deficient performance, the Court need not consider any resulting prejudice on this particular issue.

Applicant further alleges that counsel was ineffective in failing to call Fauntain Judon as a witness during his suppression hearing. This Court finds this allegation to be without merit. Counsel provided a strategic basis for her decision not to call Judon as a witness during the Applicant's suppression hearing. Where counsel articulates a valid strategic reason for her action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Counsel stated at the evidentiary hearing that Judon's testimony would not have been relevant to the suppression issue. This Court finds counsel's reasoning for failing to call Judon as a witness during the suppression hearing was valid and that no prejudice resulted from this decision.

This Court also finds and the record reflects that counsel was able to vigorously argue the motion to suppress without calling any additional witnesses. This Court finds it unlikely that the

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testimony of Judon (as reflected in the affidavit presented by Applicant) would have assisted the court in ruling on Applicant's motion to suppress. Applicant has failed to carry his burden of proving that counsel was deficient in failing to call Judon as a witness during the Applicant's suppression hearing. This Court also finds that Applicant has failed to show that but for counsel's failure to call Judon as a witness, his motion to suppress would have been granted.

Applicant next alleges that counsel was ineffective in failing to investigate and obtain any available video from the camera in the police car involved in his traffic stop. This Court finds this allegation to be without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds that counsel thoroughly investigated Applicant's case. Applicant has failed to show the existence of any video footage from the police car involved in his traffic stop. This Court will not speculate with regard to what an investigation by counsel into police car video would have yielded. This Court finds that Applicant has failed to carry his burden of proving counsel was deficient in failing to investigate whether any video existed from any

camera alleged to be in the police car involved in the traffic stop. This Court also finds that the Applicant has failed to show that counsel's performance in this regard resulted in any prejudice.

The Applicant alleges that counsel failed to object to the judge going into the jury room. This Court finds this allegation to be without merit. This Court finds that the record is devoid of any instance reflecting that the trial judge entered the jury room or in any way inappropriately interacted with the jury. Thus, Applicant has failed to carry his burden of proving counsel ineffective in this regard.

Accordingly, this Court finds that Applicant failed to satisfy the first prong of the Strickland test- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in her representation of Applicant. This Court also finds that Applicant has failed to satisfy the second prong of Strickland- that he was prejudiced by trial counsel's performance. This Court concludes that Applicant has not met his burden of proving that counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, the Court finds that Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby dismissed.

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CONCLUSION

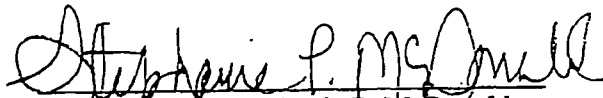
Based on the forgoing, this Court finds and concludes the Applicant has not established any constitutional violation or deprivation either before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24th day of November, 20 14


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

LSK 2004-01-00238

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

BUTLER, NCPD

2004003379

ARREST WARRANT NUMBER

H544404

JANUARY 29, 2004

ACTION OF GRAND JURY

TRUE BILL

JUN 0 8 2004

VERDICT

Guilty

Foreperson of Petit Jury

James D. Gault 3/10/04
Dre.

DOCKET NO. 2004-GS-10-3796

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2004

THE STATE

vs.

TERRANCE D. JOHNSON

Indictment for

TRAFFICKING COCAINE

04-JUN-2004 (2)

FILED

2004 JUN 15 AM 10:53

JULIE A. WILSON
CLERK OF COURT

BY *MB*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
POSSESSION OF FIREARM DURING COMMISSION OF
A VIOLENT CRIME

At a Court of General Sessions, convened on June 7, 2004 the Grand Jurors of Charleston County
present upon their oath:

That Terrance D. Johnson did in Charleston County on or about January 28, 2004, possess or visibly display a 9mm Taurus semi-automatic pistol bearing serial# TMJ19378D during the commission or attempted commission of a violent crime, to wit: Trafficking Cocaine. This is in violation of §16-23-490 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.

ASSISTANT SOLICITOR

LSK 2004-01-00238

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

BUTLER, NCPD

2004003379

ARREST WARRANT NUMBER

H544410

JANUARY 29, 2004

ACTION OF GRAND JURY

TRUE BILL

JUN 08 2004

VERDICT

Guilty

Foreperson of Petit Jury

Date:

3/10/04

DOCKET NO. 2004-GS-10-3797

The State of South Carolina

County of Charleston

FILED

JUN 15 AM 10:54

COURT OF GENERAL SESSIONS

JUNE TERM 2004

JULIE L. LONG
CLERK OF COURT

BY

THE STATE

vs.

TERRANCE D. JOHNSON

Indictment for

POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME

04-0W-5A2 (4)

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF CHARLESTON) POSSESSION OF FIREARM DURING COMMISSION OF
) A VIOLENT CRIME

At a Court of General Sessions, convened on June 7, 2004 the Grand Jurors of Charleston County
present upon their oath:

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR