

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

S.C. Supreme Court

William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-417 (S.C. Ct. App. filed 8/12/2015)

13-GS-32-0967

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

PETITIONER

APPELLATE CASE NO. 2015-002170

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Raheem Jamar Bonham, Appellant.

Appellate Case No. 2013-001364

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2015-UP-417
Submitted July 1, 2015 – Filed August 12, 2015

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General John Benjamin Aplin, all of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Corley*, 383 S.C. 232, 239, 679 S.E.2d 187, 191 (Ct. App.

2009) ("In criminal cases, the appellate court sits to review errors of law only. We are bound by the trial court's factual findings unless they are clearly erroneous. This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. In Fourth Amendment search and seizure cases, our review is limited to determining whether any evidence supports the trial court's finding. Upon such review, an appellate court may reverse only when the trial court's decision is clear error. Under the 'clear error' standard, the appellate court will not reverse a trial court's finding of fact simply because it may have decided the case differently." (citations and internal quotation marks omitted)), *aff'd as modified*, 392 S.C. 125, 708 S.E.2d 217 (2011); *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence . . ."); *Rakas v. Illinois*, 439 U.S. 128, 148-50 (1978) (finding passengers of a vehicle did not have an expectation of privacy in the car's glove compartment or the area under the seat of the car, and the court did not need to determine whether the search of the car was unlawful); *Palacio v. State*, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) ("Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent."); *State v. Pichardo*, 367 S.C. 84, 106, 623 S.E.2d 840, 851-52 (Ct. App. 2005) ("A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion."); *Corley*, 383 S.C. at 240, 679 S.E.2d at 191 ("A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.").

AFFIRMED.¹

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-417

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel would petition for rehearing pursuant to this Court's opinion in the above titled case upholding the trial judge's finding that the Fourth Amendment was not violated by the ultimate stop of the vehicle in which appellant was a passenger per the rationale that there was reasonable suspicion proved by articulable facts that criminal activity was afoot in the case, because to the contrary, the stop was unjustifiable as the evidence presented in support of the validity of the stop was lacking per the reasonableness factor. In support of this petition, counsel for appellant would submit the following information.

1.) First, note that per Brendlin v. California, 551 U.S. 249 (2007), appellant, who was a passenger in the car, had standing to challenge the constitutionality of the ultimate car stop in this case. In the case at hand, the list below includes a summary of Police Officer Burt's observations made at 9:45 p.m. on August 10, 2012, before he began following the Kia, wherein appellant was a passenger, and prior to the ultimate stop of the Kia, whereinafter a search yielded the presence of crack cocaine. Officer Burt noticed the following:

- a.) A white Kia pulled into the driveway of a suspected drug house;
- b.) The tail lights of the Kia were visible while it sat in the driveway;
- c.) The white Kia stayed in the driveway for approximately two minutes;
- d.) No one exited the Kia while it sat in the driveway;
- e.) No one exited the house and came to the Kia; and
- f.) The white Kia left the driveway after two minutes. Tr. 43-44.

2.) At trial, the Police Officer Burt explained that neighbors had filed complaints of suspected drug activity emanating from the house in question. Officer Burt explained also how the search of the Kia came about in the case. Apparently, there were three occupants inside the Kia: the female driver, a male front seat passenger, i.e. appellant, and a female back seat passenger. After the stop, the female driver gave Officer Burt consent to search the Kia. Shortly thereafter, Officer Burt stated that he heard Officer Thomas confirm that crack cocaine was found under the front passenger seat. App. 141, l.1- p.148, l.6. Tr. 220, l.18- p. 221, l.25. Thereafter, Officer Finch detained appellant. Tr. 190, l.15 – p.191, l.10, Tr. 197, l.7 –p. 199, l.22. Officer Finch stated that

appellant denied ownership of the crack cocaine initially, but later admitted that he was in possession of the crack cocaine. Tr.200, l. 3-9, Tr. 201, l. 7 – p. 202, l. 21; Tr. 205, ll. 8-21.

During Officer Burt's testimony, he stated the following:

A. [The Kia] pulled into the driveway and I could see the back third of the car...[and] taillights just up and to the back door.

Q. Okay. Could you see any of the occupants in that vehicle?

A. No

Q. Did the taillights ever turn off?

A. No. They remained lit the entire time

Q. Okay. Could you see anybody come out to the car from where you were positioned?

A. No.

Q. Could you see anybody leave the car from where you were positioned?

A. No.

Q. How long did the car stay there?

A. Just under two minutes. App.43, l. 19 – p. 44, l. 12.

3.) A routine stop violates the Fourth Amendment if there is no purpose justifying the stop. State v. Pichardo, 367 S.C. 84, 623 S.E. 2d 840 (2005). The touchstone of the Fourth Amendment is reasonableness. Ohio v. Robinette, 519 U.S.33 (1996). In State v. Taylor, 401, S.C. 104, 736 S.E. 2d 663 (3013), the Court held that an investigative detention is constitutional only if supported by a reasonable suspicion that the person detained is engaged in criminal activity; and further that:

Courts must look at the cumulative information available to the officer...and not find a stop unjustified based merely on a "piecemeal refutation of each individual fact and inference....just as one corner of a picture might not reveal the picture's subject or nature, each component that contributes to reasonable suspicion

might not alone give rise to reasonable suspicion.” United States v. Mason, 628 F. 3d 123, 129 (4th Cir. 2010); United States v. Branch, 537 F.3d 328 (4th Cir. 2008).

4.) Here, seeing the Kia pull into the driveway of a what was believed to be a drug house per neighbors’ complaints and sit for two minutes while seeing no one exit the car and seeing no one exit the house, and then seeing the Kia back out and exit the driveway did not constitute a scenario giving rise to reasonable suspicion for the Kia to have been stopped and the occupants inside detained upon suspicion that a drug transaction had occurred.

5.) Our South Carolina Courts view police officers’ observations of possible drug transaction as a key factor also in assessing the constitutionality of investigatory stops in Fourth Amendment cases. For example, the Taylor Court upheld the officers’ reasonable suspicion to stop the defendant (bicycle rider) because he was seen on a bike in a drug area huddled up with another male, and the Court added that “unlike the scenario in Sprinkle¹, the record d[id] not reflect that police were unable to observe [the defendant’s] hands” and that the resulting assumption suggesting a drug transaction was in progress appeared confirmed. However, to the contrary, compare the case of State v. Fowler, 322 S.C. 263, 471 S.E. 2d 706 (1996), which was similar factually to the case at bar, where the Court reversed and held that there was no reasonable suspicion to stop and detain the defendant simply because he had just came from the yard of a suspected drug house, and was walking suspiciously, and cut through the back of some other houses to get to the road because the officers did not “see a drug transaction” and did not see “the defendant throw anything down,” but

¹ United States v. Sprinkle, 106 F.3d 613 (4th Cir 1997). In Sprinkle, the Court did not uphold the investigatory detention after finding no reasonable suspicion for a stop where the officers saw a male in the driver’s seat of a car parked in a high crime drug area huddled up with a male in the passenger seat over the console area of the car because there was no observation of any transaction involving drugs passing through their hands to support suspicions of drug transactions in progress in the case.

rather made “broad generalizations” based on the defendant’s demeanor and knowledge about his one prior drug conviction.

Likewise, in the case at bar, the officers did not observe any actions from the occupants of the Kia that suggested that a drug transaction was percolating because he could not see inside the Kia. Additionally, note that like in Fowler, the house (where the Kia pulled into the driveway) was not a known drug house, but a “suspected” or “reported” drug house. Also, the Kia never parked in the driveway in question. The Kia’s taillights stayed on and the Kia sat in the driveway for two minutes and backed out. Moreover, no occupant from inside the Kia exited and went up to the suspected drug house. Furthermore, no one from the suspected drug house went out to the Kia. Also, the Kia left the suspected drug house after a quick two minutes. Here, we have no observations by police of anything that rose to a level that suggested that a drug transaction occurred in this case. Hence, no reasonable suspicion existed in support of the ultimate stop of the Kia. As in Fowler, the officer here made broad generalizations that about a car entering and exiting the driveway of a suspected drug house and without more, undoubtedly erred in assuming that such actions meant that a possible drug transaction in progress.

Again, the officer did not observe any activity inside the Kia or outside the Kia to justify the ultimate stop. And, note further that in the case at bar, there was no traffic violation that reportedly occurred whereby the ultimate stop of the Kia could be justified. Compare the following list of only a few notable cases where traffic stops were upheld because traffic violations occurred:

- a.) See Rodriguez v. United States, 135 S.Ct. 1609 (2015), where the driver of the vehicle was stopped justifiably because his car veered slowly onto the shoulder of the highway, but held undue delay by police to obtain dog sniffers was unconstitutional.
-

- b.) See Whren v. United States, 517 U.S. 806 (1996), where the driver of the vehicle was stopped justifiably because no turn signal was used and the car speeded off after stopping at stop sign.
 - c.) See United States v. Stanfield, 109 F.3d 976 (4th Cir. 2005), where the driver was stopped justifiably for heavily tinted windows.
 - d.) See State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (2005), where the car driver was stopped justifiably for failure to maintain a lane, but the Court held the stop was unduly prolonged and the motion to suppress granted by the circuit judge was upheld.
 - e.) See State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2006), where the driver of a vehicle was justifiably stopped for following another vehicle too closely.
 - f.) See State v. Morris, 395 S.C. 600, 720 S.E.2d 468 (2011), where the driver of a vehicle was justifiably stopped for following a truck too closely.
 - g.) See State v. Butler, 353 S.C. 383, 577 S.E.2d 498 (2003), where the driver of a vehicle was justifiably stopped for a broken tail light and
 - h.) See State v. Adams, 409 S.C. 641, 763 S.E.2d 341 (2012), where the driver of the vehicle was stopped justifiably for improper lane change.
- 5.) In the instant case, no traffic violations were reported to have occurred. Clearly, the observations of the Kia witnessed by the police did not rise to any reasonable suspicion that criminal activity (a drug transaction) was afoot and thus the stop, search, and seizure carried out by the police were illegal and unconstitutional actions in violation of the Fourth and Fourteenth Amendments. There have been cases where our courts have held that the initial traffic stops were illegal stops. For example, in Brendlin v. California, 551 U.S. 249 (2007), and Delaware v. Prouse, 440 U.S. 648 (1979), the Court agreed that stopping a motorist for license/registration checks without anything

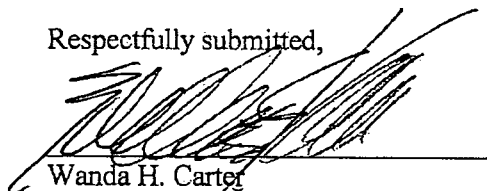
more would be unconstitutional. Compare also United States v. Brignoni-Ponce, 422 U.S. 873 (1975), where the Court held that stopping cars believed to contain undocumented persons would be unconstitutional. The reasonableness of the evidence presented in support of a car stop is the key in these cases.

6.) Here, the ultimate stop was illegal and as a result, this Court erred in upholding the trial judge's denial of appellant's motion to suppress the drugs seized after the illegal stop because there was a lack of reasonable evidence in existence to support any suspicion that criminal activity was afoot in the case.

CONCLUSION

Based on the foregoing points, counsel for appellant would request a rehearing with respect to this Court's decision regarding the legality of the ultimate stop of the Kia vehicle in this case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 27th day of August, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Lexington County

 William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

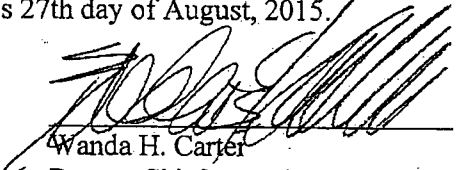
V.

RAHEEM JAMAR BONHAM,

APPELLANT

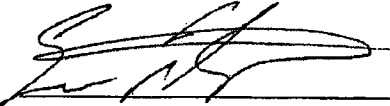
 CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Raheem Jamar Bonham, at 3018 Princeton Road, West Columbia, SC 29170, and Mr. Bennett Casto, Esquire, at 407 West Main Street, Lexington, SC 29072, this 27th day of August, 2015.


 Wanda H. Carter

 Deputy Chief Appellate Defender
 ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 27th day
 of August, 2015.


 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Raheem Jamar Bonham, Appellant.

Appellate Case No. 2013-001364

ORDER

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

John Cannon C.J.
Thomas C. Hoff J.
H B W J.

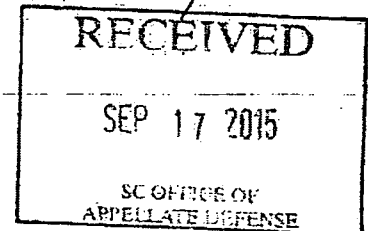
Columbia, South Carolina

cc:

Salley W. Elliott, Esquire
 Wanda H. Carter, Esquire
 Alan McCrory Wilson, Esquire
 John Benjamin Aplin, Esquire
 The Honorable William P. Keesley

FILED

September 17, 2015



20934

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

RECORD ON APPEAL

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1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State)

6)
7 v.)

Transcript of Record
13-GS-32-967

8 Raheem Jamar Bonham)

9 Defendant.)

10
11 June 3, 5 - 6, 2013
Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge; and a
15 jury.

16
17 A P P E A R A N C E S:

18 Michael D. Ross, Assist. Solicitor
19 Gill Bell, Assist. Solicitor
Attorneys for the State

20 Bennett E. Casto, Assist. Public Defender
Attorney for the Defendant

21
22
23
24
25 Stacy L. Sheppard, RPR
Circuit Court Reporter

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1 (The following proceedings were held on June
2 3, 2013.)

3 **THE COURT:** What's the next case?

4 **MR. ROSS:** Yes, Your Honor. The State calls
5 Raheem Jamar Bonham for trial. This is indictment
6 number 13-GS-32-00967, possession of crack cocaine.
7 Your Honor, I'm handing you the indictment.

8 **THE COURT:** All right. Ladies and gentlemen of
9 the jury panel, we're about to select a jury to hear
10 the case of the State versus Raheem Jamar Bonham.
11 Mr. Bonham is charged with possession of crack
12 cocaine.

13 The indictment alleges that Raheem Jamar Bonham
14 did in Lexington County, South Carolina, on or about
15 August 10, 2012, knowingly, willfully, intentionally
16 and unlawfully possessed crack cocaine or cocaine
17 base, a controlled substance, in violation of the
18 statute cited in the indictment.

19 Upon his arraignment on this charge, Mr. Bonham
20 has entered a plea of not guilty. He is presumed to
21 be innocent. It is the obligation of the State,
22 having brought this charge against Mr. Bonham, to
23 prove every essential element of the offense charged
24 beyond a reasonable doubt.

25 The indictment is not evidence. It has no

1 evidentiary value and you may not accord it any.

2 I know you know the process by now, but I have
3 to make a separate record for every case, so I'm
4 going to be asking you questions. If any of the
5 questions apply to you or you have doubt about
6 whether they apply to you, please stand and follow
7 the procedure that we outlined earlier.

8 Remember that you're under oath. And remember
9 that if you ever need to discuss anything more
10 privately with me or prefer to, just let me know you
11 want to come down front.

12 All right. Is Raheem Jamar Bonham in the
13 courtroom?

14 **MR. CASTO:** Yes, sir, Your Honor.

15 **THE COURT:** Mr. Bonham, I need you, please, to
16 stand and face towards the jury so they can see you.

17 Thank you very much, sir. You may be seated.

18 Is there any member of the jury panel who is
19 related by blood or marriage or connected by
20 employment with the defendant in the case, Raheem
21 Jamar Bonham; if so, please stand?

22 (There was no response.)

23 **THE COURT:** All right. Mr. Bonham will be
24 represented by Mr. Bennett Casto.

25 (Mr. Casto stands and faces the jury

1 venire.)

2 **THE COURT:** Mr. Drylie, are you on this one or
3 not?

4 **MR. DRYLIE:** I'm not, Your Honor.

5 **THE COURT:** Thank you, Mr. Casto.

6 **MR. CASTO:** Yes, sir.

7 **THE COURT:** The following persons have been
8 identified as potential witnesses for the State.
9 They may not be here today because this is the
10 second case we're going to try. It's not unusual
11 for the witnesses not to be at the jury selection.
12 So if I read out a name and you're not sure if you
13 have a connection with that person and you want more
14 identifying information, let me know and I'll get
15 that for you from the attorneys. But if any of
16 these people are present at this time, please stand
17 and face the jury:

18 Master Deputy Nicholas Burt of the Lexington
19 County Sheriff's Office, thank you, sir; Sergeant
20 Bill Finch of the Lexington County Sheriff's
21 Department; Beth Harmon of the Lexington County
22 Sheriff's Department; Candy Kyzer of the Lexington
23 County Sheriff's Department; Emily Homer of the
24 Lexington County Sheriff's Department; and Captain
25 Lee Thomas of the Lexington County Sheriff's

1 Department.

2 Are any of you related by blood or marriage or
3 connected by employment with any of the potential
4 witnesses for the State; if so, please stand?

5 (There was no response.)

6 **THE COURT:** The State will be represented by
7 Mr. Michael Ross and Mr. Gill Bell. They are with
8 the Solicitor's Office of the Eleventh Judicial
9 Circuit.

10 Do any of you know anything at all about this
11 matter? Do you have any knowledge whatsoever about
12 the underlying factual allegations? Have you heard,
13 seen or read anything about it to the best of your
14 knowledge, any news accounts? Have you overheard
15 any conversations? Do you know anything whatsoever
16 about this case or this situation; if so, please
17 stand?

18 (There was no response.)

19 **THE COURT:** Now, I've asked you if any of you
20 are related by blood or marriage or connected by
21 employment with Mr. Bonham or any of the potential
22 witnesses for the State.

23 Once again, I need to ask you, as I did when we
24 qualified the first case, if you've got any
25 connection of any kind with any person or any entity

1 involved in the case, you need to disclose that to
2 us, that includes such things as being neighbors,
3 friends, attending the same church or civic clubs;
4 current or former clients or associates or being
5 involved in any cases involving any of the attorneys
6 or anyone with whom they're affiliated; having any
7 connection whatsoever with the Lexington County
8 Sheriff's Office, the Eleventh Circuit Solicitor's
9 Office; any connection of any kind, any relationship
10 of any kind with anybody or any entity in the case,
11 please disclose it to us by standing.

12 (Jurors stand.)

13 **THE COURT:** Yes, ma'am.

14 **JUROR:** Officer Burt and I went to high school
15 together.

16 **THE COURT:** What's your name, please?

17 **JUROR:** Sadaras Carmichael, number 35.

18 **THE COURT:** Ms. Carmichael's juror number 35.

19 And you went to high school with who?

20 **JUROR:** The witness...

21 **THE COURT:** I'm sorry, I can't hear you.

22 **JUROR:** The witness, Officer Burt.

23 **THE COURT:** To the best of your knowledge, is
24 there anything about that relationship that affects
25 your ability to be a fair and impartial juror in the

1 case?

2 JUROR: No, sir.

3 THE COURT: You can decide the case without
4 regard to what he may think of your decision?

5 JUROR: Yes, sir.

6 THE COURT: All right. I need to ask you some
7 questions and I need you to answer them either yes
8 or no. Don't go beyond that. If you want to go
9 beyond that, it's fine with me, but you need to come
10 down front to give me the full explanation, okay.
11 You understand?

12 JUROR: Yes, sir.

13 THE COURT: Do you understand if you're a juror
14 on this case, you have to evaluate the credibility,
15 the believability of every witness who testifies?
16 Do you know that, Ms. Carmichael?

17 JUROR: Yes, sir.

18 THE COURT: Now, again, yes or no, have you
19 ever formed in your own mind or have you ever
20 expressed to anyone else an opinion as to whether
21 Officer Burt is a believable person or not?

22 JUROR: No, sir, but in my own mind, yes, sir.

23 THE COURT: Okay. Then I have to set you
24 aside.

25 Ms. Carmichael is set aside on the second

1 trial.

2 Thank you, ma'am.

3 And your name again, please?

4 **JUROR:** Kirsti Thompson, 275.

5 **THE COURT:** 275. And you're the one that's
6 related to all the people in the sheriff's
7 department pretty much; is that correct?

8 **JUROR:** Just about.

9 **THE COURT:** I'm going to set you aside on this
10 case too, please, ma'am.

11 275 is set aside on the second case.

12 Yes, sir.

13 **JUROR:** 142, Samuel Koon. I believe Sergeant
14 Finch worked for me when he was over at Columbia.

15 **THE COURT:** 142, Mr. Koon. Can I get you to
16 repeat that again?

17 **JUROR:** Sergeant Finch, I believe he worked for
18 me when he was over in Columbia, over at the
19 Columbia Police Department where I retired from.

20 **THE COURT:** Yes, sir. So you, at one time,
21 supervised him as a police officer?

22 **JUROR:** Yes, sir.

23 **THE COURT:** I'm going to set you aside on this
24 case, Mr. Koon.

25 142 is set aside on the second trial.

1 Anybody else?

2 (There was no response.)

3 **THE COURT:** Is there anything at all about the
4 nature of the allegation itself, that is, the
5 allegation of possessing crack cocaine or cocaine
6 base -- cocaine base is a term that's defined in the
7 statute that includes crack cocaine -- is there
8 anything at all about the nature of the allegation
9 itself that could in any way affect your ability to
10 be a fair and impartial juror in the case?

11 Has it ever been a situation where anyone close
12 to you has been affected by any such drug, ever been
13 accused of being involved in having any such drug?
14 Is there anything at all about the nature of the
15 allegation itself that might affect your ability to
16 be fair and impartial; if so, please stand?

17 (Juror stands.)

18 **THE COURT:** Your name, please, ma'am?

19 **JUROR:** Alissa Wise, juror number 297.

20 **THE COURT:** Ms. Wise is juror number 297. I'm
21 just going to set you aside on this trial, Ms. Wise.
22 Just stay with us, though, for other instructions.

23 All right. Now, again, ladies and gentlemen,
24 we've reached one of those questions where I'm going
25 to pose the questions, it's going to be multiple

1 parts. And if it applies to you or you have doubt
2 about whether it applies to you, I need you to come
3 down front. We're going to talk about this down
4 front, not openly in front of the whole pool.

5 Have any of you, any of your immediate family
6 members or any of your close, personal friends, to
7 the best of your knowledge, ever been accused of
8 being involved in any way with illegal drugs or
9 affected in any way by the use of any type of drug,
10 legal or illegal, in an adverse way?

11 I know that's a very broad question. I'm
12 expecting you to use your common sense in
13 understanding it, but basically what I want to know
14 is if there's anything about illegal drug activity
15 or about addiction that would affect your ability to
16 be a fair and impartial juror in a case in which it
17 is involving someone -- I'm sorry -- in which it is
18 alleged that someone possessed crack cocaine or
19 cocaine base; if so, please stand?

20 (Jurors stand.)

21 **THE COURT:** Come down front. The lawyers may
22 join me on the side.

23 (Whereupon, the following bench conferences
24 were held on the record, in the presence of the jury
25 venire, but out of the hearing of the jury venire.)

1 **BAILIFF:** 85, Your Honor.

2 **THE COURT:** Ms. Frye?

3 **JUROR:** Yeah.

4 **THE COURT:** What's your situation?

5 **JUROR:** It wasn't crack cocaine, but my brother
6 has been arrested by people in Lexington County
7 several times for marijuana.

8 **THE COURT:** Okay. For possession or
9 distribution?

10 **JUROR:** Both.

11 **THE COURT:** Both?

12 **JUROR:** Uh-huh.

13 **THE COURT:** Has he ever had to go to prison for
14 that?

15 **JUROR:** Uh-huh.

16 **THE COURT:** Is he in prison now?

17 **JUROR:** No. It was when he was a juvenile.

18 **THE COURT:** How old is he now?

19 **JUROR:** Twenty-six.

20 **THE COURT:** Is there anything at all about that
21 experience or your relationship with him or with the
22 authorities in Lexington County that affects your
23 ability to be fair and impartial as a juror in this
24 case?

25 **JUROR:** No. I just thought I should tell you.

1 **THE COURT:** You did the right thing. Do you
2 have any doubt about that?

3 **JUROR:** No.

4 **THE COURT:** Thank you, ma'am. Just have a seat
5 back there.

6 Ms. Frye is juror number 85. She's eligible to
7 serve.

8 Yes, ma'am.

9 **BAILIFF:** 153, Your Honor.

10 **THE COURT:** Ms. Liley?

11 **JUROR:** Yes, sir.

12 **THE COURT:** What's your situation?

13 **JUROR:** My brother in Missouri was disbarred
14 for drug use and possession and everything else that
15 goes along with it.

16 **THE COURT:** Did he ever get any criminal
17 charges filed against him?

18 **JUROR:** Yes.

19 **THE COURT:** Did he have to go to prison?

20 **JUROR:** Yes.

21 **THE COURT:** Is there anything about that
22 experience or your relationship with him that
23 affects your ability to be fair and impartial in
24 this case?

25 **JUROR:** No, not at all.

1 **THE COURT:** Any doubt?

2 **JUROR:** No.

3 **THE COURT:** Thanks very much.

4 Ms. Liley is 153 and eligible to serve.

5 Yes, ma'am.

6 **BAILIFF:** 209, Your Honor.

7 **THE COURT:** Ms. Powell?

8 **JUROR:** Yep.

9 **THE COURT:** What's your situation?

10 **JUROR:** Family member addicted to crack cocaine

11 and an accidental overdose of prescription

12 pharmaceuticals.

13 **THE COURT:** Two different people?

14 **JUROR:** Two different people, immediate family

15 members.

16 **THE COURT:** Anything about that experience that

17 affects your ability to be a fair and impartial

18 juror in the case?

19 **JUROR:** Yeah.

20 **THE COURT:** I'll set you aside on this case,

21 too. Just have a seat back there, please, ma'am.

22 209, Ms. Powell, is set aside on the trial of

23 this case.

24 **BAILIFF:** 91, Your Honor.

25 **THE COURT:** Ms. Geddings?

1 **JUROR:** Yes, sir.

2 **THE COURT:** What's your situation?

3 **JUROR:** My former live-in boyfriend, they had
4 the law come in to check --

5 **COURT REPORTER:** I can't hear you.

6 **JUROR:** They had probable cause to search my
7 house of a former live-in boyfriend and they came in
8 and tore my house apart, upset my children.

9 **THE COURT:** Okay. Did they bring any charges?

10 **JUROR:** Yes, sir. I believe he did go to court
11 on that. They didn't find what they had come in
12 looking for, but they did find marijuana.

13 **THE COURT:** Okay.

14 **JUROR:** And I believe he did six months to a
15 year or something. I'm not positive what his -- he
16 ended up doing because we haven't been together
17 since.

18 **THE COURT:** Was that in Lexington County?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Was it Lexington County Sheriff's
21 Department that searched?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Is there anything at all about that
24 experience that affects your ability to be a fair
25 and impartial juror in this case?

1 **JUROR:** Just being upset over my house being
2 torn apart.

3 **THE COURT:** Is that a yes or a no?

4 **JUROR:** Yes, sir.

5 **THE COURT:** It does, okay. Then I have to set
6 you aside on this case, okay. Just have a seat back
7 there for me, please, ma'am.

8 Ms. Geddings is juror number 91. She's set
9 aside on the trial of this case.

10 **BAILIFF:** 75, Your Honor.

11 **THE COURT:** Mr. Evans?

12 **JUROR:** Yes, sir.

13 **THE COURT:** What's your situation, please?

14 **JUROR:** I'm very prejudiced against the use of
15 crack.

16 **THE COURT:** That'll affect your ability to be a
17 fair and impartial juror in the case?

18 **JUROR:** Yes, sir.

19 **THE COURT:** I'll set you aside on this case.
20 Just have a seat back there, okay.

21 Mr. Evans is juror number 75. He's set aside
22 on this trial.

23 **BAILIFF:** 188, Your Honor.

24 **THE COURT:** Ms. Moseley?

25 **JUROR:** Yes.

1 **THE COURT:** What's your situation?

2 **JUROR:** I have a cousin that went to jail for
3 drug related offenses.

4 **THE COURT:** Was it in Lexington County?

5 **JUROR:** I believe so. It was either Lexington
6 or Richland, I'm not sure.

7 **THE COURT:** Okay. Anything about that that
8 affects your ability to be -- your relationship with
9 your cousin or anything about that experience that
10 affects your ability to be fair and impartial in
11 this case?

12 **JUROR:** No.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** No.

15 **THE COURT:** Thank you very much.

16 188, Ms. Moseley is eligible to serve.

17 (The bench conferences were concluded.)

18 **THE COURT:** Have any of you formed or expressed
19 any opinions about the case; if so, please stand?

20 (There was no response.)

21 **THE COURT:** Are any of you aware of any
22 interest, bias or prejudice that you might have for
23 or against the State, for or against the defendant,
24 for or against anyone or any entity in the case; if
25 so, please stand?

1 (There was no response.)

2 **THE COURT:** Can each of you give both the State
3 of South Carolina and the defendant a fair and
4 impartial trial? If you know of any reason why you
5 cannot, please stand now.

6 (There was no response.)

7 **THE COURT:** Further questions from the State?

8 **MR. ROSS:** No, Your Honor.

9 **THE COURT:** Defense?

10 **MR. CASTO:** No, sir, Your Honor.

11 **THE COURT:** Thank you very much. The strikes
12 are five and five.

13 Folks, you know the drill.

14 Madame Clerk, give us a jury.

15 **THE CLERK:** Yes, sir. Number 32, Christine
16 Burnette.

17 (Whereupon, Christine L. Burnette, a white
18 female, was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. ROSS:** Please present Ms. Burnette.

21 **THE CLERK:** What say you for the defense?

22 **MR. CASTO:** Please excuse Ms. Burnette from the
23 trial of this case.

24 **THE CLERK:** Return to your seat, please, ma'am.

25 73, Eric Eckstrom.

1 (Whereupon, Eric D. Eckstrom, a white male,
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. ROSS:** Please present Mr. Eckstrom.

5 **THE CLERK:** What say you for the defense?

6 **MR. CASTO:** Please seat Mr. Eckstrom.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 Number 1, Kevin Ackim.

9 (Whereupon, Kevin T. Ackim, Jr., a white
10 male, was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. ROSS:** Please present Mr. Ackim.

13 **THE CLERK:** What say you for the defense?

14 **MR. CASTO:** Please seat Mr. Ackim.

15 **THE CLERK:** Have a seat in the jury box, sir.
16 Number 6, Jimmy Amick.

17 (Whereupon, Jimmy L. Amick, a white male,
18 was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. ROSS:** Please present Mr. Amick.

21 **THE CLERK:** What say you for the defense?

22 **MR. CASTO:** Please seat Mr. Amick.

23 **THE CLERK:** Have a seat in the jury box, sir.
24 291, Patricia Wheeler.

25 (Whereupon, Patricia B. Wheeler, a white

1 female, was called forward.)

2 **THE CLERK:** What say you for the State?

3 **MR. ROSS:** Please present Ms. Wheeler.

4 **THE CLERK:** What say you for the defense?

5 **MR. CASTO:** I beg the Court's indulgence.

6 **THE COURT:** Sure.

7 (Pause.)

8 **MR. CASTO:** Please seat Ms. Wheeler.

9 **THE CLERK:** Have a seat in the jury box, ma'am.

10 Number 52, Cecil Curry.

11 (Whereupon, Cecil J. Curry, II, a black

12 male, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. ROSS:** Please present Mr. Curry.

15 **THE CLERK:** What say you for the defense?

16 **MR. CASTO:** Please seat Mr. Curry.

17 **THE CLERK:** Have a seat in the jury box, sir.

18 273, Debbie Teague.

19 (Whereupon, Debbie M. Teague, a white

20 female, was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. ROSS:** Please present Ms. Teague.

23 **THE CLERK:** What say you for the defense?

24 **MR. CASTO:** I beg the Court's indulgence.

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

1 (Pause.)

2 MR. CASTO: Please excuse Ms. Teague from the
3 trial of this case.

4 THE CLERK: Return to your seat, please, ma'am.
5 Number 110, Charlotte Hartung.

6 (Whereupon, Charlotte A. Hartung, a white
7 female, was called forward.)

8 THE CLERK: What say you for the State?

9 MR. ROSS: Please present Ms. Hartung.

10 THE CLERK: What say you for the defense?

11 MR. CASTO: Please seat Ms. Hartung.

12 THE CLERK: Have a seat in the jury box, ma'am.
13 251, Melissa Sinclair.

14 (Whereupon, Melissa R. Sinclair, a white
15 female, was called forward.)

16 THE CLERK: What say you for the State?

17 MR. ROSS: Please excuse Ms. Sinclair.

18 THE CLERK: Return to your seat, please, ma'am.
19 289, Melody Weeks.

20 (Whereupon, Melody M. Weeks, a white female,
21 was called forward.)

22 THE CLERK: What say you for the State?

23 MR. ROSS: Please present Ms. Weeks.

24 THE CLERK: What say you for the defense?

25 MR. CASTO: Please excuse Ms. Weeks from the

1 trial of this case.

2 **THE CLERK:** Return to your seat, please, ma'am.

3 234, Elizabeth Ross.

4 (Whereupon, Elizabeth N. Ross, a white
5 female, was called forward.)

6 **THE CLERK:** What say you for the State?

7 **MR. ROSS:** Please present Ms. Ross.

8 **THE CLERK:** What say you for the defense?

9 **MR. CASTO:** Please seat Ms. Ross.

10 **THE CLERK:** Have a seat in the jury box, ma'am.

11 24, Jody Britt.

12 (Whereupon, Jody S. Britt, a white female,
13 was called forward.)

14 **THE CLERK:** What say you for the State?

15 **MR. ROSS:** Please present Ms. Britt.

16 **THE CLERK:** What say you for the defense?

17 **MR. CASTO:** Please seat Ms. Britt.

18 **THE CLERK:** Have a seat in the jury box, ma'am.

19 150, Christine Lee.

20 (Whereupon, Christine M. Lee, a white
21 female, was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. CASTO:** Please excuse Ms. Lee.

24 **THE CLERK:** Return to your seat, please, ma'am.

25 Number 5, Slate Alligood.

1 (Whereupon, Slate T. Alligood, a white male,
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. ROSS:** Please excuse Mr. Alligood.

5 **THE CLERK:** Return to your seat, please, sir.
6 84, Richard Fraser.

7 (Whereupon, Richard B. Fraser, a white male,
8 was called forward.)

9 **THE CLERK:** What say you for the State?

10 **MR. ROSS:** Please present Mr. Fraser.

11 **THE CLERK:** What say you for the defense?

12 **MR. CASTO:** Please seat Mr. Fraser.

13 **THE CLERK:** Have a seat in the jury box, sir.
14 Number 143, Laura Kotti.

15 (Whereupon, Laura G. Kotti, a white female,
16 was called forward.)

17 **THE CLERK:** What say you for the State?

18 **MR. ROSS:** Please present Ms. Kotti.

19 **THE CLERK:** What say you for the defense?

20 **MR. CASTO:** Beg the Court's indulgence.

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

22 (Pause.)

23 **MR. CASTO:** Please seat the juror.

24 **THE CLERK:** Have a seat in the jury box.
25 Number 290, Roy Wellborn.

1 (Whereupon, Roy T. Wellborn, a white male,
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. ROSS:** Please present Mr. Wellborn.

5 **THE CLERK:** What say you for the defense?

6 **MR. CASTO:** Please seat Mr. Wellborn.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 Number 43, Monique Cook.

9 (Whereupon, Monique L. Cook, a black female,
10 was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. ROSS:** Please present Ms. Cook.

13 **THE CLERK:** What say you for the defense?

14 **MR. CASTO:** Please seat Ms. Cook.

15 **THE CLERK:** Have a seat in the jury box, ma'am.
16 Alternate, Your Honor?

17 **THE COURT:** Draw one alternate. Strikes are
18 one for the State, two for the defense.

19 **THE CLERK:** Number 146, Melinda Kuntz.

20 (Whereupon, Melinda S. Kuntz, a white
21 female, was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. ROSS:** Please present Ms. Kuntz.

24 **THE CLERK:** What say you for the defense?

25 **MR. CASTO:** Please seat Ms. Kuntz.

1 **THE CLERK:** Have a seat in the jury box, ma'am.
2 That's the alternate, Your Honor.

3 **THE COURT:** Are there any matters to take up,
4 including composition of the panel prior to the jury
5 being sworn, from the State?

6 **MR. ROSS:** No, Your Honor.

7 **THE COURT:** From the defense?

8 **MR. CASTO:** No Your Honor.

9 **THE COURT:** All right. Thank you.
10 Let me see the attorneys up here, please.

11 (Whereupon, a bench conference was held off
12 the record, in the presence of the jury, but out of
13 the hearing of the jury.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 what's going to happen is that I'm going to excuse
16 you in just a few moments for the rest of the day
17 and I need you to call in. And what I'm going to
18 try to do is to dovetail these cases one behind the
19 other. So when I finish the other case and give it
20 to the jury, I'm hoping that I can bring you all in,
21 maybe they'll be deliberating while you're starting.

22 Your case also is expected to take about a day
23 and a half. And at some point in the week, we will
24 run into some time constraints depending on how long
25 the first case goes, so it is possible I'd have to

1 skip over to the third case, which is supposed to be
2 shorter. I don't plan to do that. What I plan to
3 do is have you come in right behind the other case.

4 Now, the way you're going to know when I need
5 you up here is by calling in and you're going to be
6 identified as jury panel number two. So listen for
7 that message and call tonight after 6:00 and follow
8 the instructions. Now, I guess they have some of
9 this stuff online -- or go online and follow the
10 instructions, whatever they do now, but most people
11 call.

12 Over the years, I have had problems when I try
13 to tell jurors what I think is likely to happen and
14 they take that as the gospel and they quit listening
15 to me and they don't call in. You have to call in.
16 If I knew what to tell you, I'd do exactly what I
17 did with the first jury, I'd tell you to be here at
18 a certain time tomorrow.

19 Now, you have to call in. My best guess, and
20 that's all it is is a guess, my best guess is that
21 you will not be coming in tomorrow and that we'll
22 probably bring you in some time Wednesday or
23 Thursday.

24 Now, if you call in tonight and the message
25 tells you that we don't need you tomorrow and you

1 otherwise can go to work, you need to do that. Now,
2 if your boss needs to know before six o'clock
3 roughly tonight, you know, you stay and talk to me.

4 If you work a third-shift job or you're a
5 long-distance truck driver or something like that,
6 you can stay and talk to me and I'll tell you how we
7 normally deal with folks who have those positions.
8 But I don't want you to work a third-shift job and
9 then come in here to try to sit all day to hear a
10 case. It doesn't -- we don't get good results with
11 that.

12 Now, I have to give you the same instructions I
13 gave that other jury. I know you've heard them, but
14 I have to give them to you: Don't discuss this case
15 among yourselves until I tell you to, don't talk
16 about the people involved, the type of case it is,
17 anything about the case. Don't talk about the case
18 with any family members, friends or anybody else
19 until the week is over and you've been discharged
20 from jury duty. You may tell a family member, a
21 friend, an employer that you're on a jury, but you
22 cannot tell them anything about the case or who's in
23 it.

24 Do not do any independent investigation on the
25 case. You heard me read that to the jury. So don't

1 go on the Internet and look up law, don't go out and
2 try to look around, don't do any word searches,
3 don't do any independent investigation.

4 If there's any media coverage of the trial, get
5 away from it. Report to me what you saw, heard or
6 read through the media. If anybody attempts to
7 contact you and discuss the case with you, report
8 that to me so that I can deal with it.

9 Now, if you have some true emergency that
10 arises that prevents you from being here, please
11 have someone call the Clerk's office and tell us
12 because I cannot do anything until I account for all
13 of you.

14 All right. Now, when you leave, I'm going to
15 have the bailiff show you where to report. When you
16 come back, I don't know if you'll be going back to
17 this jury room or one on the third floor to start
18 with. We only have one up here and one down there,
19 but you report to the same place, report to these
20 glass doors out here, and call tonight after 6:00,
21 follow the instructions for jury panel number two.
22 If I had to guess right now, it will be that it's
23 going to tell you to call in tomorrow night after
24 6:00.

25 Any questions before I let you go?

1 (There was no response.)

2 **THE COURT:** Okay. Then, folks, if you'll
3 follow the bailiff, please.

4 (The jury was excused for the day.)

5 **THE COURT:** All right. As I was starting to
6 say a moment ago, I realize it's past most of your
7 normal lunch break, but if you let me draw, based on
8 what's happened downstairs and what's happening
9 here, we have one other potential trial, I don't
10 know if we'll have time to reach it or not, I can
11 narrow this pool down to 35 people and I can let the
12 rest of you go for the week and then I'll keep the
13 35 on a telephone call-in system. So some of you
14 will be through for the week.

15 Is the next case -- so that's why we're doing
16 this. That's why we're making your stomach's growl,
17 if you're like me and your stomach's growling.

18 (Pause.)

19 **THE COURT:** Let me talk to y'all a second
20 before you let him go.

21 (Whereupon, the following bench conference
22 was held on the record with defendants, Raheem
23 Bonham and Frankie Muller, in the presence of the
24 jury venire, but out of the hearing of the jury
25 venire.)

1 **THE COURT:** Guys, I have to make decisions
2 about whether we let you stay out on bond or whether
3 we take you into custody. I'm going to let y'all
4 stay out right now.

5 You have to be back at 2:30 or if the lawyers
6 say be here sooner, be here sooner.

7 **DEFENDANT MULLER:** Yes, sir.

8 **THE COURT:** And you have to stay in touch with
9 your lawyer. Be back whenever he tells you, okay.

10 **DEFENDANT BONHAM:** Okay.

11 **THE COURT:** Now, if you're not here, I've drawn
12 a jury and I plan to go forward with your trials
13 whether you're here or not. Do you understand that,
14 sir?

15 **DEFENDANT MULLER:** Yes, sir.

16 **THE COURT:** Do you?

17 **DEFENDANT BONHAM:** Yes, sir.

18 **DEFENDANT MULLER:** We'll be here.

19 **THE COURT:** I have to put this stuff on the
20 record. If I didn't think you'd be here, you'd be
21 sitting in handcuffs right now, all right. Thank
22 you.

23 (The bench conference was concluded.)

24 (Whereupon, the clerk called the names of
25 jurors for the third trial.)

1 **THE COURT:** If you were not one of the 35 names
2 called, you are through with jury duty. You don't
3 have to call in, you don't have to come back. You
4 have an exemption for 2013, '14 and '15 for jury
5 duty at this level of court. They will mail to you
6 your Happy Meal money check. You'll get it in about
7 ten days from the end of the term. The end of the
8 term is Friday. Inside the envelope, there'll be a
9 certificate certifying the days you were up here.
10 If your boss won't wait that length of time for you
11 to give them the slip, check with the clerk's
12 office, they'll be happy to give you one, but most
13 employers are fine waiting.

14 Hopefully, none of you have in your head any
15 idea that you can take the rest of the week off and
16 get a certificate serving -- indicating that you
17 served this week. I have had that happen a couple
18 of times. If anybody tries to put that bug in your
19 ear, it won't work because if your name was not
20 called, you're through and I can't do anything to
21 you anymore, all right.

22 Yes, ma'am.

23 **JUROR:** What if you want to serve? Can I
24 switch with someone?

25 **THE COURT:** It has to be -- it's a good

1 question. It has to be completely random. It
2 cannot be just the folks that really wants to serve.

3 In McCormick County, I know it's late, I'll
4 shut up in a minute, McCormick County, we usually
5 have a big retirement community over there and we
6 used to have a whole lot of trouble getting jurors,
7 but now we've got a bunch of people that are well
8 over 65 and they don't ever ask to get off the jury.
9 Seriously. One of my biggest shocks in my life was
10 when I became a judge and realized that a lot of
11 people really want to serve and get upset when they
12 don't get the chance. But it has to be completely
13 random.

14 All right. The folks whose names were not
15 called, you're free to go. I need you to leave as
16 quickly as you can before we change our minds, okay.
17 Thank you.

18 (The remaining jury venire was excused.)

19 **THE CLERK:** These are the balance of the panel.

20 **THE COURT:** All right. Ladies and gentlemen,
21 you were explained the call-in system this morning.
22 And what I need you to do is to call that number on
23 that card tonight or if you use the Internet,
24 whatever they explained to you about that, and
25 follow the instructions for the balance of the panel

1 that's not selected on the jury. That's what you
2 are, you're the balance of the panel.

3 As soon as I see that I cannot get to you, in
4 other words, if I see the time's going to run out or
5 we're not going to reach a third case, I will tell
6 the clerk to put on the machine to turn you loose.
7 But I cannot turn you loose until then.

8 If you have any questions or you work a
9 third-shift job or anything like that, you stay and
10 talk to me if you like, but otherwise I just need
11 you to call tonight after 6:00 and follow the
12 instructions for the balance of the panel not
13 selected on the jury, all right.

14 If I do not see you again, thank you very much
15 for your service. I really do appreciate it. And
16 I'll shut up so you can go eat. Thank you.

17 Courts in recess until 2:30.

18 (The jury for the third trial was excused.)

19 (The proceedings were concluded for June 3,
20 2013.)

21 (The following proceedings were held on June
22 5, 2013.)

23 (State's Exhibit Numbers 1 through 12 were
24 marked for identification.)

25 **THE COURT:** All right. Mr. Bonham is present.

1 And my understanding is that we have some pretrial
2 issues to address.

3 MR. ROSS: Yes, Your Honor, that's correct.

4 THE COURT: All right. What do y'all have?

5 MR. ROSS: Your Honor, the State has a Denno
6 hearing, and I believe Mr. Casto has a motion to
7 suppress the -- not only the statements as part of
8 the Denno hearing, but also the evidence seized in
9 this case, the drugs themselves.

10 MR. CASTO: That's correct, Your Honor.

11 MR. ROSS: I believe the witnesses will be the
12 same for both issues. We could probably cover them
13 in one rather than having, I guess, two separate
14 hearings, calling the same officers, and we can
15 cover both of those issues. But with regard to the
16 defendant's motion to suppress, we would ask under
17 Patton that grounds for that motion be given by the
18 defense.

19 THE COURT: What's the basis for the motion to
20 suppress?

21 MR. CASTO: Basically, Your Honor, that this
22 was an unlawful stop and seizure, and it violates
23 the Fourth Amendment to the Constitution as a bad
24 stop and seizure and the drugs were found as a
25 result of it, and we move to suppress. And I

1 believe the burden's on the State to present
2 testimony.

3 **THE COURT:** Is it okay with you if they cover
4 everything in one with the witnesses at the same
5 time, both issues, the Denno issue and the motion to
6 suppress that you have?

7 **MR. CASTO:** Yes, sir, Your Honor.

8 **THE COURT:** All right. Call your witness.

9 **MR. ROSS:** Thank you, Your Honor. The State
10 calls Deputy Nick Burt to the stand.

11 **THE COURT:** Come up to the clerk, please.

12 NICHOLAS EDWARD BURT,
13 having been duly sworn, testified as follows:

14 **THE CLERK:** Once you're seated, state your full
15 name, spelling your last on the record, please.

16 **THE WITNESS:** Deputy Nicholas Edward Burt,
17 B-u-r-t.

18 DIRECT EXAMINATION

19 BY MR. ROSS:

20 **Q** And, Deputy Burt, if you could, please lower
21 the microphone.

22 **A** (Witness complies.)

23 **Q** Deputy Burt, you were the arresting officer in
24 this case; is that correct?

25 **A** Yes.

1 **Q** Can you tell the Judge how you came to arrest
2 Mr. Bonham? Tell me what happened on August 10th,
3 2012. What were you doing, why were you there and
4 why did Mr. Bonham come to be arrested by you?

5 **A** I was part of a crime suppression task force
6 with Sergeant Finch and Captain Thomas. We were
7 stationed at Holland Street and Sumter Street with
8 our lights turned off doing surveillance on a house
9 that, to us, had been known as a drug sale point,
10 ■■■■ Sumter Street.

11 **Q** ■■■■ Sumter Street, is that in Lexington County?

12 **A** Yes, it is.

13 **Q** You said it was known to be a drug house. Can
14 you elaborate on that, how it was known to be a drug
15 house?

16 **A** When I first started with the sheriff's
17 department, my previous master deputy had made a
18 possession with intent to distribute marijuana from
19 that address, as well as we received numerous
20 complaints from neighbors and through CAD history,
21 which is our computer-aided dispatch, of calls for
22 suspicious activity for drug sales at that house.

23 **Q** Okay. So your master deputy made a case and it
24 was at the same house you were surveilling?

25 **A** Correct.

1 Q And that was at [REDACTED] Sumter Street?

2 A Correct.

3 Q And in addition to that PWID marijuana case
4 that was made at the house, you said there were
5 some -- a neighbor had complained; is that correct?

6 A Yes. That was given through {sic} us through
7 the resident deputy, David Nieves.

8 Q Okay. And when was that complaint made?

9 A I believe it began in January of 2012 up until
10 June 2012.

11 Q And it was a neighbor of [REDACTED] Sumter Street?

12 A Correct.

13 Q Okay. Did that neighbor remain anonymous or
14 did Deputy Nieves know who he was?

15 A Deputy Nieves knew who he was.

16 Q And Deputy Nieves passed that on to you and the
17 members of your team; is that correct?

18 A Through Sergeant Finch and then through the
19 rest of the team.

20 Q Okay. Is Sergeant Finch in the courtroom
21 today?

22 A Yes, he is.

23 Q Is he your direct supervisor?

24 A At the time of this incident, he was.

25 Q Okay. You also said there were some CAD

1 reports. Tell me what is a CAD report?

2 **A** Any time anybody calls the sheriff's department
3 to the communication center for a call for service,
4 it's entered into the computer. It's our
5 computer-aided dispatch which goes out to the units
6 on the road and a record is kept.

7 **Q** Okay. And prior to August 10th, 2012, did you
8 have an awareness of all of these reports being made
9 and filed as CAD reports?

10 **A** Yes, I did.

11 **Q** Did you bring those CAD reports with you today?

12 **A** Yes, I did.

13 **Q** May I see them, please?

14 **A** (Witness complies.)

15 **MR. ROSS:** Your Honor, I have several documents
16 that Deputy Burt has handed me. I'd like to make
17 all of these one court exhibit.

18 **THE COURT:** Have you seen them?

19 **MR. CASTO:** No, sir.

20 (Pause.)

21 **MR. CASTO:** I've reviewed these, Your Honor.
22 We feel that obviously that they would be hearsay,
23 but for purposes of this hearing, we certainly
24 understand the limitation on those rules under 1101
25 of the Rules of Evidence, Judge.

1 **THE COURT:** Mark them as a Court's Exhibit,
2 please.

3 (Court's Exhibit Number 1, CAD reports,
4 marked for identification.)

5 BY MR. ROSS:

6 **Q** Deputy Burt, I'm handing you Court's Exhibit
7 Number 1. Are these the CAD reports you had
8 testified to earlier?

9 **A** Yes.

10 **Q** And these reports -- in cop lingo, how was this
11 -- how were these complaints identified?

12 **A** The majority of them are signal ten, which is
13 our code for drug related issues. A few came in as
14 suspicious vehicles, but in the notes, it referred
15 to possible drug activity.

16 **Q** Okay. And how many -- roughly, how many
17 complaints were made regarding 638 Sumter Street?

18 **A** Approximately, I believe there's eight or nine
19 here.

20 **Q** Okay. And you obtained these CAD reports in
21 preparation for this case and this trial today,
22 correct?

23 **A** Yes.

24 **Q** But you had a general understanding that these
25 complaints were made prior to August 10th, 2012,

1 right?

2 A Yes.

3 Q Had you personally made any arrests for drugs
4 relating to [REDACTED] Sumter Street?

5 A Yes.

6 Q And when was that?

7 A That would have been on July 28th, 2012.

8 Q And tell me about that arrest.

9 A It was about 11:30 p.m., I was in the same
10 area, Holland Street across from Sumter Street.
11 There were other units circulating and observed a
12 car leave that residence. A probable cause for the
13 stop was it had no rear working tag light or
14 taillights.

15 Q Did you make the stop or did --

16 A Yes, I did make the stop as it pulled out back
17 onto Holland Street.

18 Q Okay.

19 A The driver and the passenger were removed from
20 the car, had an odor of marijuana, and there was
21 marijuana found on the driver's side door.

22 Q Okay. And that car was seen -- the car with
23 the marijuana was seen directly leaving 638 Sumter
24 Street?

25 A Yes.

1 **Q** Now, let's fast forward to August 10th, 2012.
2 I'm going to show you and the Judge State's Number
3 1, which has previously been shown to Mr. Casto. If
4 you could, please tell me where were you and the
5 other two officers positioned in reference to
6 State's Number 1.

7 **A** At the large industrial building at Holland
8 Street directly across from Sumter Street.

9 **Q** Right over here where my laser pointer is?

10 **A** Yes.

11 **Q** And am I pointing to 638 Sumter Street here
12 with my laser pointer?

13 **A** Yes.

14 **Q** So you, Captain Thomas and Sergeant Finch were
15 here and y'all were looking in this direction
16 (indicating)?

17 **A** Yes.

18 **Q** And what did you see when y'all were sitting
19 right here?

20 **A** We could see the entire street. There were
21 street lights. And on this specific case, the
22 vehicle had come in front of us, took a left and
23 pulled to ■■■ Sumter Street.

24 **Q** So he came from Holland this way and took a
25 left?

1 A Yes.

2 Q And when he passed you sitting, you, Captain
3 Thomas and Sergeant Finch, in this area, how far
4 away from the vehicle were you?

5 A Fifteen to 20 feet.

6 Q And then it took a left up this way
7 (indicating)?

8 A Yes.

9 Q Now, from here to here, approximately how far
10 is that from where you were sitting in surveillance
11 to [REDACTED] Sumter?

12 A It's less than a quarter of a mile. It's not
13 very far.

14 Q Now, were y'all using your binoculars to
15 surveil this?

16 A I didn't have binoculars.

17 Q Okay. And what could you see as that white Kia
18 Rio pulled into [REDACTED] Sumter Street?

19 A It pulled into the driveway and I could see the
20 back third of the car. So as it would -- it pulled
21 up in, I could see the taillights just up and to the
22 back door.

23 Q Okay. Could you see any of the occupants in
24 that vehicle?

25 A No.

1 Q Did the taillights ever turn off?

2 A No. They remained lit the entire time.

3 Q Okay. Could you see anybody come out to the
4 car from where you were positioned?

5 A No.

6 Q Could you see anybody leave the car from where
7 you were positioned?

8 A No.

9 Q How long did the car stay there?

10 A Just under two minutes. I noted the time as
11 soon as it pulled in the driveway to when it backed
12 back out.

13 Q And how did you know that it was less than two
14 minutes?

15 A As soon as it pulled in, I made a reference of
16 looking at the clock in my patrol car.

17 Q And is that what you're trained to do when
18 you're surveilling a house, to time how long a car
19 is in the driveway?

20 A Yes, through training, that type of scenario
21 would be consistent with a drug sale or buy.

22 Q Okay. How is that consistent with a drug sale
23 for a car to be there less than two minutes?

24 A It would be unusual for someone to be just
25 pulling in and pulling back out from a house with no

1 other cause to be there.

2 Q Okay. What time of night was it?

3 A It was right at 9:45 p.m.

4 Q And in addition to all the CAD reports, the
5 arrest that you made and the arrest that your master
6 deputy made -- generally speaking, what type of area
7 is this from, say, Sumter all the way over here to
8 Ross Street, North Brown Street?

9 A It's a lower to middle income with a higher
10 crime rate.

11 Q Okay. Now, on Sumter Street itself, are there
12 any lamps or lighting devices to assist in seeing
13 after dark?

14 A Yes. I believe there's two on the, looking at
15 that, the right-hand side of the road.

16 Q Okay. Would you say it's a fair statement to
17 say that Sumter Street is well lit?

18 A Yes.

19 Q Okay. So the car takes a left off to Holland,
20 pulls on Sumter. How were you for sure that it
21 pulled into [REDACTED] Sumter Street as opposed to this
22 house right beside it?

23 A I'm very familiar with the area and been
24 watching the house for quite some time. From where
25 I was sitting, that's where the car pulled into.

1 Q Okay. And after it left less than two minutes
2 later, what direction did it take?

3 A It backed out and then continued down Sumter
4 Street and made a right on Joye.

5 Q So it came out this way and up and around?

6 A Correct.

7 Q And what did you and what did the other
8 officers do at that point?

9 A Myself and Captain Thomas pulled onto Holland
10 Street and knowing that Joye Street dead ends on
11 North Brown --

12 Q Right here?

13 A Yes. We went down Holland Street and then made
14 a left on North Brown to try to intercept the
15 vehicle.

16 Q Were you and Captain Thomas in separate
17 vehicles?

18 A Yes.

19 Q So y'all were here and y'all pursued, as the
20 white Kia went this way, y'all pursued parallel down
21 this street (indicating); is that correct?

22 A Correct.

23 Q And when you came up to the intersection of
24 Holland and North Brown, did you take a left?

25 A Yes.

1 Q And what happened then?

2 A As I was coming up on Ross Street and North
3 Brown Street, that vehicle was pulling up into the
4 side driveway.

5 Q Now, how do you know it was that vehicle?

6 A It was the exact same white Kia we'd just seen,
7 less than 30 seconds had gone by.

8 Q Okay. Was there any other traffic going on in
9 this area?

10 A No.

11 Q Was there any other traffic coming and going on
12 North Brown Street?

13 A Not at that time.

14 Q Were you the lead vehicle or was Captain Thomas
15 the lead vehicle as you pursued down on Holland?

16 A I was the lead vehicle.

17 Q Okay. And you said Sergeant Finch was also
18 there?

19 A Yes.

20 Q How did he pursue this vehicle?

21 A He went straight down Sumter Street.

22 Q So he went this way and followed from behind?

23 A Yes.

24 Q When you saw that white Kia Rio, had the car
25 come to a stop yet?

1 **A** No. It was still rolling on North Brown
2 Street.

3 **Q** Okay. And where did it come to a stop?

4 **A** At [REDACTED] Ross Street at that corner house at
5 Ross and North Brown.

6 **Q** This house right in here (indicating)?

7 **A** Yes.

8 **Q** Okay. What did you do as you passed that
9 vehicle?

10 **A** As I went around, I did a U-turn on North Brown
11 to come up behind the vehicle and called out the
12 license plate.

13 **Q** Okay. Did you see the occupants get out of the
14 vehicle?

15 **A** As I was turning around, they were beginning to
16 all get out.

17 **Q** Okay. And how many people were in the car?

18 **A** Three.

19 **Q** Can you please give me their physical
20 descriptions as they were getting out of the car?

21 **A** The driver was a black female, the back
22 passenger on the driver's side was also a black
23 female, and the passenger side was a black male.

24 **Q** So you had two females in the car, one was
25 driving and one was sitting right behind the driver?

1 A Yes.

2 Q And you had a male riding shotgun; is that
3 correct?

4 A Yes.

5 Q And is that male Raheem Bonham?

6 A Yes.

7 Q What happened as you saw them getting out --
8 after you did your U-turn, you saw them get out of
9 the car, what did you do next?

10 A I called out the license plate. I got out of
11 my vehicle and approached towards the driver. The
12 passenger went around towards the front of the car.
13 And there was a large crowd gathered at that address
14 that appeared to be trying to walk towards...

15 Q How large was the crowd?

16 A Ten to 15 people.

17 Q What did you do next?

18 A I made contact with the driver and obtained her
19 driver's license, which was also run and came back
20 suspended.

21 Q Okay. Where were the other officers at this
22 point? You were focused on the driver. Were the
23 other officers focused on the other occupants?

24 A Yes. Captain Thomas had stopped beside the
25 vehicle at first and then was back in front of it,

1 and he had made contact with the defendant.

2 Q Okay. When you made contact with the driver,
3 you ran her driver's license?

4 A Yes.

5 Q Did you run the tag of the vehicle?

6 A Yes, before I even got out.

7 Q Okay. Did that vehicle come back reported
8 stolen?

9 A No, it did not.

10 Q Did the driver still have the keys to the
11 vehicle when you made contact with her?

12 A Yes.

13 Q And what did you advise the driver of when you
14 made contact with her? What did you tell her the
15 reason why you had approached her?

16 A That we had seen her leaving Sumter Street and
17 that we were on a suppression team.

18 Q Okay. Now, tell me what is a suppression team?

19 A It's a group that was put together to target
20 reported crimes or things, such as, we're having a
21 rash of auto break-ins or drug activity to where
22 we're in marked patrol cars doing aggressive patrols
23 trying to make a difference.

24 Q Okay. So as y'all are sitting in your -- on
25 those vehicles, these are all marked patrol

1 vehicles?

2 A Yes.

3 Q And you are wearing your police uniform?

4 A I had a -- police pants and a tac vest that had
5 Sheriff written on it in numerous places.

6 Q Okay. How did the driver respond after you
7 identified yourself and what you were doing there?

8 A She became very nervous. And when I asked her
9 if she knew her driver's license was suspended, she
10 became nervous.

11 Q Okay. What happened next?

12 A I asked her -- she started saying, I live close
13 by. I can get somebody to come get the vehicle. I
14 told her, We'd get to that in a minute; if she knew
15 anything was illegal in the car? In which she said,
16 No. And then I asked for consent to search the
17 vehicle, which she gave.

18 Q Okay. When you asked for consent to search the
19 vehicle, how did you phrase that? Did you limit it
20 to any particular area in the vehicle?

21 A No. I just asked if we could search inside the
22 vehicle.

23 Q Okay. And how did she respond?

24 A She looked kind of surprised, just like, No,
25 nothing's in there.

1 Q Okay. Did she give you consent to search the
2 vehicle?

3 A Yes, she did.

4 Q How did she do that?

5 A She just said, Yes, you can search.

6 Q Did she place any limits on where you could go?

7 A No, she didn't.

8 Q Did she tell you you couldn't go in the trunk?

9 A No, she didn't.

10 Q Did she say you can't go in the glove
11 compartment?

12 A No.

13 Q Did she ever say you can't search underneath
14 the passenger seat?

15 A No.

16 Q How long had elapsed from the point you first
17 made contact with the driver to the point she gave
18 consent to search?

19 A At the most, five minutes.

20 Q And you would say that's a conservative
21 estimate? Could it have been less than five
22 minutes?

23 A It could have been less.

24 Q What happened after she gave consent to search?

25 A She was -- remained at the back of the vehicle.

1 I went to the driver's side, and Captain Thomas came
2 to the passenger side and he alerted me that he had
3 observed a bag up underneath the passenger seat.

4 Q Okay. And what did you do?

5 A I went around to see the bag as well and
6 observed two yellowish, white rocks believed to be
7 crack cocaine. I then went back to my patrol
8 vehicle and got my camera.

9 Q Okay. And while you were speaking with the
10 driver and, subsequently, while you were searching
11 the vehicle, where was the defendant?

12 A Sergeant Finch had arrived on the scene and was
13 with him at that time.

14 Q Let me take one quick step back before we get
15 to the search and subsequent statements. After you
16 left Holland Street when you saw the car coming out
17 of 638 Sumter, how long did it take you to go from
18 this point (indicating) to actually pass that same
19 vehicle as it was coming to a stop? How long did
20 that take you?

21 A Thirty to 45 seconds.

22 Q Okay. So you find the bag. You said you got
23 your camera to document what was found?

24 A Yes.

25 Q Okay. What happened next?

1 **A** I took photographs of where it was located in
2 the vehicle and then seized it.

3 **Q** Specifically, where was it located?

4 **A** It was underneath the passenger seat towards,
5 if you're sitting in the seat, on the left-hand side
6 just underneath the seat.

7 **Q** And did you handle that bag prior to taking
8 photos of it?

9 **A** No.

10 **Q** Did Captain Thomas handle the bag prior to
11 taking photos?

12 **A** No.

13 **Q** Was Mr. Bonham under arrest at the time y'all
14 were searching that vehicle?

15 **A** No, he was not.

16 **Q** Was anyone under arrest?

17 **A** No.

18 **Q** Are you familiar with the term investigative
19 detention?

20 **A** Yes.

21 **Q** What does that term mean?

22 **A** That's when someone is -- can be placed into
23 cuffs or not, but they're not free to go at that
24 time while we're investigating whether a crime has
25 been committed.

1 Q Okay. Who placed Mr. Bonham -- was Mr. Bonham
2 ultimately arrested for this case?

3 A Yes, he was.

4 Q Okay. And did Sergeant Finch do that?

5 A Yes, he did.

6 Q Were you focused on any statements between
7 Mr. Bonham and Sergeant Finch at that time?

8 A No, I was not.

9 Q Okay. Who is the owner of the vehicle?

10 A It is a rental agency, U-Save Car and Truck
11 Rental.

12 Q And how do you know that?

13 A That's what the registration came back to
14 through dispatch, as well as what was in the glove
15 compartment.

16 Q Okay. And you found what was in the glove
17 compartment after a consent to search was given,
18 correct?

19 A Yes.

20 Q Was that vehicle reported stolen at all?

21 A No.

22 Q Is it uncommon for you -- let me take a step
23 back. On that rental agreement, did you keep a copy
24 of that for your records?

25 A I did.

1 Q And did you bring that to court with you today?

2 A I did.

3 Q Who was the person listed on that rental
4 agreement?

5 A Sylvia Haynes.

6 Q Is it uncommon for somebody to -- you, as a
7 police officer in your experience, is it uncommon
8 for you to find somebody driving a vehicle, a rental
9 car, who is not listed on the rental agreement?

10 A In that area, no.

11 Q And can you elaborate on that, please?

12 A We'd been working another case where drugs had
13 been found in a car from the same rental agency
14 where the person who was in control of the car was
15 not on the rental agreement.

16 Q Okay. Did you have any indication that the
17 driver of the vehicle could not give consent to
18 search it, that she was not in lawful possession of
19 the vehicle?

20 A No, not at that time.

21 Q Was the defendant on that rental agreement?

22 A No, he was not.

23 Q Was he ever -- is he connected to or is he the
24 owner of the vehicle in any way?

25 A Not based on the registration.

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1 **MR. ROSS:** That's all the questions I have. If
2 you would, please answer any questions that
3 Mr. Casto has for you.

4 CROSS-EXAMINATION

5 BY MR. CASTO:

6 **Q** Good morning, Officer. How are you?

7 **A** Good.

8 **Q** Just a few questions just to make sure that I
9 get it right that you were doing a patrol in that
10 area; is that right?

11 **A** Yes.

12 **Q** And y'all were parked at that, that parking lot
13 that was down Sumter Street; isn't that correct?

14 **A** It's actually on Holland Street.

15 **Q** Yes. I'm sorry. Kind of the corner of Holland
16 Street right there, but you can see way down Sumter
17 Street; is that right?

18 **A** You can see down the entire street, yes.

19 **Q** And I think that, per your police report,
20 you've already said that -- it says, then you pull
21 in to a property which appeared to be [REDACTED] Sumter
22 Street; is that right?

23 **A** Yes.

24 **Q** The vehicle pulls in and you just see the
25 taillights; is that right?

1 **A** You can see like the back third of the car,
2 from about the back door to the taillights.

3 **Q** And as you just said, you couldn't see anybody
4 in that vehicle get out, right?

5 **A** No.

6 **Q** Or anybody from the house approach the vehicle,
7 right?

8 **A** Correct.

9 **Q** Then it stays, from what you guestimate, is
10 approximately two minutes, correct?

11 **A** Yes.

12 **Q** And then I think that, as I understand and
13 based on what you pointed out, that the vehicle
14 pulls off and goes onto Joye Street, but you kind of
15 go around the block the other way; is that right?

16 **A** Yes.

17 **Q** And as you said, and that purpose was to
18 intercept this vehicle as you said?

19 **A** Yes.

20 **Q** Okay. Now, you're in your own patrol car;
21 isn't that right?

22 **A** Yes.

23 **Q** Officer Thomas, as you said, was there too and
24 he's in his patrol car?

25 **A** Yes.

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1 Q Believe you're joined by Officer Finch and he's
2 in his patrol car?

3 A Yes.

4 Q And all three of y'all do the same thing and
5 essentially pull off at that time for the purpose of
6 -- to intercept the vehicle; isn't that right?

7 A Myself and Captain Thomas went to intercept;
8 Sergeant Finch continued down Sumter.

9 Q Yes, sir. As I understand it, your -- per your
10 police report, it's you and Officer Thomas that
11 approach the vehicle together?

12 A Yes.

13 Q And I believe that -- that at that portion, you
14 just stop and question the occupants of the vehicle;
15 is that right?

16 A Once we made contact with the car, yes.

17 Q Okay. And like you said, at that point, nobody
18 was under arrest, right?

19 A No.

20 Q But Officer Finch you said is also standing
21 with the defendant, right?

22 A At a later point, he had come up.

23 Q Okay. Yeah, once he joined y'all?

24 A Yes.

25 MR. CASTO: I beg the Court's indulgence.

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

2 (Pause.)

3 **MR. CASTO:** That's all the questions that I
4 have for Officer Burt.

5 **THE COURT:** Thank you.

6 Redirect.

7 **MR. ROSS:** Yes, Your Honor, just a couple
8 questions.

9 REDIRECT EXAMINATION

10 BY MR. ROSS:

11 **Q** What was the defendant's demeanor like during
12 this chain of events?

13 **A** After Captain Thomas alerted to the bag of
14 drugs and I was coming around to take photographs, I
15 heard him get very confrontational with Sergeant
16 Finch.

17 **Q** Okay. Can you -- you said you heard him get
18 confrontational. Can you remember what you heard?

19 **A** Specifically, not off the top of my head, but
20 it was almost to the point of wanting to fight with
21 him. What he had specifically said, I can't recall.

22 **Q** And that crowd of -- you said there was a crowd
23 of people nearby?

24 **A** Yes.

25 **Q** What was their demeanor like?

1 **A** They were all being rambunctious as well.

2 **Q** All of them?

3 **A** The majority of them. And it was a lot of
4 stuff going on at that time, but there was a lot
5 from both sides.

6 **Q** So tell me what's going on in your head. An
7 officer in that position, you have that crowd and
8 you have that defendant making threats to Sergeant
9 Finch, what's going on in your head? What is it
10 like to walk in those shoes?

11 **A** Dealing with that kind of area with drugs and
12 that situation, you never know what's going to
13 happen between the crowd in front of you, behind you
14 and with the defendant and Sergeant Finch.

15 **MR. ROSS:** Thank you, Deputy Burt.

16 **THE COURT:** Recross.

17 **MR. CASTO:** No, sir, Your Honor.

18 **THE COURT:** Thank you, sir. You may step down.
19 Call your next witness.

20 **MR. ROSS:** State calls Sergeant Finch to the
21 stand.

22 **THE COURT:** Come up to the clerk, please.

23 JOHN WILLIAM FINCH,
24 having been duly sworn, testified as follows:

25 **THE COURT:** Once you're seated, state your full

1 name, spelling your last on the record, please.

2 **THE WITNESS:** Sergeant John William Finch,
3 F-i-n-c-h.

4 DIRECT EXAMINATION

5 BY MR. ROSS:

6 **Q** Sergeant Finch, you were a backup officer in
7 this case; is that correct?

8 **A** Yes, sir, I was.

9 **Q** Before you tell the Judge what you did leading
10 up to this arrest, can you tell him briefly about
11 your law enforcement experience, please?

12 **A** Been in law enforcement about 21 and a half
13 years, started with the Richland County Sheriff's
14 Department, did about five there, been with
15 Lexington County the rest of that time. I've been a
16 supervisor now for 12 years in the north region of
17 the county, which consists of this area, which I've
18 been in many times.

19 **Q** How many officers do you supervise?

20 **A** I have six officers under me.

21 **Q** Was Deputy Burt one of the individuals you
22 supervised on August 10th, 2012?

23 **A** Yes, sir. At that time, he was a field
24 training officer.

25 **Q** Okay. And he's since been promoted?

1 **A** Yes, sir, he has.

2 **Q** Tell me what happened on August 10th of 2012,
3 leading up to the seizure of the drugs and the
4 statements given by the defendant.

5 **A** We had been receiving information and plus my
6 own prior knowledge from incidents at [REDACTED] Sumter
7 Street and the citizens basically were requesting
8 our help out there. We had received a specific
9 complaint numerous times through deputy -- excuse me
10 -- Resident Deputy Nieves at the time, and he
11 relayed that to me and gave us some contact
12 information. And I started compiling some
13 information and adding it to what I was already
14 working at that particular house.

15 **Q** And what timeframe are we talking about when
16 you received the information from Deputy Nieves in
17 relation to August 10th of 2012?

18 **A** I started receiving information from January
19 through around June or so. We got -- it was by
20 e-mail. I did make a couple phone calls and spoke
21 with the resident there who was very concerned for
22 the drug activity and gang activity in the
23 neighborhood there.

24 **Q** Okay. Independent of that complaint coming
25 through the resident deputy, did you have any other

1 knowledge of drug activity at [REDACTED] Sumter Street?

2 A Yes, sir.

3 Q And can you tell the Judge about that, please?

4 A Well, at that time, the master deputy for the
5 shift he had made -- he had also initiated a case
6 there for gang activity and he made a case for
7 possession with intent to distribute marijuana
8 there. So we were well aware that there was some
9 dealing going on at that home.

10 Q So PWID marijuana at [REDACTED] Sumter?

11 A Yes, sir.

12 Q Were there any other cases made at [REDACTED] Sumter?

13 A Yes, sir. In fact, at that time, FTO Burt, now
14 Master Deputy Burt, had made a case there where we
15 had observed a vehicle leaving, made a stop and also
16 made a drug case.

17 Q Okay. And these CAD reports that are marked as
18 State's -- or marked as Court's Exhibit Number 1,
19 did you have a general understanding that these CAD
20 reports existed?

21 A Yes, sir.

22 Q Okay. So tell me what happened on August 10th,
23 2012.

24 A We got together that night, got the team
25 together. We set up. Again, we were working the

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1 suppression details. We were trying to target
2 specifically drug and gang activity in that area.
3 We set up on Holland Street directly in front of
4 Sumter Street so we could keep a good close visual
5 of the home there and what was moving in that area.
6 At around 2145 hours, we saw a white Kia Rio pull
7 down there and go straight to the house and pull in.

8 Q Okay. Let me interrupt you there. How far
9 away was the white Kia Rio from you as you were
10 sitting here on Holland Street? As it pulled onto
11 Sumter, how far away from you in your patrol vehicle
12 did that car come?

13 A One lane of traffic. I mean, we were literally
14 sitting -- the bumpers of our patrol cars were right
15 off the roadway. We were sitting literally kind of
16 under a tree right there with our lights off, three
17 patrol vehicles all facing the same way facing down
18 Sumter Street looking straight at the house. So
19 when that car came by, it was coming from, I guess
20 you can say, the east side there coming up Holland
21 Street and it was making a left onto Sumter. So it
22 was directly in front of us.

23 Q Was there anything to obstruct your view of the
24 car as it passed by you?

25 A No, sir, and it was well lit.

1 Q And you said it went onto Sumter Street. What
2 happened next?

3 A Then it went down Sumter Street and made a
4 right turn in to the -- to the address there.

5 Q To [REDACTED]?

6 A Yes, sir.

7 Q How long did it stay at [REDACTED] Sumter Street?

8 A Less than two minutes.

9 Q Okay. And after two minutes elapsed, what did
10 it do?

11 A Backed out of the driveway, it continued down
12 Sumter away from us and made a right onto Joye
13 Street, which hooks right, it's an elbow there so it
14 had to go right. It made a right turn and then it
15 proceeded on up to North Brown Street.

16 Q The length of time that it was there, how is
17 that relevant to you and your officers as y'all are
18 sitting there surveilling the house?

19 A Well, it's just conducive to a drug sale or a
20 buy. It's, you know, they're very brief, pull up in
21 there, make the sale, make the buy and leave. It's
22 very --

23 Q So does a drug buy typically last less than two
24 minutes?

25 A Yes, sir.

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1 Q It went down Joye Street. What did you do as
2 it pulled down Joye Street?

3 A I proceeded straight down Sumter Street. I
4 proceeded right behind it and the other two units
5 turned right on Holland. And we basically,
6 basically did a circle to try and encompass the
7 vehicle and just make a stop on it.

8 Q Okay. So Deputy Burt, Captain Thomas went this
9 way and you went behind?

10 A Yes, sir.

11 Q Did you catch up to that vehicle?

12 A I did not catch up to it, which tells me it
13 really took off away from that house. It must have
14 really sped down Joye Street because when I hooked
15 the right, it was already gone around and it was on
16 North Brown Street. So it had really put it in the
17 wind to get on down the road.

18 Q Okay. Where did you catch up with the vehicle?

19 A I caught up with the vehicle, as well as the
20 two officers at the corner of Ross and North Brown
21 Street.

22 Q So that would be right here (indicating)?

23 A Yes, sir.

24 Q Now, I'm referring to State's Number 3. Is
25 this that same corner in this area here?

1 A Yes, sir.

2 Q Ross and North Brown?

3 A Yes, sir.

4 Q How do you know that it was the same vehicle --

5 A It was --

6 Q -- when y'all pulled up? How do you know that?

7 A Well, there were no other -- that's not a
8 common vehicle really anyway, but there was no other
9 white Kia Rios in that area. It was literally 30
10 seconds, 45 seconds. I mean, we were -- from the
11 time we got to it -- from the time it left 638 until
12 we got to it, it was very brief, very brief time.

13 Q Was there any other traffic coming in this
14 direction?

15 A No, sir.

16 Q Was there any other traffic going in this
17 direction here on Joye Street (indicating)?

18 A None at all on that street.

19 Q So nothing on North Brown, nothing on Joye?

20 A No, sir.

21 Q Was there any traffic going in and out of these
22 side streets here?

23 A Not that I recall. I don't recall seeing any
24 vehicles at that time.

25 Q Okay. So you approached this vehicle as it's

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1 stopped?

2 **A** It had already --

3 **Q** What happened next?

4 **A** Yes, sir. They were already stepping out with
5 it and I was approaching almost immediately after.

6 **Q** You said they were already stepping out. Are
7 you referring to the officers?

8 **A** Yes, sir, I'm sorry. Master Deputy Burt and
9 Captain Thomas were already stepping out of the
10 vehicle and I was approaching right as they were
11 getting out basically.

12 **Q** So as you're approaching that vehicle, what's
13 your role at that point? What are you trained to
14 do?

15 **A** We work as, what we call, cover and contact,
16 which means, at this point, Master Deputy Burt would
17 be the contact officer. He's in control of what's
18 going on. Myself and Captain Thomas' job, at that
19 point, is to cover him and make sure he's safe.

20 When I came up, the first thing I noticed was
21 to -- as what would be considered a threat to us
22 other than the vehicle itself, there was a lot of
23 folks on both sides of the roadway. The lot that we
24 were stopping at is another common -- another known
25 spot to us as a sale point. Again, there was 10 to

1 15 people out there, and they're not usually too
2 friendly with us out there. So that was my main
3 concern was to watch his back.

4 **Q** So what happened next? Deputy Burt made
5 contact with whom?

6 **A** He was doing the usual, making contact with the
7 driver. Initial contact's usually with the driver.
8 The passenger had gotten out of the vehicle and --
9 well, actually, I think they were all getting out at
10 that point, but he was moving towards the fence
11 line.

12 **Q** Which passenger?

13 **A** The front passenger, the defendant.

14 **Q** The defendant?

15 **A** Yes, sir. He had gotten out and he was making
16 his way over to the fence line. There's actually --
17 you can't see it right there, but there's actually a
18 fence line where that white car is.

19 **Q** Here?

20 **A** Yeah. There's a fence line there that runs up
21 and then there's a little gated area where they can,
22 you know, you can walk through into that backyard,
23 and he was making his way over there. So we were
24 trying to, you know, contain that.

25 **Q** And is that where the crowd was too?

1 **A** Yes, sir.

2 **Q** When did you first see the defendant and how
3 far away from the car was he?

4 **A** As I was pulling up, there was a car in front
5 of me and then there's the car we were stopping, the
6 Rio. So one car length between us, I guess you'd
7 say. And then as I'm pulling up, you know, you can
8 see him moving away. So I got out and, you know,
9 called out to him to have him come over.

10 **Q** And did he come over?

11 **A** Yeah, he did.

12 **Q** What happened next?

13 **A** He was very reluctant to come over there. You
14 know, he wasn't real pleased with us making the
15 stop. And then I got him to walk back towards my
16 vehicle with me, and he was just, he was very
17 aggressive, very defiant I guess you'd say.

18 **Q** How so? How was he defiant?

19 **A** He just -- you could tell that he did not care
20 for the police and that he was -- he just didn't
21 want to come with us. He did though. He did walk
22 over there, but he was fussing. He was not happy at
23 all that we were out there dealing with him.

24 **Q** And what happened once he got over to you?
25 What was going on with the other officer --

1 **A** He got to the point of becoming threatening.
2 He got to the point of acting like he was -- wanted
3 to fight me and I felt like I really needed to
4 contain him because I had a much larger problem,
5 which was a lot of people. So, at that point, I
6 advised him I was going to place him in detention
7 for my safety and his safety.

8 **Q** How did you place him in detention?

9 **A** I placed handcuffs on him and sat him down in
10 my car.

11 **Q** And prior to you placing handcuffs on him, you
12 said he made threats to you; is that correct?

13 **A** He did.

14 **Q** Specifically, what did he say to you?

15 **A** He actually wanted to fight me. He told me to
16 take the handcuffs back off, he wanted to fight me
17 in the street.

18 **Q** Prior to you putting the handcuffs on him, how
19 was he threatening towards you prior to you putting
20 the cuffs on him?

21 **A** He just -- his nature. He just appeared to be
22 like he may strike me at any time. He just appeared
23 like he was ready to take a swing at me.

24 **Q** And that was based on the, was it, 15 or 20
25 years that led up --

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1 **A** About 21 and a half years, yes, sir.

2 **Q** Okay. So based on those years of experience,
3 you felt a threat?

4 **A** Yes, sir.

5 **Q** Okay. And the other individuals, the crowd in
6 that area, how were they treating both you and the
7 other officers on the scene?

8 **A** They were cussing and fussing at us. They
9 don't care for us out there too much. So, again,
10 that was a threat in itself and that's why I felt
11 like I needed to place him in detention and make
12 sure we were all safe.

13 **Q** Okay. And when you placed him in detention,
14 did you advise that he was under arrest or did --

15 **A** No. I specifically -- I'm sorry, I didn't mean
16 to cut you off -- I specifically advised him that
17 you're not under arrest at this point; I'm placing
18 you in investigative detention until we can further
19 investigate this. And, of course, he was still
20 fussing at me and, you know, take the handcuffs off
21 and, you know, and I'll -- basically he told me,
22 I'll kick your ass.

23 **Q** Okay. Did you pat him down for weapons at that
24 point?

25 **A** I did.

1 Q And that was after you put him in cuffs?

2 A After I placed him in cuffs, I was patting him
3 down and -- just outer garment, and -- yeah, and
4 then I sat him down in the vehicle.

5 Q Okay. Did you ask him -- as you're patting him
6 down, did you ask him any questions regarding drugs?

7 A It was around that time that they called out
8 that they had found something in the vehicle. So
9 it's kind of like two things are going on at one
10 time. While I'm dealing with him, they're dealing
11 with the vehicle, and they called out that there
12 were drugs there. And I basically -- I asked him, I
13 said, Is that your dope? And he said, That's all
14 I've got. And then he said -- and then he -- like
15 he was fumbling and he said, No, that's not mine.

16 Q So you asked him, You got any dope? And did
17 you create a report in this case?

18 A Did I create a report? No.

19 Q Did you draw up a supplemental report in this
20 case?

21 A Yes.

22 Q And did that document exactly what was said?

23 A Yes.

24 Q So after he gives that statement, what did you
25 do next?

1 **A** I just sat him in the car at that point.

2 **Q** And why did you put him in the car?

3 **A** He was still violent. He was still -- I mean,
4 he was not cooperating. He was, you know, all he
5 wanted to do was fight me.

6 **Q** When you put him in the car, was it your intent
7 to arrest him? Was he under arrest at that point?

8 **A** Not at that time, no, sir. My intent at that
9 point was to make sure we were all safe.

10 **Q** Okay. In your experience, have you placed
11 individuals in the back of a patrol vehicle for
12 safety purposes and then later turn them loose?

13 **A** Absolutely.

14 **Q** Is that common to do so?

15 **A** We have. There's many circumstances we do that
16 in.

17 **Q** Did he ever cool off?

18 **A** He did.

19 **Q** Did he ever calm down?

20 **A** He did.

21 **Q** And tell me what happened next.

22 **A** It was probably somewhere five to ten minutes
23 later, I was -- I had moved up and was assisting and
24 speaking with Master Deputy Burt. Captain Thomas
25 was keeping an eye on the vehicle for me at that

1 time, and he flagged -- or yelled to me and said,
2 Sarge, I believe he wants to talk to you. So I came
3 back to the vehicle at that time.

4 Q And what happened when you got to the vehicle?

5 A Came around to the passenger side, he was
6 sitting -- excuse me -- the driver's side, he was
7 sitting on the passenger side. I opened the door.
8 I leaned down in and I said, Are you calmed down
9 now? And he had calmed down. I said, you know, you
10 want to talk to me? He said, Yes. So I read him
11 his rights at that point.

12 Q And how did you read him his rights?

13 A I pulled my card out and read him his rights.

14 Q Do you have that card with you today?

15 A Yes, sir.

16 Q And in reference to that card, what specific
17 rights did you read him? Did you read it straight
18 from the card?

19 A Yes, sir.

20 Q Can you read it to the Judge just as you read
21 it to Mr. Bonham?

22 A It's the suspect's rights, Miranda Warnings.

23 It says, You have the right to remain silent.

24 Anything you say can and will be used against you in
25 a court of law. You have the right to talk to an

1 attorney and have him or her present with you while
2 you're being questioned. If you cannot afford to
3 hire an attorney, one will be appointed to represent
4 you before any questioning if you want. You can
5 decide at any time to exercise these rights and not
6 answer any questions or make statements.

7 Do you understand these rights I've explained
8 to you? And he advised, Yes.

9 And I said, Having these rights in mind, do you
10 wish to talk to us now? And he advised, Yes.

11 Q Did he appear to understand those rights?

12 A Yes, sir, he did.

13 Q Did you offer any promises in exchange for him
14 cooperating with you or talking with you?

15 A We just told him we're just there trying to
16 clean his neighborhood up and anything -- yeah, you
17 know, if he wanted to help us, that we'd be willing
18 to help him in any way we could, but that that's our
19 mission was to stop the drug sales from that house
20 there.

21 Q What did he say after you read him his rights?

22 A He advised that that was his drugs and that he
23 wanted -- again, he wanted to cooperate. And I set
24 up a time to meet with him later and wanted to get a
25 statement from him, and so we set a time up. And I

1 advised him that he would be arrested and that we
2 would speak with him later about it and go from
3 there.

4 Q Okay. Did you threaten or coerce him in any
5 way to speak with you that night?

6 A No, sir.

7 Q And he subsequently came in and gave a
8 statement; is that correct?

9 A Yes, sir, he did.

10 Q And was that in writing?

11 A Yes, sir.

12 Q And when was that statement taken?

13 A I don't recall the exact date on that.

14 Q Did you take a written statement?

15 A I did take it. He met with me at our north
16 region headquarters.

17 Q And if you were to refer to a copy of that
18 written statement, would that refresh your memory as
19 to when it was taken?

20 A Yes, sir, it would.

21 Q Is this a copy of the statement that was taken
22 in this case?

23 A Yes, sir.

24 Q And when was the statement taken?

25 A September the 4th.

1 **Q** Okay. And so that was a little less than a
2 month later?

3 **A** Yes, sir.

4 **Q** Was his rights read to him on that day?

5 **A** Yes, sir.

6 **Q** And how were his rights read to him?

7 **A** I always read the card again. And, also, we
8 have him initial next to each right, which is
9 actually on this form.

10 (Court's Exhibit Number 2, statement, marked
11 for identification.)

12 **Q** Sergeant Finch, I'm showing you Court's Exhibit
13 Number 2. Is that the statement that was taken on
14 September 4th, 2012?

15 **A** Yes, sir.

16 **Q** And has it been altered or manipulated in any
17 way?

18 **A** It does not appear to be altered at all, sir.

19 **Q** And did you offer any promises in exchange for
20 him providing that written statement?

21 **A** What I told him was is we're just trying to
22 clean that area up, that we're working with some
23 other young gentlemen in that area that are in a
24 similar situation, and we would do anything we could
25 to help him. And once the charge goes through, I

1 can't -- I can't stop that, but I would do anything
2 I could to help him out if he wanted to do the right
3 thing and help us.

4 Q Okay.

5 MR. ROSS: That's all the questions I have for
6 you. If you would, please answer anything that
7 Mr. Casto has.

8 THE WITNESS: Yes, sir.

9 MR. CASTO: I beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 CROSS-EXAMINATION

13 BY MR. CASTO:

14 Q Just a few brief questions to essentially what
15 you already testified to. Per your police report,
16 once you see this car pull into [REDACTED], you respond to
17 intercept as well, but you go a different way around
18 the block; is that right?

19 A Yes, sir.

20 Q And I think the time that elapses in between,
21 that you testified, in between what you see and then
22 when this car comes to a stop, you estimate less
23 than a minute. I think you said 30 to 45 seconds.
24 It's really quick.

25 A Somewhere in there.

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1 **Q** When you pull up, I think that, per your
2 report, I believe Officer Burt and Officer Thomas
3 are already there; isn't that right?

4 **A** Yes, sir.

5 **Q** And with regard to statements, he did
6 eventually, actually, follow up with you about a
7 month later; isn't that right?

8 **A** Yes, sir.

9 **Q** And kind of sort of named names and wrote those
10 things down; isn't that correct?

11 **A** Yes, sir.

12 **MR. CASTO:** I don't have any further questions,
13 Your Honor. I do have a motion.

14 **THE COURT:** Redirect.

15 **MR. ROSS:** Nothing on redirect. I've got one
16 more brief witness, Your Honor.

17 **THE COURT:** Thank you, sir. You may step down.

18 **THE WITNESS:** Thank you, Your Honor.

19 **THE COURT:** Call your next witness.

20 **MR. ROSS:** The State calls Captain Thomas to
21 the stand.

22 BARRON LEE THOMAS,
23 having been duly sworn, testified as follows:

24 **THE CLERK:** Once you're seated, state your full
25 name, spelling your last on the record.

1 **THE WITNESS:** Captain Barron Lee Thomas,
2 T-h-o-m-a-s.

3 DIRECT EXAMINATION

4 BY MR. ROSS:

5 **Q** Captain Thomas, you were one of the back-up
6 officers in this case; is that correct?

7 **A** Correct.

8 **Q** Can you tell me what happened on August 10th,
9 2012, that led to the seizure of drugs and the
10 statements given by the defendant?

11 **A** Yes. I was helping Sergeant Finch and his
12 suppression unit conduct some directed controls in
13 the North Brown, Double Branch, Holland Street area
14 of Lexington County. Approximately nine o'clock,
15 all three of us were sitting at the corner of
16 Holland Street and Sumter Street sitting with our
17 vehicles perpendicular to Holland Street looking
18 down Sumter Street.

19 I was the third vehicle. And if you were
20 behind us, I was the third vehicle to the right
21 pointing down Sumter Street. The view that I had,
22 since I was on the far right, once any vehicles
23 turned onto Holland Street, I would lose view
24 approximately a quarter of the way down Sumter
25 Street. On the night in question, I did see a white

1 Kia Rio come down Holland Street, take a left onto
2 Sumter Street.

3 **Q** How far away was the vehicle from you when it
4 made that left?

5 **A** Fifteen, 20 feet tops.

6 **Q** And what happened after it took that left?

7 **A** Took a left, as mentioned, I did not see the
8 vehicle pull into [REDACTED] Sumter. All three of us were
9 sitting with our windows down and I relied upon
10 Sergeant Finch and Master Deputy Burt to provide me
11 that information that it did stop at [REDACTED].

12 **Q** Okay. Then what happened?

13 **A** I was alerted by the other two officers that
14 the vehicle was exiting [REDACTED] Sumter and was
15 approaching -- continuing down Sumter Street that
16 you can only go one way and it turns onto Joye
17 Street, turn a right, that's -- that juncture,
18 Sergeant Finch just went straight onto Sumter
19 Street. Master Deputy Burt took a right on Holland.
20 I followed Master Deputy Burt.

21 **Q** And what happened next? Did y'all find the
22 vehicle?

23 **A** Yes.

24 **Q** And how long did that take?

25 **A** Thirty, 30, 45 seconds, it was very quick.

1 Once we took a right on Sumter, it's not that far to
2 North Brown. There are other streets that are
3 perpendicular to Holland Street. And as myself and
4 Master Deputy Burt, we went down, I was looking down
5 each street to make sure I saw no headlights
6 approaching.

7 **Q** Okay. And what did you see as -- tell me how
8 you found the vehicle, what was going on there, and
9 how that occurred.

10 **A** We took a left on North Brown Street. As we
11 approached Ross Street, Master Deputy Burt notified
12 me on the radio, There's the car, that's the one
13 right there.

14 I was behind Master Deputy Burt. He went and
15 conducted a U-turn to come in behind the vehicle. I
16 stopped my vehicle parallel right beside the white
17 Kia Rio as the driver and both occupants were
18 beginning to exit the vehicle.

19 **Q** Did you see everybody get out of the vehicle?

20 **A** Yes, I did.

21 **Q** Did you see the defendant get out of the
22 passenger seat?

23 **A** Yes, I did.

24 **Q** And that was the shotgun passenger seat?

25 **A** Correct.

1 **Q** How far away from you was he when he got out of
2 the vehicle?

3 **A** Three foot because I stopped very close to the
4 vehicle, parallel. We were -- my nose -- the nose
5 of my car was facing the rear of his car. So he got
6 out, literally, in my passenger window.

7 **Q** Okay. What did you do at that point? When he
8 got out of the vehicle, what happened?

9 **A** He got out of the vehicle and was walking
10 briskly away from the vehicle walking towards the
11 group of people that were positioned in the Ross
12 Street yard. There was maybe 10 to 15 people,
13 looked like they were having some sort of gathering.
14 He was walking briskly to those people. I exited my
15 vehicle, began to call for him to come back and
16 speak with us.

17 **Q** And did he do so?

18 **A** Yes, he did.

19 **Q** Did you ever lose sight of the individual that
20 got out of the shotgun passenger seat and walked
21 briskly away?

22 **A** For the fraction of a second that it would take
23 my head to turn from right to left and exit my
24 vehicle and look over the top of my vehicle, I
25 reacquired him, he may have gone two steps, three

1 steps.

2 Q And the person that y'all called back was the
3 same person that got out -- the same male that got
4 out of that vehicle?

5 A Correct, yes.

6 Q Okay. And then what happened?

7 A Asked him to come back. He was questioning,
8 Why, why? What do you want me for? What {sic} do
9 you need me? I said, We need to speak to you about
10 this traffic stop.

11 About that time, Sergeant Finch came. I
12 basically handed him off even though no hands were
13 put on. Sergeant Finch then started talking to the
14 defendant and I stayed at the car passenger side
15 door because Master Deputy Burt was conducting
16 business with the driver of the vehicle.

17 Q Okay. And, at that point, what is your role in
18 this encounter? What are you trained to do?

19 A Trained to cover. I am --

20 Q Who are you covering?

21 A I am covering both Sergeant Finch and Master
22 Deputy Burt. We had a lot of dynamics going on that
23 evening with the large group of people that were to
24 the front left of the vehicle. There was another
25 large group of people behind us and to the right

1 that were very curious as to what we were doing. So
2 you basically kind of have to have eyes in the back
3 of your head and the front of your head to try and
4 keep control of everything that's going on.

5 **Q** What was the demeanor of the defendant as
6 Sergeant Finch was interacting with him?

7 **A** He became very aggressive, very aggressive and
8 hostile. I can remember hearing his voice elevating
9 and become very agitated, at one point, hearing him
10 say, I'm going to kick your ass, to Sergeant Finch.
11 When I heard that, of course, my attention went from
12 the vehicle back to Sergeant Finch to make sure of
13 his safety.

14 **Q** And what did you see when you turned your head
15 back toward Sergeant Finch?

16 **A** I saw Sergeant Finch placing the subject in
17 handcuffs and controlling him. He was becoming
18 very, very agitated.

19 **Q** And what was going on with that crowd of people
20 out there?

21 **A** They were all starting to move towards the
22 vehicle, What's going on, what's going on? You
23 know, they were all moving and looking towards the
24 vehicle and we kept trying to keep them back from
25 the vehicle. Nobody got to the vehicle, but they

1 were exiting the yard coming towards us and that's a
2 safety situation for us.

3 **Q** What happened next? Was the car searched?

4 **A** Yes. Master Deputy Burt got consent to search
5 from the driver. He did say, We got consent to
6 search. He started searching on the driver's area.
7 I opened up the passenger door and started to
8 conduct my search.

9 **Q** Okay. And did you find anything?

10 **A** Yes, almost immediately. I looked at the
11 passenger seat. Then as I moved my head a little
12 bit to look at the floorboard, I did notice a
13 plastic bag with some white, yellowish rocks tied up
14 at the base of the seat at the floor, notified
15 Master Deputy Burt that I may have something over
16 there. He came over, took a look, went and got his
17 digital camera from his patrol vehicle and came back
18 and started taking pictures.

19 **Q** Did you touch or handle that bag with rocks in
20 it in any way?

21 **A** No.

22 **Q** And in the course of your law enforcement
23 experience, sir, have you seen crack cocaine before?

24 **A** Yes.

25 **Q** And did what you see underneath the passenger

1 seat, did that appear to be crack cocaine?

2 **A** It appeared to be consistent with what I've
3 seen through my years.

4 **Q** What happened after you saw the bag and then
5 Deputy Burt came with his camera?

6 **A** He took photographs of different angles of the
7 vehicle to try and give a good representation of
8 where the drugs were found. He took possession of
9 it and placed it in a bag and secured it in the
10 trunk of his vehicle.

11 **Q** Where was the defendant at this time?

12 **A** The defendant was in Sergeant Finch's car.
13 Once we had found what appeared to be the crack
14 cocaine, Sergeant Finch came forward and wanted to
15 speak with Master Deputy Burt about what all he had,
16 all the dynamics going on and the different people
17 and the different charges. I went back to beside
18 Sergeant Finch's patrol vehicle just to keep an eye,
19 which is standard protocol if someone is in a
20 vehicle that we stand by, and so we keep an eye on
21 them in the event, God forbid, the childproof locks
22 don't work or something along those lines. I've
23 seen windows kicked out. So it's just there to
24 observe.

25 **Q** And did Sergeant Finch and the defendant

1 interact with each other at any point after that?

2 **A** Yes. The defendant notified me, knocked on the
3 window, yelled and said, Hey, I want to talk to him.

4 **Q** Did you get Sergeant Finch at that point?

5 **A** Yes. I notified Sergeant Finch that the
6 subject wanted to speak with him, which Sergeant
7 Finch then came back to the vehicle, we almost
8 traded places. I went back to the vehicle in
9 question to keep cover and all the people, and
10 Sergeant Finch came back to speak with the subject.

11 **Q** And, at that point, Sergeant Finch began
12 speaking with the defendant; is that correct?

13 **A** Correct.

14 **MR. ROSS:** Captain Thomas, that's all the
15 questions I have for you. If you would, please
16 answer any that Mr. Casto has.

17 **THE COURT:** Cross.

18 **MR. CASTO:** We don't have any questions of
19 Officer Thomas.

20 **THE COURT:** Thank you, sir. You may step down.
21 Any other evidence from the State?

22 **MR. ROSS:** No, Your Honor.

23 **THE COURT:** Any witnesses from the defense?

24 **MR. CASTO:** No, sir, Your Honor.

25 **THE COURT:** Let's take a five-minute break,

1 then I'll hear your motion.

2 **MR. CASTO:** Yes, sir, Your Honor.

3 **THE COURT:** We're at ease.

4 (Brief recess.)

5 **THE COURT:** All right. What's your motion?

6 **MR. CASTO:** Thank you very much, Judge, and may
7 it please the Court.

8 The facts as elicited through testimony during
9 the suppression hearing, Your Honor, I'll deal with
10 that first and each issue in turn, but first the
11 suppression motion. The testimony elicited from the
12 three officers goes like this:

13 This incident with the car pulling in the
14 driveway occurs at 9:45 p.m. Officers observe a car
15 pull into the driveway of what's labeled a suspected
16 drug house. They cannot see anything but the back
17 third of the car. And of particular importance,
18 they don't see any occupants of the vehicle, get
19 out, open doors or anyone from the house even come
20 out of the house and interact whatsoever with these
21 folks in the car. This car stays for approximately
22 two minutes and then leaves.

23 The three separate officers each testify, each
24 in their own patrol car, that they go after that
25 car. Officer Finch, both in his testimony and in

1 his report, says that the two other officers
2 responded to intercept this car. And, in fact,
3 Officer Burt used that word as well, To intercept
4 this car. Officer Finch himself replied that he
5 responded in an attempt to intercept that car as
6 well.

7 Another key fact here in this, Your Honor, is
8 there's been no testimony whatsoever that this car
9 was pulled for any type of traffic violation
10 whatsoever in this case. The white car goes about
11 four-tenths of a mile or a few blocks when Officer
12 Finch sees the stopped car. The two other officers,
13 that's Officer Burt and Officer Thomas, have already
14 stopped and are already questioning the occupants in
15 the white car.

16 It's Officer Finch's testimony that the
17 defendant, Raheem, was trying to walk away. He
18 replied, during testimony during the suppression
19 hearing, that he was trying to contain that,
20 referring to him walking away, and then that's when
21 he called Raheem over to come back, and that's when
22 Raheem did. And so he was effectively stopped at
23 that place, Your Honor.

24 Basically, these cases, as the Court well
25 knows, that the officer needs reasonable,

1 articulable suspicion of criminal activity to
2 initiate this encounter. In determining whether
3 reasonable suspicion exists, the whole picture must
4 be considered. The idea that the car pulled in the
5 driveway of a drug house where none of the occupants
6 even got out nor any of the folks in this house even
7 interacted with the occupants in the car is simply
8 not enough.

9 The case that we cite and rely on in support of
10 our position, Your Honor, is State versus Fowler.
11 And I have a copy of the case to pass up, Your
12 Honor.

13 (Pause.)

14 **MR. CASTO:** Basically, Your Honor, it's a South
15 Carolina decision where the facts are these:

16 That officers, at approximately 1:20 a.m. in
17 the morning, Officers Blair and Campbell were
18 routinely patrolling, what they label, a high drug
19 area. Officer Blair saw Fowler come from the front
20 yard of a suspected drug house. About 15 minutes
21 later, they saw Fowler again. And suspecting Fowler
22 might be carrying a weapon, they stopped him, they
23 patted him down. Essentially, it was found, as a
24 result of that, they found a large lock-blade knife,
25 \$504.87. And once they booked him in at the jail,

1 Your Honor, they did find drugs on his person.

2 During the suppression hearing, Fowler moved to
3 suppress evidence of the money and drugs found on
4 him. And the officers that took the stand during
5 that suppression hearing testified to ten different
6 factors as to why they initiated this stop of
7 Mr. Fowler. And the list is as follows:

8 That Fowler they said walked in a suspicious
9 manner; number two, that he acted kind of scared;
10 number three, that he acted as if possibly he was
11 trying to elude us; number four, their suspicions
12 were aroused because he cut behind some houses; and,
13 five, didn't come to the corner and make a
14 right-hand turn on the sidewalk like normal people
15 would make that route, and then he got on the
16 sidewalk and proceeded back on the sidewalk real
17 fast at a fast walk; number six, officers said they
18 knew he had a conviction for prior drug offenses;
19 number seven, was known to carry weapons; number
20 eight, keeps company with suspected drug dealers;
21 and, number nine, also keeps company with persons
22 known to carry weapons; the final factor, number
23 ten, that they cite was that the officer said he'd
24 known Fowler for about one and a half -- I'm sorry
25 -- two and a half years, and normally when he ran

1 into him on the street, Fowler waved or came over to
2 talk to him.

3 Well, the court in that case taking -- in
4 applying this analysis, based on reasonable
5 suspicion, said this, Here the facts do not support
6 the State's position the officers had an articulable
7 suspicion Fowler was involved in criminal activity.
8 The officers did not see a drug transaction and did
9 not even see Fowler throw anything down.

10 One, they didn't see anything, and, two, they
11 didn't see him throw anything down; which leads to
12 point three, the officers knew Fowler had a prior
13 drug conviction and basically made broad
14 generalizations about his demeanor as they saw him
15 leaving the curtilage of a suspected drug house.

16 The court finally says this in that case, Your
17 Honor, We note that we do not reach the issue of
18 whether the search was constitutional because we
19 affirm the suppression of the evidence based on the
20 unconstitutional stop.

21 Your Honor, that case speaks volumes to the
22 case at bar here. The other cases that are cited,
23 in trying to speak to this, are totally different.
24 Each of those cases are normally, have factors where
25 they are much later in the evening where officers

1 saw someone get out of a vehicle, or, there are
2 another line of cases where we normally see a
3 familiar fact pattern of, at some point, men huddled
4 together and then once law enforcement officers walk
5 up, they break apart. Here we do not have any of
6 that, Your Honor.

7 These drugs should be suppressed based on an
8 unconscionable stop, Your Honor. And just like the
9 court reasoned in Fowler, we don't even reach the
10 issue of the search because the stop was bad.

11 I think that if we were to apply this in a
12 different setting and scenario and we take the exact
13 same facts as they're presented in this case at bar
14 here, that if we inserted different characters into
15 the mix and say there was a grandmother in the white
16 car that she pulls up, stays for two minutes and
17 then goes around the corner to another house and law
18 enforcement officers walk up to her, I think that
19 that would, on its face, be totally, totally
20 unreasonable. For those reasons, Your Honor, we
21 move these drugs should be suppressed.

22 **THE COURT:** Solicitor.

23 **MR. ROSS:** Judge, I think State versus Corley
24 is on point. I'm handing up a copy of this opinion.

25 The Court of Appeals opinion is the most

1 relevant. It goes into much more detail than the
2 subsequent Supreme Court opinion. The Supreme Court
3 looked at it and modified a couple of the words of
4 that original opinion.

5 What we have here is, first off, this is a
6 known drug house. The officers had two cases that
7 they can locate drugs coming from the house.

8 Secondly, they have a neighbor who is
9 complaining, who is saying there are drugs being
10 sold at that house. That neighbor did not remain
11 anonymous. That neighbor provided his name to the
12 officers. And because it was not in an anonymous
13 capacity, that neighbor's tip is a lot more
14 reliable. And I'm looking at, essentially, the
15 search warrant case law dealing with anonymous
16 versus nonanonymous tips, Your Honor.

17 We have the officers surveilling the scene.
18 Their testimony was that they could see the back of
19 the vehicle. They couldn't see anything else, but
20 they could see the taillights remained on. Their
21 testimony was not that nobody got out of the vehicle
22 or that nobody came to the vehicle, but that they
23 just -- they could not see.

24 What they do know is that the taillights
25 remained on, it stayed for less than two minutes,

1 then it backed right back out, Your Honor. That is
2 consistent with drug activity, that is consistent
3 with a drug sale and that is consistent with what
4 happened in State versus Corley.

5 In that case, the officer sees the suspect go
6 into a known drug house, come out a few minutes
7 later and then stops him based on a reasonable
8 suspicion that a drug sale had occurred. And here
9 we have essentially the same case.

10 In Corley, the officer never saw a hand to
11 hand, he never saw any type of drug transaction, but
12 he saw what appeared to be a suspicious case. There
13 was articulable suspicion. This wasn't generalized
14 hunches where somebody's in a bad neighborhood at a
15 late time of night like the Fowler case that
16 Mr. Casto mentioned.

17 Here we have a car diverting off the beaten
18 path and pulling into a known drug house, staying
19 for less than two minutes and coming right back out,
20 essentially the same fact pattern as Corley, Your
21 Honor. For that reason, we do think the stop of
22 these individuals was proper.

23 We think the stop occurred when Captain Thomas
24 said, hey, come back here. And I also think it's
25 relevant to consider the facts immediately preceding

1 him being stopped. He sees the police come up, he's
2 three feet away from the police and he briskly walks
3 away, Your Honor. I think that is another factor
4 that is suspicious of drug activity.

5 Walking away from the police in a bad
6 neighborhood, those are facts similar to Illinois
7 versus Wardlow where the police stopped somebody,
8 granted in that case it was headlong flight, but
9 somebody sees a cop, runs away, that's suspicious
10 activity. When you add it to the facts that the
11 officers were surveilling prior to the stop, the
12 totality of the circumstances in this case based on
13 all of these officers on years of experience, I
14 think it's reasonable to stop them and ask them some
15 questions. That's all that's going on here, a brief
16 investigative detention from which further evidence
17 and further investigation was developed, sir.

18 And we can get -- I can get into the subsequent
19 search of the vehicle, but, at this point, I believe
20 the defendant's motion is just that initial stop.

21 **THE COURT:** Anything else?

22 **MR. CASTO:** Nothing further, Your Honor.

23 **THE COURT:** In Corley, they had a traffic stop
24 for failure to use a turn signal.

25 **MR. CASTO:** And if I may.

1 **THE COURT:** Yes.

2 **MR. CASTO:** I'm sorry, very briefly. And
3 that's our understanding as well. I believe that
4 the facts of that case -- one fact to consider is
5 that was 2:50 a.m. They actually -- the law
6 enforcement position is they see a man get out of a
7 car and disappear. Here we don't have that at all.
8 And then there was a traffic stop as well, Your
9 Honor.

10 **MR. ROSS:** Judge, dealing with the traffic stop
11 issue, the court essentially says, yes, you have two
12 grounds for the stop. You have a traffic stop, but
13 you also had reasonable suspicion based on those
14 articulable facts that they discussed.

15 So -- the court in Corley says he could have
16 stopped him regardless of the traffic violation,
17 which is what we have here. We don't have a traffic
18 violation. We have reasonable suspicion of criminal
19 activity. And I think that's what the Supreme Court
20 talked about in its subsequent opinion that the stop
21 was good based on reasonable suspicion.

22 **THE COURT:** All right. Let me read this
23 opinion.

24 (Pause.)

25 **THE COURT:** All right. Without making a final

1 ruling, I want to tell you how it appears to me and
2 then you can argue where I'm wrong or right.

3 If this is considered a case of the law
4 enforcement officers stopping the vehicle, there was
5 no basis that would allow the officers
6 constitutionally to stop that vehicle. So if this
7 were a traffic stop where the vehicle stopped as a
8 result of police direction and events occurred
9 thereafter, I think it would be a much clearer
10 ruling.

11 You can't just stop people because they drive
12 away from a place where there has been known drug
13 activity and you don't see anybody get in or out of
14 the car and -- it's just not enough. They may be
15 guilty as sin, but that's one of the prices of
16 living in a free society.

17 The difficulty I have with the particular facts
18 in this case is that I didn't hear that the officers
19 stopped the vehicle. It might have been their
20 intent to stop it, but the vehicle stopped on it's
21 own. There's no evidence that the vehicle stopped
22 because they -- the driver saw officers.

23 There was evidence that the vehicle may have
24 been blocked in to some extent. I'm not a hundred
25 percent clear about that, but there's no indication

1 that the driver had any intention of driving away.
2 What I heard in the evidence was that the driver had
3 stopped at a house and they all got out, the
4 passengers and the driver got out, and with regard
5 to this defendant, that he briskly walked away.

6 Now, he walked away into a situation where
7 there was a crowd of people, and everything that the
8 officers have said regarding officer safety sounds
9 perfectly appropriate to me. So he got out, he
10 walked away briskly from the officer who was three
11 feet away from him.

12 And it appears to me that the officers have
13 stated that they saw a vehicle come from a known
14 drug house; the occupants of the vehicle stopped a
15 short distance away; they drove away at a relatively
16 fast pace; when the officers drove up, instead of
17 standing there to see what the officers wanted, this
18 defendant briskly walked away into a crowd of
19 hostile people; when told to come back, he responded
20 in a hostile manner which increased and then later
21 decreased in hostility.

22 If the officers had a right to tell him to come
23 back, then everything that happened from that point
24 forward with regard to placing him in handcuffs and
25 putting him in investigative detention seems proper.

1 And it seems he's trying to assert the rights of
2 somebody else regarding a consent search. There's
3 no indication that he had any rights to that
4 vehicle. He was out of it, out of the vehicle,
5 walking away.

6 Now, I'm a little bit concerned about -- well,
7 I am concerned, let me put it that way, about asking
8 him prior to Miranda, Is that your dope? Let me go
9 back to my notes.

10 (Pause.)

11 **THE COURT:** If I have this right, Sergeant
12 Finch heard the other officers say that they had
13 found drugs, called out they had found this bag and
14 that Officer Finch asked the defendant if it was his
15 dope. The defendant initially denied it and then
16 said -- admitted it and then said, no, it wasn't
17 his.

18 But as far as the statements after that, they
19 were given, without going through the full ruling on
20 Denno, they're given after Miranda warnings were
21 given. And there were two separate and distinct
22 statements given at various points in time which
23 appear to be free and voluntary and I don't know if
24 they are the product of any poisonous tree analysis.

25 As far as what the officers observed, they knew

1 this to be a house that had drug activity in the
2 past. And in the recent past, there had been a
3 prior stop just a month before by one of the
4 officers where there was a traffic stop because
5 there were no working taillights and an odor of
6 marijuana was detected and marijuana was found after
7 a traffic stop.

8 The Supreme Court in Corley corrected the Court
9 of Appeals in only one regard and that was to say
10 that the trial court determined the officer had the
11 probable cause to stop the vehicle and the Supreme
12 Court said that was error, which is kind of what I'm
13 saying. I don't think the officers had probable
14 cause to stop the vehicle, but I didn't hear any
15 testimony that they stopped the vehicle. They
16 wanted to. It just stopped before they had the
17 chance, not at their direction.

18 All right. Go ahead.

19 **MR. ROSS:** Yes, Your Honor, that's my
20 interpretation of the facts as well was that the car
21 stopped and then they get out of the vehicle. As
22 the defendant's walking away, that's where the
23 detention occurs when they call him back over.

24 **THE COURT:** What about the initial questioning
25 of the defendant about, Is that your dope?

1 **MR. ROSS:** Your Honor, I think that's
2 permissible pursuant to an investigative detention.
3 I think in the Corley case, and I'll use the precise
4 words, When you have somebody in investigative
5 detention pursuant to the Terry doctrine, quote,
6 even drawing weapons, handcuffing a suspect, placing
7 a suspect in a patrol car for questioning or using
8 or threatening to use force does not necessarily
9 elevate a lawful stop -- a Terry stop into a
10 custodial arrest.

11 And I think what the Court of Appeals was
12 getting at there is precisely this type of
13 situation. The defendant was placed in cuffs not to
14 put him in custody and send him to jail, but because
15 he was beginning to threaten the officers, the crowd
16 was starting to get rambunctious.

17 **THE COURT:** I agree with you on all that. The
18 question is how do you then ask him is that your
19 dope without mirandizing him?

20 **MR. ROSS:** Pursuant to the Terry doctrine, Your
21 Honor, you're allowed to ask the detainee a moderate
22 amount of questions without giving Miranda because
23 it's not a custodial arrest, it is a brief
24 investigative detention. There's a distinction
25 between investigative detention, the Terry stop and

1 custodial arrest, Miranda.

2 Now, granted there's going to be situations of
3 a gray area where where does one stop and the other
4 one begin, but I think if you look at the quoted
5 language in Corley, Corley stands for the
6 proposition that even when you handcuff somebody,
7 that doesn't turn an investigative detention into
8 custodial arrest thereby implicating Miranda
9 warnings.

10 **THE COURT:** But that language relates to the
11 United States Supreme Court dealing with ordinary
12 traffic stops where people are not in custody,
13 they're not entitled to Miranda warnings. The
14 officers can ask questions during ordinary traffic
15 stops, that's one of the carved out exceptions. I
16 agree with that. But the Court of Appeals is going
17 through this analysis like it is an ordinary traffic
18 stop, and the Supreme Court of South Carolina said
19 they didn't have probable cause to stop that car.

20 **MR. ROSS:** And the -- what the court --

21 **THE COURT:** Now, if they patted him down and
22 found drugs on him, we wouldn't be having this
23 discussion. The drugs were not on his person. The
24 drugs were somewhere else, if there were drugs,
25 somewhere else in that ve -- away from him in an

1 area he had been removed from and handcuffed. They
2 were inside the vehicle. Go ahead.

3 **MR. ROSS:** What the Supreme Court, from my
4 reading of the case, Your Honor --

5 **THE COURT:** Which Supreme Court?

6 **MR. ROSS:** The South Carolina Supreme Court on
7 the Corley case.

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

9 **MR. ROSS:** My reading of the case is that the
10 Supreme Court is saying regardless of the traffic
11 stop, they had reasonable suspicion. And the search
12 and the statements were valid and admissible based
13 on that reasonable suspicion based on an
14 investigative detention. Be it a traffic stop or
15 based on the reasonable suspicion of criminal
16 activity, it's the same thing. You are being held
17 to invest -- briefly for investigative purposes. It
18 doesn't matter if it's a traffic stop or if the
19 officer has articulable suspicion in the absence of
20 a traffic stop, which is what we have here.

21 **THE COURT:** All right. It cites State versus
22 Woodruff and United States versus Mason, a Fourth
23 Circuit case.

24 **MR. ROSS:** I think U.S. versus Leshuk is also
25 quoted, Your Honor, on that, even drawing weapons,

1 handcuffing a suspect, that language I cited, Your
2 Honor. That's a Fourth Circuit, Federal Court of
3 Appeals from '95.

4 **THE COURT:** Mr. Casto.

5 **MR. CASTO:** Yes, sir, if I could be heard on
6 this. I will address the Court's initial concern.
7 We believe, essentially, the statements uttered by
8 the Court with concern about the nature of the stop
9 is exactly correct. It is key that there is no
10 traffic violation for which they were pulled here.
11 And really what that does, Your Honor, is it says
12 that this encounter where these people were stopped
13 and questioned is based on what they had seen
14 before.

15 And so when the State says, and Officer Finch
16 articulated it, as I understood or believed to
17 understand what happened is that, well, Officer
18 Finch sees him walk away to where the crowd of
19 people is, but we don't have a situation with those
20 line of cases where he took off running or anything
21 like that. He calls over to him to come back, and
22 it's based on the -- it's based on what he'd seen
23 before.

24 Now, granted he's not happy about coming back
25 or anything like that, but he comes back and he's

1 stopped.

2 Your Honor, this -- they do not have reasonable
3 suspicion in this case. And I cite the Fowler case
4 again because the -- the testimony -- I'm sorry --
5 the statements and the analysis raised during the
6 suppression hearing in State versus Fowler is
7 exactly what we have here. The court used the --
8 well, I'm sorry, the officers testifying in the
9 suppression hearing and Fowler said the same thing.
10 They said, It appears as if he was, and I quote,
11 Trying to elude us. Their suspicions were also
12 aroused because he cut behind some houses and he,
13 quote, Walked in a suspicious manner. So the court
14 dealt with these issues.

15 We think that these drugs should be suppressed
16 because the stop was bad and the Court doesn't even
17 reach the search in that case, Your Honor. Very
18 respectfully, we'd ask these drugs be suppressed.

19 **THE COURT:** Are you saying the stop is the
20 traffic stop? Are you saying a stop of the vehicle
21 or are you saying the stop is the stop of the
22 defendant?

23 **MR. CASTO:** The stop is the detainment of
24 the -- or the stop of the driver and Raheem, the
25 defendant. And that's --

1 **THE COURT:** Well, see, what I'm telling you is
2 I don't see where they stopped the car. Had they
3 stopped the car, as I said earlier, I think it would
4 be a much clearer thing.

5 They knew about this drug house. They knew
6 about complaints. They documented that in the
7 record. They had a nonanonymous source of
8 complaints. They saw a vehicle drive up and leave
9 rather quickly. They could have been taking an
10 apple pie to a sick aunt for all I know, I
11 understand that. They did not see what was seen in
12 these cases as far as the person going back --
13 getting out of the car, going around to the back of
14 the house, coming back, getting in the car and
15 driving away.

16 But here's the thing: They saw all of that and
17 they did not have probable cause, I don't believe,
18 but they have articulable suspicion or articulable
19 justification for believing that there's criminal
20 activity taking place and the right to temporarily
21 detain and investigate.

22 **MR. ROSS:** Judge, State versus Easler is a case
23 that I neglected to bring to the Court's attention
24 dealing with routine traffic stops, that language
25 from the U.S. Supreme Court versus your good

1 old-fashion Terry stops in the absence of a traffic
2 violation. Easler was a felony DUI case. And
3 that's 489 S.E.2d 617. It's from the South Carolina
4 Supreme Court in '97.

5 That was a felony DUI case where a suspect was
6 seen walking down the street not far from where an
7 accident had occurred. He was asked back to the
8 scene. And during the highway patrol taking him
9 back to the scene, he gave incriminating statements.
10 And the court made clear that it was not, quote, A
11 routine traffic stop. They were not basing that
12 Miranda custodial analysis on the U.S. Supreme
13 Court's case law from the Berkemer versus McCarty
14 and all those traffic stops from the 80s where they
15 used the language, A routine traffic stop.

16 The court made clear in Easler that where you
17 have a brief detention, even where it's not a,
18 quote, A routine traffic stop, that does not rise to
19 a custodial arrest warranting Miranda. I would just
20 cite that case, Your Honor.

21 **THE COURT:** All right. And I don't want to --
22 I want to clarify what I said a moment ago. I'm not
23 saying you have to have probable cause to stop the
24 vehicle. You can stop a vehicle on reasonable
25 suspicion.

1 All right. Mr. Casto.

2 MR. CASTO: Yes, sir, Your Honor, and that's
3 exactly our position. That's why we cited Fowler
4 because that person wasn't in a vehicle, but the
5 analysis going into the Court's determination is the
6 same. The court in reaching that says, The police
7 may stop and briefly detain a person for
8 investigative purposes when an officer has
9 reasonable suspicion supported by articulable facts,
10 persons engaged in criminal activity. And the court
11 heard ten different things, you know, during the
12 suppression hearing and still found that the stop
13 was bad, and we submit that's exactly the case here,
14 Your Honor.

15 THE COURT: Well, had the -- I'm not -- I
16 apologize to you all, my words are not coming out
17 well and I realize that and I'm sorry. Had the
18 vehicle been stopped, based on what the officers
19 testified about, on the street after it pulled away,
20 there is not enough reasonable suspicion, there is
21 not enough probable cause. But it didn't stop
22 there.

23 What happened was it went on and the vehicle
24 stopped itself 30 to 45 seconds later. At the time
25 the vehicle stopped, it got -- the occupants of the

1 vehicle got out in a high crime area, I believe, I
2 don't know the exact words that were used, but an
3 area where they've had problems, I think something
4 like that was said, and into a rather hostile
5 situation.

6 Now, the officers pulled up. The defendant --
7 the only evidence I've got is the defendant got out
8 of his car with an officer's car three feet away and
9 briskly walked away. Now, I don't know how I'm
10 going to get into refining whether somebody's
11 running or briskly walking or what they're doing,
12 but a brisk walk seems to be suspicious in those
13 circumstances. And he called the defendant back and
14 the defendant was hostile and it was a hostile
15 environment. And so he clearly, in my view, had a
16 right to detain the defendant.

17 Now, where I'm really struggling is how the
18 defendant gets to start asserting and what rights he
19 can assert related to another person who's a driver
20 of a vehicle that he doesn't have any ownership
21 interest in nor any evidence in this record of a
22 right to control, and she then gives consent to
23 search in which they find drugs.

24 It's a whole lot more complicated factual
25 scenario. I mean, I honestly feel like that I would

1 have to rule with the defense if the vehicle had
2 been stopped right down the road because I don't
3 think they had a reasonable suspicion to stop the
4 vehicle at that particular point, but it didn't stop
5 there. And the cases made it clear, you look at the
6 totality of the circumstances, and they had not
7 observed anything like nervousness or walking away
8 or any of those things until after they pulled up at
9 that house.

10 All right. What else do y'all need to put
11 on -- are all of the jurors here?

12 **BAILIFF:** Yes, sir.

13 **THE COURT:** Can you send word to them it's
14 going to be at least ten more minutes?

15 Anything else y'all need to put on the record
16 before I rule?

17 **MR. ROSS:** Judge, with regard to asserting
18 someone else's rights, I have done some research on
19 that and it may assist the Court --

20 **THE COURT:** Tell me what it is.

21 **MR. ROSS:** It's State versus Moore.

22 **THE COURT:** Well, go ahead and cite your cases,
23 but I want you to tell me what the law is.

24 **MR. ROSS:** State versus Moore, 659 S.E.2d 256,
25 and Rakas, R-a-k-a-s, versus Illinois, that's a U.S.

1 Supreme Court case, 439 U.S. 129. Essentially, in
2 these cases, Your Honor, is a situation where in
3 Rakas, they searched the -- underneath the passenger
4 seat of a vehicle. The individual that was
5 ultimately tried was not the driver, he was a
6 passenger. U.S. Supreme Court says in that case, he
7 doesn't have a reasonable expectation of privacy in
8 what was found because he's not the owner of the
9 vehicle and he's not the driver.

10 Our courts in State versus Moore, that was the
11 Court of Appeals on a felony DUI case, they applied
12 Rakas versus Illinois. Defendant was a driver of
13 the vehicle that his brother owned. Police obtained
14 consent to process a vehicle. The highway patrol
15 seized the vehicle and ran tests on it and took
16 items off the vehicle.

17 And the court held that even if the process
18 that the highway patrol did on that vehicle exceeded
19 the scope of towing it away, they said, the Court of
20 Appeals said, the defendant didn't have any rights
21 to assert anyway because he was not the owner.
22 There was no evidence other than the defendant was
23 anything more than a permissive user is what the
24 court said there. And if Your Honor would like
25 copies of those, I do have them.

1 But the law is, quote, Like the trunk of an
2 automobile, these areas in which a passenger in the
3 capacity of a passenger simply would not normally
4 have a legitimate expectation of privacy. That's
5 page 148 to 149 of the Rakas case. So if you're
6 just a passenger...

7 **THE COURT:** Do you need to put anything else on
8 the record before I rule, Mr. Casto?

9 **MR. CASTO:** Yes, sir. Your Honor, with regard
10 to the Court's question with regard to the driver's
11 rights or what have you, I mean, essentially the
12 timeframe is this, that -- the timeframe is this:
13 That law enforcement sees this car pull up, go out
14 of the driveway. And then the only reason, we don't
15 even have a traffic violation as the Court's noted,
16 the only reason they go up to her, then they stop
17 her to talk to her is based on what they'd seen
18 before independent of what he does.

19 And so, essentially, Your Honor, in that case,
20 it is -- it fails to bait reasonable suspicion with
21 regard to her and it's her -- since the stop in that
22 interaction is bad, we move that, you know, we don't
23 get to the issue of consent because, you know, in
24 the Fowler case, basically the -- Fowler consents to
25 the search. He doesn't pull away or anything like

1 that. And so this -- these drugs would be fruit of
2 the poisonous tree, Your Honor. We feel that these
3 drugs should be suppressed based on that issue
4 there.

5 I beg the Court's indulgence to make sure I've
6 placed everything that I need to on the record.

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

8 **MR. CASTO:** The Court also cited that, you
9 know, with regard to, hey, this is a high drug area
10 or what have you, and I have a case from the United
11 States Supreme Court, Brown versus Texas, and I'll
12 just tell the Court basically what that case stands
13 for.

14 Essentially, law enforcement in El Paso sees
15 two men in an alley. It looks like they were about
16 to meet or -- is what the law enforcement believes,
17 and then they walk away in opposite directions from
18 one another. The two men were a few feet apart.
19 And, again, the officer testified that both officers
20 believed that the two either had been together or
21 were about to meet until the patrol car appeared.

22 Law enforcement also, in describing that
23 situation, gave as familiar language, the officer
24 testified that he stopped appellant because the
25 situation looked suspicious and had never seen that

1 subject in that area before. He elaborated that the
2 person was stopped, and these people were walking in
3 a high incidence -- in a place with a high incidence
4 of drug traffic, much like we have here.

5 Well, the U.S. Supreme Court responded to that.
6 And the fact that the drug, and I quote, The fact
7 the appellant was in a neighborhood frequented by
8 drug users, standing alone, is not a basis for
9 concluding that appellant himself was engaged in
10 criminal conduct, which is required. In short, the
11 appellant's activity was no different from activity
12 of other pedestrians in that neighborhood. The
13 record suggests, as the court later finds, An
14 understandable desire to assert a police presence;
15 however, that purpose does not negate Fourth
16 Amendment guarantees.

17 And, finally, that court said immediately after
18 that, In the absence of any basis for suspecting
19 appellant of misconduct, the balance between the
20 public interest and the appellant's right to
21 personal security and privacy tilts in favor of
22 freedom from police interference, Your Honor. And
23 that's our position.

24 We submit that this case is more analogous to
25 Fowler. We feel very strongly that the fact that

1 because there's an automobile involved, Your Honor,
2 we submit that that's a distinction without a
3 difference because the analysis used in Corley,
4 there must be reasonable suspicion to stop the car.

5 It's interesting, the analysis in Fowler, well,
6 the same exact thing. The police may -- they need
7 reasonable suspicion to stop somebody based upon the
8 person -- the belief the person is involved in
9 criminal activity. In other words, Judge, we have
10 the same analysis used with vehicle and without, and
11 that's why we feel the case is more analogous to
12 Fowler and any doubt, Your Honor, should be resolved
13 in favor of my client. We move that the drugs be
14 suppressed.

15 **THE COURT:** All right. Well, the Court of
16 Appeals in the Corley case, what they're discussing
17 is how Fowler is distinguishable from Corley. And
18 they talk about things about one of the
19 distinguishing factors is that in Fowler, there was
20 a suspected drug house, and in Corley, there is a
21 known drug house, and the observations that the
22 officer made.

23 Now, again, the officer did not see anybody get
24 out of the vehicle at the first house, but you've
25 got such a blending of things going on that -- I

1 mean, under Terry versus Ohio and under State versus
2 Nelson, as pointed out in Corley, a Court of Appeals
3 opinion, A policeman who lacks probable cause, but
4 whose observations lead him reasonably to suspect
5 that a particular person has committed -- is
6 committing or is about to commit a crime, may detain
7 that person briefly.

8 As I've indicated to you, the evidence in this
9 case appears to be that they went to stop that car.
10 My understanding of the evidence is they did not
11 stop the car. The car stopped on its own. It
12 stopped after driving at a high rate of speed or
13 quickly away from a brief transaction. That's an
14 additional factor to what they saw from their
15 initial observation point.

16 When they pull up on the scene, it is in
17 another area where there have been problems before.
18 There is a group of people around. The officer
19 pulls within three feet of the passenger side where
20 the defendant is said to have been sitting. He gets
21 out of the vehicle, the defendant, and he briskly
22 walks away from the officer. He's walking into a
23 crowd of people who have been described as being
24 hostile. When he is asked to come back or told to
25 come back, he responds in a hostile fashion.

1 You've got officer safety issues and you've got
2 all of this stuff building about reasonable
3 suspicion about what he -- what -- why he is acting
4 that way combined with what the officers had just
5 seen down the street.

6 In my view, it was proper for the officers,
7 they were justified in detaining the defendant, they
8 had reasonable suspicion at that point when they did
9 detain the defendant, and then they had officer
10 safety issues, they could detain the defendant.

11 Then there's an inquiry with the driver that's
12 going on. The driver has not testified. I don't
13 know what the driver might say, but the only
14 evidence that's before me is that this was a rental
15 car -- and I didn't go back and discuss all the
16 things which I've already said, which was the
17 evidence about the CAD reports and the known arrest
18 at the previous location and the arrest in July of
19 somebody leaving under what arguably is a similar
20 scenario where they drive away. It's just that that
21 one didn't have any taillights and it was a traffic
22 stop involved.

23 But getting back to the point, the driver is --
24 a discussion's going on between the police officers
25 and the driver, the driver consents to the search.

1 And the officer who is -- they're all investigating
2 to try to determine what's happening and asked the
3 question, Is that your dope? That question concerns
4 me, but I find that the State has established that
5 it was not violative of the defendant's
6 constitutional rights, not prohibited and it can be
7 allowed into evidence if a proper foundation is
8 established for admitting it.

9 Thereafter, there are discussions where I find
10 under Jackson versus Denno, that the State has
11 proven by the requisite degree of proof, at least by
12 clear and convincing evidence, that as to the two
13 statements given by the defendant that were
14 testified about, the oral and the written statement
15 after Miranda, that those statements were given
16 after proper Miranda warnings, after the defendant
17 was properly advised of his rights under the Fifth
18 and Sixth Amendments of the United States
19 Constitution and Miranda versus Arizona and its
20 progeny.

21 I find that he understood those rights and that
22 he made a free, knowing, voluntary and intelligent
23 decision to waive his rights and give the statements
24 in question. It was not -- the statements were not
25 the result of any type of undue influence, any

1 impropriety on the part of the police, any promise
2 that was inappropriate. It was a vague promise that
3 we'll help you if you help us basically, but there's
4 nothing inappropriate about that that would bar
5 admission of the statement.

6 It was made -- the statements were made after
7 the defendant had been advised about his right to
8 remain silent, his right to an attorney, that an
9 attorney will be appointed for him, that the
10 statements would be used against him in court and
11 that he could stop talking at any time and assert
12 his rights at any time. There was no threats, no
13 coercion, no undue influence. The statement was the
14 product of the defendant's own free will.

15 Now, obviously the jury would have to find
16 beyond a reasonable doubt all of the factors.

17 The motion for suppression is denied. The
18 motion under Denno has been heard. Is there any
19 other pretrial motions?

20 **MR. CASTO:** Briefly, Your Honor, we just move
21 that the witnesses be sequestered.

22 **THE COURT:** The chief investigating officer,
23 whoever you wish to designate, may stay in the
24 courtroom throughout the trial. The other witnesses
25 have to remain outside and are not to discuss the

1 testimony.

2 Do y'all need any time to talk? I mean, I've
3 had the jury back there an hour almost, but I'm
4 willing to wait another five, seven minutes if y'all
5 want to talk.

6 **MR. CASTO:** If we can take five minutes, Judge.

7 **THE COURT:** All right. Thank you. We're at
8 ease.

9 (Brief Recess.)

10 **THE COURT:** A few moments ago when I was
11 struggling to say what the other testimony was about
12 problems in the area, I should have mentioned gang,
13 the testimony about the gang activity, alleged gang
14 activity.

15 All right. Is the State ready for the jury?

16 **MR. ROSS:** Yes, Your Honor.

17 **THE COURT:** Defense ready for the jury?

18 **MR. CASTO:** Yes, sir, Your Honor.

19 **THE COURT:** Bring them in.

20 (The jury enters the courtroom at 11:58
21 p.m.)

22 **THE COURT:** All right. Ladies and gentlemen, I
23 wanted to bring you out here and tell you that, as I
24 mentioned to you, there's always pretrial issues in
25 every case and I have to, in consultation with the

1 attorneys, make an estimate of how long I think it
2 will take us to do those. We could not do them
3 yesterday because of various logistical factors. So
4 we started this morning at 9:30. I thought it would
5 take about an hour to do them, then you'd come at
6 11:00 and we'd get started with you.

7 Well, I was wrong. We just finished. We've
8 been working the whole time. We haven't been
9 goofing off. But that's why you've been waiting and
10 I'm sorry. I just -- sometimes I guess right and
11 sometimes I don't.

12 Now, I want you, without discussing the case --
13 you haven't selected a foreman, have you?

14 **BAILIFF:** No.

15 **THE COURT:** I want you, if you will, to go back
16 in the jury room without discussing the case and
17 select a foreman, put that on a note. And then as
18 soon as you have that, then I'll bring you back in
19 and we'll get started with the trial. The foreman
20 will take the seat on the end of the front row and
21 the alternate will take one of the seats in the end
22 of the back row. The rest of you can sit anywhere
23 in the jury box. But those are the two designated
24 seats for the foreman and the alternate, okay.

25 Thank you, folks. If you'll just let me know

1 as soon as you're ready.

2 (The jury retires to the jury room.)

3 (Pause.)

4 **THE COURT:** Juror number 52, Cecil Curry, II is
5 designated as the foreman.

6 (The jury returns to the courtroom.)

7 (Court's Exhibit Number 3, jury note, marked
8 for identification.)

9 **THE COURT:** All right. Mr. Curry is the
10 foreman of the jury.

11 Ladies and gentlemen, I have to have you placed
12 under a different oath now. I need you to stand and
13 raise your right hand. The clerk will administer
14 your oath.

15 (The jury was duly sworn by the Clerk of
16 Court at 12:04 p.m.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 typically, what we do is we break for lunch around
19 one o'clock, so we'll probably try to do that. I
20 may stop after the opening statements, but we'll
21 have a lunch break for you. You'll be on your own
22 for lunch some time either right after the opening
23 statements or after the first witness.

24 Now, I need to explain some things to you.
25 That oath that you just took -- well, first of all,

1 let me go back before that. Let me tell you how the
2 case is expected to proceed. I won't go through the
3 whole thing. I'll just tell you how we'll get
4 started.

5 The first thing you're going to hear will be
6 the opening statements of the attorneys. In opening
7 statements, attorneys are not permitted to engage in
8 what we refer to as argument. An opening statement
9 is permitted to be an introduction, an outline, an
10 overview, but it cannot extend into argument.

11 Once the opening statements are finished, then
12 I will call upon the State to present its evidence.
13 The State brought this charge and the State has the
14 burden of proof. Mr. Bonham is presumed to be
15 innocent. The State has to prove every essential
16 element of the offense charged against him beyond a
17 reasonable doubt. So I'll recognize the State to
18 present evidence in an attempt to meet that burden.

19 When the State finishes putting up its case in
20 chief, the Solicitor will inform me that the State
21 rests. And, at that point, whether you've been in
22 the courtroom just a few minutes or whether you've
23 been in here a long time, I have to send you out of
24 the courtroom so that I can discuss legal issues
25 with the attorneys like we've been doing all

1 morning. When you come back in after that, I'll
2 tell you where we go from there, but that's how the
3 case will get started.

4 Now, it's really important that you understand
5 some things, that oath that you just took is one in
6 which you've promised us that you're going to decide
7 this case based on the evidence and the law. So you
8 need to know where those things come from:

9 The law comes from me. It's my job to decide
10 what law applies to a case and to tell it to the
11 jury at the end of the trial. The evidence comes
12 from the witnesses. Evidence comes in the form of
13 the sworn testimony of witnesses. Evidence can also
14 come in the form of exhibits.

15 Now, an exhibit can be anything that's tangible
16 that's marked in the record. It can be a
17 photograph, a map, a chart, a substance, anything
18 tangible that's marked in the record. If something
19 is marked in the record, then you will have it in
20 the jury room with you when you decide the case.

21 What the lawyers say is not evidence. I want
22 you to pay attention to what they say, they
23 facilitate the introduction of the evidence, but
24 what comes out of the lawyers' mouths is not
25 evidence. The evidence comes from the witnesses and

1 the exhibits.

2 Now, while you've promised us that you're going
3 to decide the case based on the evidence and the law
4 and you must do that, I'm not asking you to leave
5 your common sense out of this. We want you to use
6 your common sense, use your sense of logic, reason,
7 your good judgment.

8 It just makes good common sense that you keep
9 an open mind about the case and you don't make up
10 your mind until you've heard all the evidence and
11 you know what law applies to the case. So there's
12 that rule that I've already mentioned to you that I
13 have to repeat it now and that is that you're not to
14 discuss this case in any way among yourselves until
15 I tell you to, don't talk about the case in any way
16 among yourselves, don't discuss the people involved,
17 the type of case it's alleged to be or anything
18 related to the case.

19 Until the week is over and you've been
20 discharged from jury duty, do not discuss this case
21 with anybody else. If anybody attempts to contact
22 you and discuss the case with you, report it to me
23 so that I can deal with it.

24 If there's any media coverage of the trial, get
25 away from it, report to me what you saw, heard or

1 read through the media.

2 Do not do any independent investigation.

3 You've heard me explain that at length to that other
4 jury. I'm going to shorten that some. You know
5 what I'm talking about. Don't go on the Internet
6 and look up law, don't go out to the scene and look
7 around, don't do any kind of independent research.
8 You'll get what you need presented to you here in
9 the courtroom.

10 Now, I have to read to you, for the purpose of
11 your record, what I read to them from the Supreme
12 Court, and I'll only do this this one time. You are
13 instructed that until your jury service is
14 concluded, you're not to discuss the case with
15 others including other jurors except as authorized
16 by the Court. You're not to read or listen to any
17 news reports about the case.

18 You're not to use a computer, a cell phone or
19 any other device with electronic communication
20 capabilities while attending the trial or during
21 deliberations. You may use such devices during
22 extended breaks, but not to obtain or disclose
23 information that's prohibited by the court.

24 You're not to use a computer, a cell phone or
25 any other electronic device with communication

1 capabilities or any other method to obtain or
2 disclose information about a case when you're not in
3 court. And information about a case includes, but
4 is not limited to, the following types of things:

5 Any information about a party, a witness, an
6 attorney or a court officer, any news accounts of
7 the case, any information collected through juror
8 research on any topics raised or testimony offered
9 by a witness or any information collected through
10 juror research on any other topic that the juror
11 might think would be helpful in deciding a case.

12 Now, it's also important that you understand
13 that there are two judges in the courtroom. I'm the
14 judge of the law. As I've indicated to you, it's my
15 job to decide the law that applies to the case and
16 instruct the jury on it. It's also my job to rule
17 on legal issues as they arise. And it's my job to
18 preside over the trial, to maintain order. I'm the
19 judge of the law.

20 You must understand that you are the only judge
21 of the facts. Only you get to decide such things as
22 whether evidence is believable or not. Only you get
23 to decide what weight, if any, to put on evidence.

24 So you'll be instructed that you have to accept
25 and apply the law as I give it to you because I'm

1 the only judge of the law and you're the only judge
2 of the facts and I will not invade your province. I
3 can't comment to you about the facts of the case. I
4 can't give you an impression about what I might
5 think about the facts of the case. You're the only
6 judge of the facts.

7 Now, the last thing I want to go over with you
8 is my effort to thank you. I tell jurors that I do
9 not sit up here and repeatedly thank them for their
10 service and the reason for that is not because I'm
11 not appreciative, it's because I think it cheapens
12 it. You all have a -- had a duty to meet, you did
13 not try to dodge it, you met it head on, and I thank
14 you.

15 Now, you've already found out that court
16 sometimes involves hurry up and wait. And I told
17 the jury yesterday and I'll tell the jury that comes
18 in tomorrow, I certainly cannot promise you that
19 there will be an absence of hurry up and wait in a
20 trial.

21 What I can promise you is this: If you're ever
22 waiting on us, we're working. There's not going to
23 be a situation where we're sitting out here goofing
24 off, drinking coffee while you're back there
25 waiting. That will not happen. If you're waiting,

1 we're working to get you out here. So thank you.

2 Now, to honor my commitment to you to try to
3 avoid wasting your time as much as possible, I'm
4 going to be quiet now. I invite your close
5 attention.

6 Solicitor, you're recognized for your opening
7 statement.

8 **MR. ROSS:** Thank you, Your Honor. May it
9 please the Court.

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

11 OPENING STATEMENT

12 **MR. ROSS:** Ladies and gentlemen, buckle up
13 because this case is going to expose you to a
14 real-world, street-level drug investigation. You're
15 going to hear from real cops. You're going to see
16 real drugs and you're going to learn what the cops
17 do to push the drugs off the street.

18 The facts that you're going to hear are very
19 simple. On Friday, August 10th, 2012, three
20 deputies had a house in West Columbia under
21 surveillance. They'd received some complaints and
22 they were watching for drug activity. Now, one of
23 the things that they'd looked for are cars going up
24 to the house staying a few minutes and then leaving.
25 That's a classic sign of drug sales.

1 So at about 9:45 that night, they saw a white
2 Kia Rio pull up to the house. They were about a
3 hundred yards away, but they could see with their
4 binoculars. They saw the car pull up. They saw
5 that it never turned off its taillights or
6 headlights, and then less than two minutes later, it
7 left.

8 So the officers pursued that vehicle. Two
9 officers went down a parallel street to try and
10 swing around and cut it off and then one officer
11 went directly from behind, and less than a minute
12 later, they found that white Kia Rio. It had
13 stopped at a house just down the street. And the
14 officers saw a female driver. They saw a female in
15 the back seat on the driver's side.

16 Then they saw Raheem Bonham, this defendant on
17 trial today. He was in the front passenger seat.
18 He was riding shotgun. He was about three feet away
19 from one of those officers when he got out of the
20 front seat, and when he got out, he quickly walked
21 away. He was walking towards a crowd of other
22 people that were standing by at that nearby house.
23 So the officer asked him to come back.

24 At that point, nobody's under arrest. They
25 wanted to ask these people some questions because

1 they had just seen what looked like a drug deal.
2 They had seen what looked like somebody driving up
3 to a drug house like you drive up to McDonalds and
4 ask for a Quarter Pounder.

5 So Deputy Nicholas Burt, right here
6 (indicating), he starts speaking with the female
7 that's the driver. He explains why they're there,
8 why they're talking to her and that what they saw
9 looked like there was some drug activity going on.
10 He asked for consent to search the vehicle, and the
11 driver gave consent to search that vehicle. It
12 didn't take them long to find the bag of crack
13 sitting right underneath the seat that Raheem Bonham
14 was sitting on, right underneath that front
15 passenger seat.

16 Needless to say, when they found that bag of
17 crack, Mr. Bonham, he wasn't a happy camper. He was
18 getting agitated. He started threatening the
19 officers. And when you threaten an officer, he's
20 going to put you in cuffs and he's going to pat you
21 down, and that's what Sergeant Bill Finch did.

22 You're going to hear from him in a minute.
23 He's a veteran police officer. He's been around the
24 block a couple times. And as he's patting him down
25 as he's putting him in cuffs, he asked him, You got

1 anymore dope on you? And the defendant says, Nah,
2 that's all I had -- I mean, I ain't got nothing. He
3 literally says that. The evidence will show he
4 literally corrected himself after he admitted that
5 bag of crack was his.

6 So Sergeant Finch puts him in the back of his
7 patrol car. The defendant is still upset. He's
8 still agitated. They wanted to let him have a
9 chance to cool down before they talked to him.
10 Several minutes go by and he does cool down. They
11 approach him, they read him his Miranda rights, and
12 they ask him again, Whose drugs are those? And he
13 says, Those drugs are mine. He admits that the
14 drugs found underneath his seat were his.

15 The drugs were packaged up, put in the evidence
16 room and they were tested by a chemist at the
17 sheriff's department. They tested positive. So
18 based on that, he faces this charge of possession of
19 crack cocaine. Those are the facts you will hear.

20 Now, at the end of the trial, Judge Keesley
21 will explain to you what the law is, what does that
22 mean, possession of crack cocaine? What does the
23 law say about that? And he's going to explain that
24 there are two types of possession under the law.
25 You have actual possession, that's where the drugs

1 are in your pockets or the drugs are in your hands.
2 And then you have constructive possession, that's
3 where the drugs aren't on you, but you exercise
4 power and control over the drugs or you exercise
5 power and control over the location where the drugs
6 are found.

7 For example, all those books in my office that
8 I dutifully read before coming to court today, right
9 now I have constructive possession of them. The
10 property at my house, constructive possession. My
11 pen sitting over there on the desk, I'm just as
12 guilty of possessing the pen now, constructive
13 possession, as I am now, actual possession
14 (indicating). It's as simple as that.

15 Ladies and gentlemen, this is going to be a
16 short trial. You're going to hear from those three
17 officers. You're going to hear from the evidence
18 custodian, and you're going to hear from the chemist
19 that tested the drugs. It's going to be a short
20 trial, but this is an important trial. This is a
21 serious charge. And what those officers were doing
22 that night was serious business.

23 And once you hear from the officers, once you
24 see the drugs that were seized and you hear from the
25 chemist, you're going to be firmly convinced that

1 Raheem Bonham was in possession of those drugs. And
2 that's why, at the end of the trial, I'll ask that
3 you find him guilty as charged.

4 **THE COURT:** Thank you, Solicitor.

5 Mr. Casto, you're recognized for your opening
6 statement.

7 **MR. CASTO:** Thank you very much, Judge, and may
8 it please the Court.

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

10 **MR. CASTO:** Night, it's roughly 9:45 p.m., and
11 there's a crowd of people that surround a rental car
12 as it pulls up to stop. Law enforcement walks up in
13 what is deemed a high crime, high drug area and ask
14 questions to the occupants of that car. The crowd
15 of onlookers sees what's going on and watches law
16 enforcement's interaction with the three people that
17 are in that car. Raheem Bonham is one of them. And
18 they see and they observe him and they see him out
19 there speaking with law enforcement, standing with
20 them, asking questions.

21 You're going to hear a couple of things, that
22 Raheem, he got upset, he admits that, as the crowd
23 of onlookers kept watching and observing this
24 interaction with law enforcement. You see, the
25 society that this takes place in is probably one

1 that not everybody has experienced whatsoever in
2 their personal life, but the places exist and that's
3 where it happened.

4 You know, the State has told us it's not a long
5 case and basically that it is going to be one that
6 is very short and that we agree, but it's one that's
7 very, very important because this is Raheem's day in
8 court and he's waited quite some time for it, for a
9 jury of 12 to listen and decide whether he should be
10 stripped of his freedom.

11 Now, up till now you've heard one side of the
12 story, you've heard the State's side. And keep in
13 mind it's the same State that's charged with proving
14 their case. We call it the burden of proof. We've
15 heard these terms before. And it's a very high
16 burden in criminal court. It's much higher than in
17 civil court. And for this offense that's charged,
18 well, elements exist and they're much like puzzle
19 pieces. And if you find that reasonable doubt does
20 not exist for each one of those elements, you must
21 find Raheem not guilty.

22 Now, a reasonable doubt, we hear it all the
23 time in shows, movies, books, videos, what have you.
24 Well, take a step back and how does our court
25 system, how do they define reasonable doubt? And it

1 looks like this: The type of doubt that would cause
2 an ordinary or reasonable person to pause or to
3 hesitate before they act. The type of doubt that
4 would cause a reasonable or ordinary person to pause
5 or hesitate before they act.

6 How do we find out, you know, and evaluate this
7 case? Be of good cheer, the pressure's off because
8 it's not the jury's job to solve the case. That
9 job's left to law enforcement.

10 What I'd ask you to do is to question
11 everything that's said in that chair right there,
12 question everything. Don't check your common sense
13 at the door or anything like that, use it as your
14 chief tool in your analysis as you wade through the
15 evidence. We'd ask you to keep an open mind
16 throughout the entire case as the entire case is
17 presented to you, and in the end, we'd ask you to
18 find Raheem not guilty of the offense charged.
19 Thank you.

20 **THE COURT:** Thank you, Mr. Casto.

21 It's 12:30, do you want to call your first
22 witness?

23 **MR. ROSS:** Yes, Your Honor. The State will
24 call Deputy Burt to the stand.

25 **THE COURT:** Come around, please.

1 NICHOLAS EDWARD BURT,
2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat please, sir. Once
4 you're seated, speak up loud and clear, state your
5 full name, spelling your last.

6 THE WITNESS: Deputy Nicholas Edward Burt,
7 B-u-r-t.

8 DIRECT EXAMINATION

9 BY MR. ROSS:

10 Q Deputy Burt, you were the arresting officer in
11 this case; is that correct?

12 A Yes.

13 Q And before you tell the jury about what you did
14 in this case, can you tell them about your
15 experience in law enforcement, please?

16 A I've been a deputy for three years. Prior to
17 that, I worked at City of Columbia. I'm a master
18 deputy now, which is an assistant supervisor in the
19 north patrol district. And prior to that, I was a
20 field training officer.

21 Q How many officers do you supervise right now?

22 A Right now we have a total of six with four
23 under me.

24 Q What type of cases do you investigate?

25 A We could respond to anything that comes in. It

1 could be a cat in a tree up and to a murder
2 investigation.

3 **Q** Tell me what happened on August 10th, 2012.
4 Tell me about the facts that led up to Mr. Bonham's
5 arrest.

6 **A** I was attached to a crime suppression team at
7 that time, myself and Sergeant Finch and Captain
8 Thomas. And we were positioned on Holland Street
9 conducting surveillance of -- on an area of a house
10 that we knew to be a known drug house of 638 Sumter
11 Street.

12 **Q** Okay. What were you looking for?

13 **A** We were watching for any kind of suspicious
14 activity, cars pulling up, leaving less than two
15 minutes, conducive to drug sales.

16 **Q** And what time of night were you there?

17 **A** We had originally got there around 9:00 p.m.

18 **Q** Okay. Did you see any cars pull up?

19 **A** At 9:45, we did.

20 **Q** And tell me what you saw.

21 **A** We were positioned across the street side by
22 side by side with no headlights on, observed a white
23 Kia take a left off of Holland Street onto Sumter
24 Street and proceed directly to the address where it
25 pulled into the driveway.

1 Q What type of Kia was it?

2 A It was a Kia Rio.

3 Q How far away from that car were you when it
4 passed by you?

5 A Fifteen to 20 feet from the front of my car.

6 Q Okay. And then it went down Sumter Street at
7 that point?

8 A Yes, it did.

9 Q Okay. And which house did it pull up in?

10 A From where I was sitting, 638 Sumter Street.

11 Q Okay. And how were you watching this vehicle
12 pull by?

13 A At the time, I had binoculars as well to try to
14 keep track of it going down to that area.

15 Q Okay. And how far away is 638 Sumter Street
16 from where you were positioned?

17 A It's less than a quarter of a mile.

18 Q Were there any -- does that street have lights,
19 lamps to illuminate the area during the nighttime?

20 A Yes, it does.

21 Q Okay. And you saw it pull up to 638 Sumter
22 Street. What happened next?

23 A As it pulled in the driveway, you can only see
24 the back third of the car, which would be just
25 behind the rear door on the passenger side. The

1 headlights stayed on, presumably, because the
2 taillights were always lit. I noted what time it
3 was on the clock and then it backed out at two
4 minutes later.

5 Q Why did you note what time it pulled in on your
6 clock? Is that something you're trained in?

7 A Yes. I wanted to keep track of how long it was
8 actually at the house.

9 Q And how long was it there?

10 A At -- two minutes at the most. It was probably
11 less than two minutes.

12 Q So less than two minutes that vehicle was at
13 the house?

14 A Yes.

15 Q How was that relevant for what you were looking
16 for?

17 A Knowing that it was a drug house, that's
18 consistent with somebody pulling up to make a
19 transaction and leave.

20 Q What did it do after it left?

21 A It backed back out into Sumter Street and
22 continued to the end of the road which is --
23 connects directly to Joye Street and the only way to
24 go is to the right.

25 Q So what did you and your fellow officers do at

1 that point?

2 **A** Myself and Captain Thomas pulled out onto
3 Holland Street and proceeded to the right to try to
4 intercept the vehicle because Joye Street dead ends
5 into North Brown Street. So we went to the end of
6 Holland Street and made a left onto North Brown
7 Street.

8 **Q** Were you and Captain Thomas in the same vehicle
9 or separate vehicles?

10 **A** We were in separate vehicles.

11 **Q** And you said there was a third officer with you
12 as well; is that correct?

13 **A** Yes, my sergeant.

14 **Q** Okay. And what's his name?

15 **A** Sergeant Bill Finch.

16 **Q** Okay. And what did he do?

17 **A** He went straight across and went down Sumter
18 Street.

19 **Q** Okay. Did you find the vehicle?

20 **A** Yes, we did.

21 **Q** And where did you find it?

22 **A** As I was pulling onto North Brown Street coming
23 up to Ross Street, that same vehicle was pulling up
24 to a stop at [REDACTED] Ross Street.

25 **Q** Okay. So you came in that vehicle's line of

1 sight prior to the vehicle stopping?

2 A Yes.

3 Q And you came into that vehicle's line of sight
4 prior to anybody getting out of the vehicle?

5 A Yes, it was still rolling.

6 Q Okay. What happened next?

7 A The vehicle parked. I drove past the vehicle
8 and did a U-turn to come behind it so I could read
9 the tag.

10 Q Okay. You got the tag?

11 A I did.

12 Q And then what happened?

13 A I ran the tag through dispatch. It came back
14 to a rental car company. I pulled up behind them as
15 Captain Thomas stayed beside them and all three
16 occupants began exiting the vehicle.

17 Q Okay. And then what did you do?

18 A I made contact with the driver.

19 Q And what was that driver's name?

20 A That driver's name was Danielle Macon.

21 Q Okay. And how did you make contact with her?
22 What happened with her?

23 A She had exited the vehicle. I walked up to
24 her. She made eye contact with me, came up to me.
25 I told her what we were doing and why we were

1 stopping her and succinctly asked for consent to
2 search the vehicle.

3 **Q** And did she give consent to search?

4 **A** She did.

5 **MR. CASTO:** Objection to hearsay.

6 **THE COURT:** Do you wish to be heard?

7 **MR. ROSS:** Your Honor, I'd say it's effect on
8 the listener.

9 **THE COURT:** Do you wish to be heard?

10 **MR. CASTO:** No, sir, Your Honor.

11 **THE COURT:** Bear with me a moment.

12 (Pause.)

13 **THE COURT:** It may fall within the exceptions
14 to the hearsay rule, but it appears to be hearsay.
15 Don't say what anyone said to you.

16 You have to rephrase your question, please.

17 **MR. ROSS:** After asking for consent --

18 **THE COURT:** Anyone other -- other than the
19 allegations of what the defendant may have said to
20 you.

21 BY MR. ROSS:

22 **Q** After asking for consent of the vehicle, did
23 you search the vehicle?

24 **A** Yes.

25 **Q** And what part of the vehicle did you search?

1 **A** I began at the driver's door.

2 **Q** Okay. Did you find anything?

3 **A** I did not. Captain Thomas, I'd also alerted we
4 had consent to search the vehicle, and he started at
5 the passenger side and he advised me he had located
6 something under the passenger --

7 **MR. CASTO:** Objection to hearsay.

8 **THE COURT:** Do you wish to be heard?

9 **MR. ROSS:** Yes, Your Honor.

10 **THE COURT:** Do you want to be heard?

11 **MR. ROSS:** Yes, Your Honor.

12 **THE COURT:** Ladies and gentlemen, please step
13 in the jury room. Don't discuss the case.

14 (The jury retires to the jury room.)

15 **THE COURT:** What is it you wanted to say, sir?

16 **THE WITNESS:** That I was searching the vehicle
17 and Captain Thomas had alerted me he saw the bag
18 under the passenger seat.

19 **THE COURT:** And what's your objection?

20 **MR. CASTO:** That what Captain Thomas told him
21 is hearsay.

22 **THE COURT:** It's a present sense impression.
23 It's an exception to the hearsay rule.

24 Anything else you want to add?

25 **MR. ROSS:** Your Honor, I would add with regard

1. to the driver giving consent, we would offer that
2 not as truth of the matter asserted, but to show the
3 effect on the listener, the effect on this officer.
4 And we would say it's not hearsay and he should be
5 allowed to get into it.

6 **THE COURT:** You're arguing that it's not
7 offered for the truth of the matter asserted, I
8 disagree. I'm not changing my ruling.

9 **MR. ROSS:** Yes, Your Honor.

10 **THE COURT:** As a practical matter, I don't know
11 if it makes any difference in the case, but it is --
12 the ruling stays the same.

13 I'm ready for them if they're ready, Art.

14 (The jury returns to the courtroom.)

15 **THE COURT:** The objection is overruled. It is
16 hearsay, but it falls within the exception to the
17 hearsay rule.

18 Pose your question again, please.

19 BY MR. ROSS:

20 **Q** Once you began searching the vehicle, did you
21 find anything?

22 **A** I did not myself right away.

23 **Q** Okay. Did anybody assist you in searching that
24 vehicle?

25 **A** Yes, Captain Thomas did.

1 Q And what part of the vehicle did he search?

2 A He started at the passenger side.

3 Q And did he advise you that he found something?

4 A He did.

5 Q And what did he say?

6 A He said he'd thought he had seen something, so
7 I went around to his side.

8 Q Okay. Did he handle what he saw?

9 A No, he did not.

10 Q Did he ever take possession of that?

11 A No, he did not.

12 Q And did you come around to look at what he said
13 he saw?

14 A I did.

15 Q And what did you find?

16 A When I came around to the passenger door and
17 looked forward up underneath the passenger seat,
18 there was a clear, plastic bag containing two
19 yellowish, white, rock-like substances that are
20 believed to be crack cocaine.

21 Q Okay. And how many years have you been a
22 police officer?

23 A Four.

24 Q And during those four years, have you had the
25 opportunity to see crack cocaine before?

1 **A** Yes, I have.

2 **Q** And did what you see on August 10th, 2012, did
3 that appear to be crack cocaine to you at that
4 point?

5 **A** It did.

6 **Q** Okay. What happened after you saw that bag of
7 what appeared to be crack cocaine?

8 **A** I went to my vehicle and got my digital camera.

9 **Q** Did you handle it prior to getting your digital
10 camera?

11 **A** No, I did not.

12 **Q** And what happened after you got your camera?

13 **A** I began taking pictures of everything and how
14 it was.

15 **Q** Okay. And then what happened?

16 **A** Then I collected the bag and secured it in the
17 trunk of my vehicle.

18 **Q** Okay. When you took those photographs, are the
19 photographs, are they exactly where the drugs were
20 when you saw them?

21 **A** Yes.

22 **Q** You said you collected that bag of suspected
23 crack cocaine?

24 **A** Yes.

25 **Q** Tell me what you did with it at that point.

1 **A** I placed it in a manila envelope in the trunk
2 of my patrol vehicle.

3 **Q** Okay. And is that trunk locked?

4 **A** Yes.

5 **Q** Okay. Did you ultimately turn that bag of
6 suspected crack cocaine into evidence?

7 **A** Yes.

8 **Q** And how do you go about doing that?

9 **A** It's placed in, what we call, our BEST kit.

10 **Q** And tell me what's a BEST kit?

11 **A** It's for anything, any drug that's higher than
12 marijuana. It goes into a separate bag. It's
13 sealed, it's tamperproof, and sealed again, and then
14 turned in for further testing in a lab.

15 **Q** Now, how is a BEST kit marked for
16 identification?

17 **A** It's on the front of the bag, you'll write the
18 case number and your name and the time it was
19 sealed. It also has a control number on each bag.

20 **Q** Now, is the control number on each bag is that
21 unique to each BEST kit?

22 **A** Yes.

23 **Q** Did you bring a BEST kit in with you to court
24 today?

25 **A** I did.

1 Q Would you please step down and demonstrate to
2 the jury how you go about putting drugs in a BEST
3 kit?

4 A (Witness leaves the witness stand.)

5 These are in our evidence locker anytime we
6 have a suspected drug. Each packet is the same with
7 the exception of -- each BEST kit has a different
8 control number. This is what it looks like. This
9 seal up top, once you put it in there and close it,
10 it has this printing on the top that if it's
11 tampered with anywhere around the bag, it will be
12 evident. You fill out date sealed, our agency, our
13 case number and then the receipt up top is mimicked
14 and this actually tears off and we keep as a receipt
15 for this same bag, the numbers coincide.

16 And then this other paperwork is the request
17 for it to be tested and then chain of custody
18 paperwork. After that, it's placed in this manila
19 envelope, sealed and turned into a secured locker.

20 Q Now, once you seal --

21 A (Witness resumes the witness stand.)

22 Q Deputy Burt, once you seal this plastic bag,
23 when you put the drugs in, pull it off and then you
24 seal it, can you open this bag after that point?

25 A No. It has to be cut.

1 Q You mentioned a control number. What was the
2 control number of the BEST kit that you placed the
3 drugs in in this case?

4 A C-022696.

5 Q And are you reading from the receipt from the
6 same BEST kit?

7 A Yes.

8 Q Okay. After you sealed the drugs in that BEST
9 kit, what did you do with the BEST kit?

10 A I placed it into a secure locker in the
11 evidence room.

12 Q Okay. From the point you seized the bag of
13 suspected crack cocaine underneath the seat to the
14 point you placed it in the BEST kit and then turned
15 the BEST kit into evidence, was that plastic bag
16 within your care, custody and control the whole
17 time?

18 A Yes.

19 Q Did anyone else come into possession of that
20 plastic bag or its contents?

21 A No.

22 Q Did you place anything in the BEST kit that was
23 not seized from underneath the seat of that vehicle?

24 A No.

25 Q You put the BEST kit into evidence, then what

1 happened?

2 **A** After that, it's logged in on the computer.

3 **Q** What county was the defendant stopped?

4 **A** Lexington County.

5 **Q** South Carolina?

6 **A** Yes.

7 **Q** And that's -- and, specifically, what street
8 did the car stop at?

9 **A** It was, specifically, on North Brown Street,
10 but the address itself is a Ross Street address.

11 **Q** And that location is Lexington County, South
12 Carolina?

13 **A** Yes, it is.

14 **Q** Okay. Deputy Burt, I'm going to show you first
15 what's been marked as State's Number 1. Do you
16 recognize this aerial photograph?

17 **A** Yes.

18 **Q** And does this accurately reflect the location
19 of where this stop occurred?

20 **A** Yes.

21 **Q** And it accurately reflects Sumter Street in
22 relation to Ross and Brown Street?

23 **A** Yes.

24 **MR. ROSS:** Your Honor, we'd move Number 1 into
25 evidence.

1 **THE COURT:** Any objection to this?

2 **MR. CASTO:** No, sir, Your Honor.

3 **THE COURT:** Mark that in evidence, please,
4 ma'am.

5 (State's Exhibit Number 1, map, admitted
6 into evidence.)

7 BY MR. ROSS:

8 **Q** Now, I'm showing you State's Number 2. Is this
9 an accurate reflection of [REDACTED] Sumter Street?

10 **A** Yes.

11 **Q** And is this an accurate reflection of the house
12 that you were -- you had under surveillance that
13 night?

14 **A** Yes.

15 **MR. ROSS:** Your Honor, we'd move Number 2 into
16 evidence.

17 **THE COURT:** Any objection to this?

18 **MR. CASTO:** Without objection, Your Honor.

19 **THE COURT:** Mark it in evidence, please.

20 (State's Exhibit Number 2, map, admitted
21 into evidence.)

22 **Q** And, finally, Deputy Burt, I'm showing you
23 State's Number 3. Is this an accurate reflection of
24 the corner of Ross and North Brown Street where this
25 stop occurred?

1 **A** Yes.

2 **MR. ROSS:** Your Honor, we'd move this into
3 evidence, Number 3.

4 **THE COURT:** Any objection to this?

5 **MR. CASTO:** No, sir, Your Honor.

6 **THE COURT:** Mark that in evidence, please,
7 ma'am.

8 (State's Exhibit Number 3, map, admitted
9 into evidence.)

10 **MR. ROSS:** Your Honor, at this time, we'd ask
11 to publish to the jury.

12 **THE COURT:** You may show the jury anything
13 that's in evidence.

14 BY MR. ROSS:

15 **Q** Deputy Burt, if you could, please step down.

16 **A** (Witness leaves the witness stand.)

17 **Q** And if you would, please stand on this side.

18 And if you could, please point out where you and
19 your fellow officers were -- and if you could,
20 please stand where everybody on the jury can see --
21 where were y'all sitting -- where were y'all
22 conducting your surveillance from?

23 **A** Right here at the corner (indicating).

24 **Q** So y'all are right here?

25 **A** Yes.

- 1 Q And which street is this?
- 2 A That's Holland Street.
- 3 Q And which street is this?
- 4 A Sumter Street.
- 5 Q And all three of the vehicles, which direction
- 6 were they pointed?
- 7 A They were all facing toward Sumter Street.
- 8 Q So they were facing up this way (indicating)?
- 9 A Yes.
- 10 Q And which house on Sumter Street is [REDACTED] Sumter
- 11 Street?
- 12 A This one right here (indicating).
- 13 Q That one?
- 14 A Yes.
- 15 Q So y'all were looking from here all the way
- 16 down to here?
- 17 A Yes.
- 18 Q Okay. And the car pulls in -- in reference to
- 19 State's Number 2, tell me where that car pulled in
- 20 on [REDACTED] Sumter Street.
- 21 A Pulled in right here.
- 22 Q So right in there?
- 23 A Yes.
- 24 Q Okay. And then what direction did it pull out?
- 25 A It backed out this way, and then was facing

1 towards the end of Sumter.

2 Q So it swung around like that and then down
3 here?

4 A Yes.

5 Q And did it take -- which direction did it take
6 when it got to Joye Street?

7 A The only way you can go is to the right.

8 Q That way?

9 A Uh-huh.

10 Q Now, when you saw it back out, what direction
11 did you take in your patrol vehicle?

12 A I pulled out and went to the right down Holland
13 Street.

14 Q Okay. So you're going down this way as the
15 white Kia, what direction is it going?

16 A It's parallel going down this way.

17 Q So you're going this way, it's going this way?

18 A Yes.

19 Q And if you take Joye Street all the way down,
20 what street does it lead into?

21 A North Brown.

22 Q And if you take Holland Street all the way
23 down, which street does it lead into?

24 A North Brown.

25 Q Now, let's look at a close-up of Ross Street,

1 State's Number 3. Point out how you were coming
2 when you saw that white Kia Rio.

3 A I had turned left onto North Brown. I was
4 approximately here when that vehicle was coming
5 right here (indicating).

6 Q Okay. And where did the car stop?

7 A Almost exactly where this other vehicle is.

8 Q Okay. And you passed by that vehicle?

9 A I did. I slowed down, passed by and did a
10 U-turn. There's an open field right here, this
11 front yard.

12 Q And you passed by the vehicle prior to anybody
13 getting out?

14 A Correct.

15 Q If you'll, please, have a seat.

16 A (Witness resumes the witness stand.)

17 (Mr. Casto reviewing documents.)

18 Q Deputy Burt, I'm going to show you what's been
19 marked as State's Numbers 4 through 12. If you
20 could, please take a second and review these
21 photographs.

22 A (Witness complies.)

23 Q Have you had a chance to review them?

24 A I have.

25 Q Are these the photographs you took that night?

1 **A** Yes.

2 **Q** And do they accurately reflect what you saw
3 that night?

4 **A** Yes.

5 **MR. ROSS:** Your Honor, we'd move 4 through 12
6 into evidence.

7 **THE COURT:** Any objection to these other than
8 your previous objections?

9 **MR. CASTO:** We would ask that a proper
10 foundation be laid, and we'd note our previous
11 objection for the record.

12 **THE COURT:** Do you want to be heard?

13 **MR. ROSS:** Your Honor, I think the proper
14 foundation has been laid.

15 **THE COURT:** The objection's overruled. You may
16 mark those in evidence, please.

17 (State's Exhibit Numbers 4 through 12,
18 photographs, admitted into evidence.)

19 BY MR. ROSS:

20 **Q** All right. Deputy Burt, I'm showing you number
21 4. Now, Deputy Burt, the projector's a little bit
22 dark, but what is State's Number 4 here?

23 **A** That is the rear of the white Kia.

24 **Q** Okay. And does the photograph that you took,
25 does it appear a little bit brighter than what you

- 1 see on the projector?
- 2 **A** Yes.
- 3 **Q** State's Number 5, what is this a photograph of?
- 4 **A** It's the passenger side of the same car.
- 5 **Q** Okay. On number 6?
- 6 **A** The front driver's side.
- 7 **Q** 7?
- 8 **A** Another shot of the front.
- 9 **Q** If you would, please step down. Now, I'm
- 10 showing you 8.
- 11 **A** (Witness leaves the witness stand.)
- 12 **Q** If you could stand there. Tell the jury what
- 13 this is a photograph of.
- 14 **A** That's the interior of the car standing at the
- 15 driver's side door.
- 16 **Q** Now, let me ask you this: What are these items
- 17 right here?
- 18 **A** That is the registration that I had pulled out
- 19 of the glove box.
- 20 **Q** Okay. So when you initially approached, were
- 21 these papers sitting on that seat?
- 22 **A** No.
- 23 **Q** Okay. Again, Number 9, is that the same area?
- 24 **A** Yes.
- 25 **Q** What is State's Number 10?

1 **A** That is looking on the passenger side just
2 underneath the passenger seat.

3 **Q** Okay. So what is this metal bar here?

4 **A** That's to adjust the seat going back and forth.

5 **Q** And this plastic thing, this black plastic
6 thing, what is that?

7 **A** The floor mat.

8 **Q** Okay. And what is this?

9 **A** That is the clear plastic bag with two
10 yellowish, white, rock-like substances.

11 **Q** And is that what you seized?

12 **A** Yes.

13 **Q** Is that what you turned into evidence?

14 **A** Yes.

15 **Q** And that was in your care, custody and control
16 from the point you seized it to the point you turned
17 it into evidence; is that correct?

18 **A** Correct.

19 **Q** And this photograph is an exact -- this is
20 exactly where the suspected drugs were in the
21 vehicle when you first saw it?

22 **A** Yes.

23 **Q** Okay. Now, I'm showing you State's Number 11.
24 What is that?

25 **A** That's the same photo -- the same angle zoomed

1 in.

2 Q Okay. And, finally, Number 12, what is that a
3 photograph of?

4 A That's a photograph of the defendant.

5 Q Okay. And that's how he appeared that night?

6 A Yes.

7 Q Now, if you could, please return to your seat.

8 A (Witness resumes the witness stand.)

9 Q After you found the suspected drugs, tell me
10 about the defendant's demeanor.

11 A He began to get very agitated with Sergeant
12 Finch.

13 Q How so?

14 A He was just becoming boisterous.

15 Q Okay. Could you hear any of the specifics from
16 what he was saying?

17 A Not specifically what he said.

18 Q Okay. What was your main focus when Sergeant
19 Finch was dealing with the defendant?

20 A I was still securing and searching the vehicle.

21 Q Okay. Was there anyone else in that area aside
22 from the driver of the vehicle, the defendant and
23 the back seat passenger?

24 A Yes, there was.

25 Q How many people were in the area?

1 **A** At the actual Ross Street address, there were
2 10 to 15. And back behind us across the street,
3 there were additional people.

4 **Q** And what were they doing while y'all were
5 searching the people?

6 **A** The people from the Ross Street address were
7 kind of heckling us as we were out there.

8 **Q** Okay. What happened to the defendant after you
9 found the drugs?

10 **A** I had let Sergeant Finch know that we had found
11 something. When the defendant was getting
12 boisterous, Sergeant Finch placed him in
13 investigative detention.

14 **Q** And what does investigative detention mean?

15 **A** It's when -- a time you're placed into while
16 we're investigating the commission of a crime, you
17 can be placed in handcuffs, or you're not free to go
18 at that point.

19 **Q** So y'all are still trying to figure out what
20 was going on?

21 **A** Yes.

22 **Q** Did Sergeant Finch ultimately arrest this
23 defendant?

24 **A** Yes.

25 **Q** Okay. Is the individual who got out of the

1 passenger seat of that white Kia Rio in court today?

2 A Yes, he is.

3 Q And is that same individual the same one that
4 was arrested?

5 A Yes.

6 Q Can you point him out to me, please?

7 A He's sitting right there (indicating).

8 Q And that's Mr. Bonham that you're pointing to?

9 A Yes.

10 Q Sitting by his attorney?

11 A Yes.

12 MR. ROSS: That's all the questions I have for
13 you, Deputy Burt. If you would, please answer
14 anything Mr. Casto has.

15 THE COURT: Do you want to question him now,
16 break for lunch or what?

17 MR. CASTO: If I could question him now, Your
18 Honor.

19 THE COURT: Go ahead.

20 CROSS-EXAMINATION

21 BY MR. CASTO:

22 Q Hey, Deputy Burt. How are you?

23 A Good.

24 Q Where you're positioned when you were on
25 patrol, you are technically on Holland Street; isn't

1 that right?

2 **A** Yes.

3 **Q** And, basically, you're looking down Sumter
4 Street; isn't that right?

5 **A** Yes.

6 **Q** And I think that -- so there's some distance in
7 between where you're stationed and towards the end
8 of Sumter Street?

9 **A** Yes. We could see down the entire length.

10 **Q** More than a football field?

11 **A** Probably that or a little bit more.

12 **Q** Okay. More than two football fields away?

13 **A** To be precise, I mean, it's less than a quarter
14 of a mile the whole street.

15 **Q** Approximately, though. And when the car turns
16 in, how much of that car from where you were seated,
17 your vantage point, how much of that car could you
18 see?

19 **A** From that side photograph, if you're looking at
20 the back passenger door, from that point to the
21 rear.

22 **Q** So just kind of about half -- the back half of
23 the car; is that a fair assessment?

24 **A** Yes.

25 **Q** You didn't see anybody in that car get out, did

1 you?

2 **A** No.

3 **Q** You didn't see any car doors open?

4 **A** Not from where I was sitting.

5 **Q** You didn't see anybody from that house come
6 outside and interact with the folks in this rental
7 car, did you?

8 **A** No.

9 **Q** Okay. But it does back out and goes to another
10 location, correct?

11 **A** Correct.

12 **Q** When this rental car came to a stop, it's
13 through questioning that you eventually learn the
14 car's rented; is that right?

15 **A** No. I learned the car was a rental car after
16 running the tag.

17 **Q** In other words, eventually you learn it's a
18 rental car?

19 **A** Yes.

20 **Q** Who was it registered to?

21 **A** It's registered to Main Maddox, Neal and Day,
22 Incorporated, which is -- their business name is
23 U-Save Auto rental.

24 **Q** Do you know if it was rented by any of the
25 three passengers that were in it?

1 **A** The rental agreement that I had was for a
2 Sylvia Haynes.

3 **Q** And she wasn't one of the passengers in there?

4 **A** No.

5 **Q** Now, it's impossible to know, throughout the
6 time the car's been rented, who all's been in the
7 car with any degree of certainty; isn't that right?

8 **A** You can say that.

9 **Q** And it's probably even tougher with regard to
10 whoever rented the car before these folks; isn't
11 that right?

12 **A** Correct.

13 **Q** Okay. It's been stated that some drugs were
14 found and they were in a small plastic bag; is that
15 correct?

16 **A** Yes.

17 **Q** And I -- it was your testimony that you acted
18 with care, did not touch the bag, right?

19 **A** Yes.

20 **Q** And Officer Thomas acted with the same amount
21 of care in that he didn't touch the bag?

22 **A** Yes.

23 **Q** And the real reason for that is just so the
24 evidence wouldn't be contaminated; isn't that right?

25 **A** Correct.

1 Q In other words, you don't want to leave your
2 fingerprints behind?

3 A I wouldn't want to move it from where it was
4 located either.

5 Q Okay. It's twofold, don't want to move it,
6 right? Don't want to leave your -- correct?

7 A That could be a concern, yes.

8 Q And you don't want to leave your fingerprints
9 on it, right?

10 A That could be a concern.

11 Q Okay. Don't want to leave anything like DNA or
12 anything like that on it as well?

13 A Correct.

14 Q Okay. To your knowledge, was this -- it's my
15 understanding the drug material was tested, right?

16 A The actual substance in the bag --

17 Q Yes, sir.

18 A -- yes.

19 Q The bag itself was it -- do you know if you or
20 any officer, to your knowledge, fingerprinted the
21 bag?

22 A No.

23 Q Do you know if you or any other officer
24 submitted the bag for DNA testing?

25 A No.

1 Q And to lift fingerprints, do y'all have that
2 ability, say, in-house back at your -- at the
3 sheriff's office?

4 A Our CSI would.

5 Q But with regard to DNA testing, that's not
6 in-house, that's sent to SLED; is that right?

7 A I believe we use SLED and possibly Richland
8 County given some cases.

9 Q And they do that type of testing every day;
10 isn't that right?

11 A To my knowledge. I'm not there to (phonetic)
12 anything for that, so.

13 MR. CASTO: I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. CASTO:

17 Q And as you've testified, while this rental car
18 was stopped, you said that there were about 15
19 people, approximately, surrounding the car?

20 A They were coming up towards it out of the yard.

21 Q And not counting the three passengers that are
22 just getting out of the car, right?

23 A Yes.

24 Q These are just 15 additional people?

25 A Yes.

1 Q And then you said, I believe, that there were
2 even more on the other side of the street?

3 A Where we were -- the car was pointing towards,
4 on North Brown, towards Holland Street, it would be
5 behind us to the right across the street.

6 Q And how many people were over there?

7 A Four to five.

8 Q Approximately 20 people total, right?

9 A Yes.

10 Q Watching what was going on?

11 A Yes.

12 Q Described, I believe, as hostile?

13 A The crowd at the Ross Street address was giving
14 us some heckling.

15 Q And you and the other officers were questioning
16 the occupants of the vehicle, right?

17 A I had made contact with the driver.

18 Q Okay. Made contact with them. And other
19 officers were asking other occupants questions,
20 right?

21 A To my knowledge, yes.

22 Q So this crowd sees some dialogue between
23 yourself and the occupants, right?

24 A Correct.

25 Q They see specifically Raheem, you know,

1 conversing with law enforcement, right?

2 **A** Yes.

3 **Q** And then they ultimately see him driven away by
4 law enforcement, right?

5 **A** Yes.

6 **Q** And, hypothetically, if Raheem or someone else
7 is seen, you know, telling on somebody to get
8 someone else in trouble, well, there could be
9 consequences in a crowd like that, right?

10 **MR. ROSS:** Calls for speculation, Your Honor;
11 objection.

12 **THE COURT:** Overruled. You may answer the
13 question if you know an answer for it.

14 **THE WITNESS:** Can you repeat the question?
15 BY MR. CASTO:

16 **Q** Sure. If Raheem or anybody else, given this
17 high crime, high drug area, was seen tattling on
18 someone else or what have you, there could be
19 potential consequences, correct?

20 **A** That is possible.

21 **Q** I mean, that's why there are folks that are
22 cooperating with law enforcement, their identities
23 are kept secret, correct?

24 **A** In certain cases, yes.

25 **Q** And Raheem never gave you another name that

1 night of who those drugs belonged to; isn't that
2 right?

3 **A** Correct.

4 **Q** Did you know about a subsequent meeting between
5 Raheem and Officer Finch that happened after this
6 night?

7 **A** Yes.

8 **Q** And that occurred down, not in the -- well,
9 that didn't occur in this neighborhood, did it?

10 **A** No.

11 **Q** That was a meeting at the sheriff's office?

12 **A** At our north region substation.

13 **Q** Okay. And it's between Raheem and Officer
14 Finch I believe, correct?

15 **A** Yes.

16 **MR. CASTO:** No further questions. Thank you,
17 Officer.

18 **THE COURT:** Any redirect?

19 **MR. ROSS:** Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. ROSS:

22 **Q** Why weren't fingerprints taken from that bag?

23 **A** Sergeant Finch let me know that he had admitted
24 they were his drugs.

25 **Q** And who admitted they were his drugs?

1 **A** The defendant.

2 **Q** Why weren't -- why wasn't DNA taken from the
3 bag?

4 **A** Sergeant Finch let me know that the defendant
5 had admitted they were his drugs.

6 **Q** The car was a rental car. How was that
7 relevant to a drug investigation in your experience?

8 **A** In my experience, specifically with this area,
9 we've had drugs in other rental cars.

10 **Q** When the defendant and Sergeant Finch -- when
11 Sergeant Finch put the defendant in his patrol
12 vehicle, he was isolated from that crowd; is that
13 correct?

14 **A** Correct.

15 **MR. ROSS:** That's all the questions I have,
16 Your Honor.

17 **THE COURT:** Recross.

18 **MR. CASTO:** Those are all the questions I have.
19 Thank you, Officer.

20 **THE COURT:** Thank you, sir. You may step down.

21 **THE WITNESS:** Thank you, Your Honor.

22 **THE COURT:** All right. Ladies and gentlemen,
23 we're going to break for lunch now. You're on your
24 own for lunch. I need you back in the jury room,
25 please, at 2:15. Do not discuss the case. Remember

1 all those admonitions I gave to you.

2 I hope that's not thunder I've been hearing out
3 there, but -- it looks like it's sun shining, but
4 I've been hearing noises. 2:15. Thank you.

5 (The jury was excused for lunch.)

6 **THE COURT:** All right. As you leave, ladies
7 and gentlemen, you need to be careful that you don't
8 have any contact with the jurors. They go out into
9 the same common areas that you will go into, they
10 may choose the same restaurant that you might choose
11 to eat lunch, so just be real careful that you look
12 around. The safest thing to do is wait for them to
13 clear out and not talk about the case in any way
14 until you've cleared the courthouse property or
15 you're in some area where you know a juror could not
16 possibly be.

17 Mr. Bonham, I have to make decisions throughout
18 the trial as to whether to take you into custody or
19 not. I'm not going to take you into custody over
20 lunch. Are you in custody now?

21 **DEFENDANT:** No, sir.

22 **THE COURT:** Okay. I'm not going to take you
23 into custody over lunch.

24 You understand what I told you on Monday, that
25 the trial has started, it's even more started now

1 because the jury's been attached and jeopardy has --
2 I mean, the jury has been sworn and jeopardy is
3 attached, so I have to go through with this trial
4 now. If you're not present, I'm going to continue
5 the trial without you. You understand that?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** And what would happen is I would
8 issue a bench warrant for you to be picked up and if
9 they found you and were able to get you to court,
10 that would be fine. If not, the trial would
11 continue on, and if you were convicted by the jury,
12 I would sentence you, seal the sentence and whenever
13 you were picked up on a bench warrant, you'd be
14 brought before a circuit judge to read your sentence
15 if that were to happen.

16 So make sure you're here no later than 2:15
17 today and that you're present each time that I tell
18 you to be here. And if your lawyer says for you to
19 be here sooner, make sure you're here whenever he
20 tells you to be here if it's sooner, all right?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Thank you. 2:15.

23 (Whereupon, there was a luncheon recess.)

24 **THE COURT:** State ready for the jury?

25 **MR. ROSS:** Judge, I have one brief legal issue

1 I'd like to take up with the Court prior to the jury
2 being here.

3 **THE COURT:** All right.

4 **MR. ROSS:** My next witness is going to be
5 Sergeant Finch, and I would object to the defense on
6 cross-examination eliciting the statements the
7 defendant gave to Sergeant Finch after the night in
8 question. You'll recall the pretrial testimony was
9 that he later came back in and provided a written
10 statement. I would object to the defense on
11 cross-examination eliciting the content of those
12 statements on cross-examination. My objection is
13 hearsay. It's hearsay if he tries to admit his own
14 statement.

15 **THE COURT:** What statements are we talking
16 about?

17 **MR. ROSS:** He subsequently came and gave a
18 written -- this written statement, that's Court's
19 Exhibit Number 2. And the type of questions I'm --
20 I will object to is him -- is the defense saying,
21 well, isn't it true he gave a statement, isn't it
22 true he identified somebody else as a suspect, that
23 line of questioning like that, Your Honor.

24 The fact that he came in and gave a statement
25 is not hearsay, but the content of the statement

1 itself, I would argue that I do believe it is
2 hearsay. And I would not think it's proper to ask
3 that on cross because that's essentially getting the
4 statement in without proffering it into evidence or
5 having him take the stand.

6 **THE COURT:** Mr. Casto.

7 **MR. CASTO:** Thank you very much, Judge. May it
8 please the Court.

9 Obviously, you know, he is the defendant and
10 these are his statements that he made. We'd move
11 that -- I think that there is a case out there that
12 if it comes out of the defendant's mouth, that it's,
13 you know, it can be admitted, Your Honor, and,
14 basically, we hold that it's not hearsay.

15 The only thing that we plan to, you know, flesh
16 out is did he, you know, meet with you; was it
17 one-on-one, or, you know, at the office or what have
18 you; did he, you know, speak about what he knew with
19 regard to drug activity in the area; and, you know,
20 what did he tell you about -- well, he gave a name
21 that is the true origin of the drugs at that point.
22 And since it comes out of the defendant's mouth, we
23 move that it can come in.

24 (Pause.)

25 **THE COURT:** Under the definitions of hearsay,

1 under Rule 801, it becomes a question of whether the
2 declarant is available, subject to cross-examination
3 as to whether something falls under the definition
4 of hearsay or not. Now, the defendant, at this
5 point in time, is not on the stand and I have no
6 idea what he's going to decide with regard to
7 whether he's going to testify or not.

8 If a declarant is unavailable, there are
9 hearsay exceptions under Rule 804. One of those is
10 a statement against interest. And in that
11 paragraph, it reads, A statement tending to expose
12 the declarant to criminal liability and offered to
13 exculpate the accused is not admissible unless
14 corroborating circumstances clearly indicate the
15 trustworthiness of the statement.

16 Rule 803 exceptions deal with the situation
17 where it does not matter whether the declarant is
18 available or unavailable. I don't really see any --
19 anything in those that would constitute an
20 exception.

21 I'm not familiar with the case -- I know under
22 the old way, probably before a lot of y'all were
23 born, if you were in a situation in a trial and it
24 related in any way to something another party said,
25 it came in, but I think that the hearsay rules, the

1 rules of evidence have modified that, and I think
2 the cases have established that.

3 Now, here's what bothers me is the concept of
4 fundamental fairness. Because what you're wanting
5 to do, from the State, is admit the ones that
6 benefit you, but leave out the ones that don't is
7 what it seems to me. And I know there's a Rule 106
8 dealing with the remainder of or related writings or
9 statements that reads that when a writing or
10 recorded statement or part thereof is introduced by
11 a party, an adverse party may require the
12 introduction at that time of any other part or any
13 other writing or recorded statement which ought, in
14 fairness, to be considered contemporaneously with
15 it.

16 Now, that doesn't really apply, but -- because
17 what it's talking about doing is correct the
18 situation. Again, under the old rules when somebody
19 can go through an entire direct examination and
20 leave out the parts they didn't want brought in, and
21 then that witness may be on the stand two days and
22 then at the end of the two days, you come up on
23 cross and you -- you have to try to go back, and you
24 can leave the jury with a mistaken impression
25 because something is read out of context in a

1 statement under the way that it used to be done.

2 And so it provides context of a statement.

3 You had something else, Solicitor?

4 **MR. ROSS:** Your Honor, I would just say the
5 written statement was given almost a month later,
6 and I don't think the Rule 106, the Rule of
7 Completeness, would apply because we have --

8 **THE COURT:** I just said that.

9 **MR. ROSS:** Okay. And I would say it's a matter
10 of fundamental fairness that he does retain the
11 right to testify on his own behalf.

12 **THE COURT:** Oh, he can get it in by testifying.

13 If you've got that case, Mr. Casto, I'd be
14 happy to look at it, but I'm just not familiar with
15 it.

16 **MR. CASTO:** Yes, sir. I believe it's an older
17 case, Your Honor, and...

18 **THE COURT:** Well, I can tell you, in the old
19 days, this kind of stuff came in all the time. I
20 don't know if -- again, I'd have to look at the case
21 to see.

22 (Pause.)

23 **THE COURT:** It doesn't seem right to me. It
24 doesn't seem fair, but the ruling is that the motion
25 is granted. If he wants to get it in, there are

1 ways to get it in.

2 Are you ready for the jury?

3 **MR. ROSS:** Yes, Your Honor.

4 **THE COURT:** Are you ready for the jury?

5 **MR. CASTO:** We have one matter that I wanted to
6 place on the record, and I'll be brief. During the
7 recess, my client informed me that he wanted to
8 retain private counsel. I told him that the time
9 for that had more than likely -- the window of
10 opportunity for that closed unfortunately, but I did
11 want to place that on the record, Your Honor, I told
12 him that I would.

13 **THE COURT:** Do you want to say anything, sir?

14 **DEFENDANT:** Yes, sir. I just -- I don't feel
15 like I'm being represented the best I can be
16 represented, and I feel like I got too much to lose
17 just to give it up with somebody I'm not satisfied
18 with. And I feel like a private lawyer, I'd be more
19 satisfied with.

20 **THE COURT:** We're in the middle of a trial.
21 I'm not going to give you time to hire a private
22 attorney.

23 Anything else that needs to be put on the
24 record?

25 **MR. ROSS:** No, Your Honor.

1 **THE COURT:** Bring the jury in.

2 (The jury returns to the courtroom.)

3 **THE COURT:** Call your next witness.

4 **MR. ROSS:** State calls Sergeant Bill Finch to
5 the stand.

6 **THE COURT:** Come around, please.

7 JOHN WILLIAM FINCH,

8 having been duly sworn, testified as follows:

9 **THE CLERK:** Please be seated and state your
10 full name.

11 **THE WITNESS:** Sergeant John William Finch, and
12 it's F-i-n-c-h.

13 DIRECT EXAMINATION

14 BY MR. ROSS:

15 **Q** Sergeant Finch, you arrived as a backup officer
16 in this case; is that correct?

17 **A** Yes, sir.

18 **Q** Before you tell the jury about what you did
19 that day, could you please explain what your
20 experience in law enforcement is?

21 **A** I've been in law enforcement about 21 and a
22 half years. I started with the Richland County
23 Sheriff's Department. I did a little over five.
24 And then I came here and I've been here as a road
25 supervisor ever since.

1 Q What is your present duty position?

2 A I'm a road sergeant for the north region of
3 Lexington County.

4 Q And what does that mean?

5 A I run a shift. We take calls and just -- calls
6 for service every day. And I work a rotating shift,
7 and I have six people under my command. And I'm
8 also in charge of the North Region Suppression Team.

9 Q When you say north region, what area of the
10 county are you talking about?

11 A That consists of Chapin, Irmo, West Columbia,
12 Cayce and part of east Lexington.

13 Q And what type of cases do you respond to?

14 A Anything we get a call for, we get out and
15 patrol, and anything at all that comes through, we
16 respond to it and investigate and see what we can do
17 to help.

18 Q Tell me what you were doing on August 10th,
19 2012, that ultimately led to the arrest of
20 Mr. Bonham?

21 A On that night, I was working as the team leader
22 for the suppression team for the north region. We
23 were specifically working in that area for gang and
24 drug activity.

25 Q So when you say suppression team, what does

1 that mean?

2 **A** It means we target a specific crime, usually
3 it's either drugs or gang activity or sometimes
4 we'll do like when we have auto break-ins, stuff
5 like that, we'll target those type crimes. And we
6 go out and look for a specific crime in an area and
7 we go out and try to suppress it in marked units.

8 **Q** What specific crime were you looking for on
9 August 10th, 2012?

10 **A** Drug activity.

11 **Q** Were you targeting a specific house in
12 particular?

13 **A** Yes, we were.

14 **Q** And what house was that?

15 **A** It was a house located at 638 Sumter Street,
16 which is over in the West Columbia area of Lexington
17 County.

18 **Q** And what time did you begin surveilling the
19 house?

20 **A** It was around about 9:00 p.m., somewhere around
21 in there.

22 **Q** Okay. And what happened next? Did you see
23 anything suspicious?

24 **A** We did. We set up in a stationary position
25 right up on Holland Street directly in front of

1 Sumter Street where we would have a good, clear view
2 of the roadway. And we just sat up there and we
3 waited to see what kind of activity would occur
4 there, and we did see some activity that night.

5 Q Who was with you?

6 A Master Deputy Burt was there and Captain Thomas
7 was with me. There were three units all positioned
8 together facing down Sumter Street.

9 Q When you say three units, are you referring to
10 three patrol cars?

11 A Three patrol cars were out there, yes, sir.

12 Q So each officer had his own car?

13 A Yes, sir.

14 Q What did you see?

15 A While we were sitting there at around 9:45
16 p.m., we saw a white Kia Rio coming from the east
17 side of Holland Street basically approaching us. It
18 made a sharp left onto Sumter Street and proceeded
19 down Sumter Street where it then went to 638 Sumter
20 Street and pulled into the driveway there.

21 Q When it turned left past you and the other
22 officers, how far away was the vehicle from you?

23 A We were directly in front of the -- I mean, we
24 were right up to the roadway, we were right there.
25 So it was right in front of us.

1 Q And it took a left onto Sumter Street?

2 A Yes, sir, which is also right in front of us.

3 Q What happened next?

4 A It went down Sumter Street. It proceeded down
5 to 638 and pulled into the driveway there.

6 Q Okay. And how long did it stay in the
7 driveway?

8 A Less than two minutes.

9 Q And is that significant to you in any way?

10 A It is. Anytime we have -- it's one of the
11 things that we look for. If we see a vehicle pull
12 into what we consider a known drug house and they're
13 there for a short time like that, we watch our
14 clocks. And if they leave in less than about two
15 minutes, then we believe that either there was a
16 sale or a purchase made there, so that's why we act
17 on that.

18 Q So it left after two minutes, where did it go?

19 A It backed out and then proceeded away from us
20 on Sumter Street. And it made a right on an elbow
21 to Joye Street, which is right around the corner,
22 and then it proceeded forward on down to North
23 Brown.

24 Q And what did y'all do at that point?

25 A I immediately moved forward down Sumter Street,

1 and Master Deputy Burt and Captain Thomas made a
2 right onto Holland. And what we were trying to do
3 is basically just go around the block to intercept
4 the vehicle.

5 Q Did you catch up with the car?

6 A I didn't catch up to it mobile, while I was
7 moving. I caught up to them actually after they had
8 already stopped the vehicle, or got out with the
9 vehicle rather, on North Brown Street.

10 Q Okay. And what happened when you got to North
11 Brown Street?

12 A I pulled up basically, got out of my vehicle,
13 was -- my job at that point was to be a cover
14 officer and contain anything and protect the contact
15 officer, which was Master Deputy Burt at that time.
16 So, basically, what I did is get out, we had a lot
17 of citizens on our left and right side on both sides
18 of the roadway. I observed one of the occupants of
19 the vehicle getting out of the vehicle moving
20 towards a crowd to my left, which is right at the
21 corner of Ross Street and North Brown, and so I
22 basically stopped that individual from going over
23 there and helped contain the situation.

24 Q Now, you said you were the cover officer. What
25 does that mean, the cover officer?

1 **A** We work under what we call contact and cover on
2 the street. The contact officer is usually the
3 officer that's making the stop or getting out with
4 the individual. My job would be to come and
5 basically protect that officer and make sure that
6 I'm watching their 360 all the way around to make
7 sure that they're safe and able to do their job and
8 just protect them.

9 **Q** So who was the contact officer?

10 **A** Contact was Master Deputy Burt.

11 **Q** And who did he make contact with?

12 **A** The driver of the vehicle at that time.

13 **Q** Okay. Did you see the occupants of that white
14 Kia Rio leaving the vehicle?

15 **A** Yeah.. They were getting out of the vehicle.
16 And like I said, the front passenger was getting out
17 and moving towards the fence line, which on the
18 other side of that fence line was about 10 to 15
19 individuals outside in the backyard basically of
20 this house. And so we were trying to contain him
21 before he got over and tried to mix up into that
22 crowd.

23 **Q** You said the front passenger. Are you
24 referring to the defendant?

25 **A** Yes, sir.

1 Q Were y'all able to get him back over towards
2 the vehicle prior to him walking to that crowd?

3 A Yes, sir. He was reluctant to come over there.
4 He was not happy at all to see the police, but he
5 did come over there.

6 Q Where was Captain Thomas at this time?

7 A He was up there at the vehicle with Master
8 Deputy Burt at that time. And he was also
9 attempting to basically get him to comply and come
10 back over here and talk to us.

11 Q Were there any other vehicles in the area at
12 the time on Sumter Street and the nearby streets?

13 A No. There was no movement, no movement at all.
14 It was just us out there at that time.

15 Q I'm going to show you, and if you could, please
16 step down, State's Exhibit Number 1.

17 A (Witness leaves the witness stand.)

18 Q Now, tell me where you were positioned when
19 y'all were surveilling the house. And if you could,
20 step so where everybody on the jury can see.

21 A Yes, sir. Our vehicles were right here and we
22 were facing down Sumter Street. So we were
23 literally right here at the edge of the roadway.

24 Q So you're right here?

25 A Yes, sir.

1 Q And if you could, step behind. You were right
2 here?

3 A Yes, sir.

4 Q And where is 638 Sumter Street?

5 A It is where that white house is down -- yes,
6 sir.

7 Q That one there?

8 A Yes, sir.

9 Q And the white Kia Rio came down this way and
10 then took a left up here?

11 A Yes, sir.

12 Q And it stopped at this house?

13 A Yes, sir.

14 Q And it was there two minutes?

15 A Yes, sir.

16 Q And then what direction did it head?

17 A Up to Joye Street, to Joye Street, and then it
18 went all the way down and then it turned right. And
19 it came right back up into this area right in here.

20 Q And that was the corner of Ross and North
21 Brown?

22 A Yes, sir.

23 Q And that's where you saw the defendant walking
24 away from the vehicle?

25 A Yes, sir, to try and get to this area right

1 here.

2 Q Okay. If you would, please have a seat.

3 A (Witness resumes the witness stand.)

4 THE COURT: Ladies and gentlemen, I need to
5 address something. Would you please step out?
6 Don't discuss the case.

7 (The jury retires to the jury room.)

8 THE COURT: I just am not comfortable with that
9 last ruling. And I have -- not anticipating it, not
10 knowing it was coming up, you know, I do what most
11 trial judges have to do in this state and that's
12 make a ruling rather hurriedly. It seems to me
13 that, as I mentioned, it's just fundamentally
14 unfair.

15 Well, I found a case from 2004 from the Court
16 of Appeals that deals with self-exculpatory
17 statements. And it's -- I haven't had a chance to
18 see if it's been taken up by the Supreme Court or
19 anything else, but what's written in here is
20 basically the same thing that I said.

21 It stated that a pro se defendant who is trying
22 to question a witness on the stand about statements
23 that the pro se defendant himself had made, that was
24 denied by the trial judge. It was denied for,
25 basically, exactly the same thing that I stated.

1 But they say, quote, We find that fundamental
2 fairness requires that Cabrera-Pena, C-a-b-r-e-r-a,
3 hyphen, P-e-n-a, be permitted to cross-examine
4 Officer Membreno, M-e-m-b-r-e-n-o, concerning the
5 entirety of their conversation.

6 Now, I realize these conversations took place
7 at different times and places, but it seems to me
8 that can be handled through argument and through
9 questioning. But if a defendant gives statements in
10 three different timeframes and then the State just
11 gets to pick the ones they want to put in and not
12 put in the others and not be able to be
13 cross-examined about it unless the defendant gives
14 up his right against -- or his right not to testify,
15 that just seems fundamentally unfair.

16 The other thing that was gnawing at me was that
17 I thought that it might not be hearsay under the
18 definition because it in some way might relate to
19 something that's not offered for the truth of the
20 matter asserted. And to give you examples of what's
21 gnawing at me, the previous witness testified -- you
22 need to step out because you don't need to hear what
23 the previous witness testified. I'm sorry.

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

25 **THE COURT:** You can just step right back there.

1 The jury's in the jury room, they won't see you.

2 (The witness leaves the courtroom.)

3 **THE COURT:** The previous witness testified the
4 reason they didn't get fingerprints off of a bag was
5 because the guy admitted it was his drugs. Well, if
6 he admitted it one time it was and admitted it
7 another time it wasn't and there was sufficient --
8 the witness might have been talking about just that
9 night, but this statement was given well before
10 trial, this last statement. And so the exculpatory
11 statement, I think, could go to something other than
12 the truth of the matter that's asserted in it.

13 It also -- if the State does just cherry-pick
14 what it goes and puts before the jury in statements,
15 that seems to me to relate to the issue of bias. So
16 I'm reversing the ruling I previously made and I
17 wanted to do it before y'all had your witnesses go
18 into any statements so you'll know.

19 I may be wrong. This case I'm talking about,
20 again, I haven't had a chance to even look up all
21 the cases that came up when I did the word search,
22 but I was looking about self-serving statements,
23 which generally aren't admissible. The judge in
24 that instance, like I said, the trial judge went
25 through basically the same things I did, looked at

1 the definitions in the rules. But the cite is 361
2 S.C. 372. And I said it's Court of Appeals, but I
3 think it's a Supreme Court case. It's a 2004 case.
4 And it's written by acting Justice Macaulay.

5 It must have been a big case because it
6 involved some of the heavy hitters in the
7 solicitor's -- I mean, the attorney general's office
8 were arguing it.

9 All right. In light of that change, I'm going
10 to give y'all a few minutes to digest that, not
11 long, but, like, three- to five-minute break, okay.

12 **MR. CASTO:** Yes, sir.

13 **THE COURT:** Thank you.

14 (Brief recess.)

15 **THE COURT:** If you need to backtrack any,
16 Solicitor, that's fine. I apologize for
17 interrupting you.

18 (The witness returns to the courtroom and
19 resumes the witness stand.)

20 **THE COURT:** Bring the jury in.

21 (The jury returns to the courtroom.)

22 **THE COURT:** All right. Thank you, ladies and
23 gentlemen.

24 You may continue, Solicitor.

25 **MR. ROSS:** Thank you, Your Honor.

1 BY MR. ROSS:

2 Q Sergeant Finch, I think we left off, you'd
3 gotten on the scene and you saw individuals in the
4 car starting to walk away?

5 A Yes, sir.

6 Q What happened next?

7 A He -- reluctantly, we were able to get him --
8 he was reluctant to do it, but we were able to get
9 him to come back over there with us, and I basically
10 motioned for him to come back with me away from the
11 vehicle where Master Deputy Burt was at. Once
12 Captain Thomas and I were able to get him to comply
13 enough to come over with me in that area, then
14 Captain Thomas basically kind of stayed in the
15 middle there to help contain the situation because
16 we had two different things going on. And then I
17 moved back towards my vehicle with him.

18 Q So you and him moved back towards your vehicle?

19 A Yes, sir.

20 Q And how far away --

21 A To the rear of the vehicle that he was in.

22 Q Okay. And you were moving him away from that
23 crowd?

24 A Yes, sir.

25 Q How far away from the crowd was he at that

1 point?

2 **A** We were very close to the fence line. I mean,
3 it was just a very -- about the length of a sidewalk
4 to our cars right there and then so I was probably
5 another car length back. So we were right kind of
6 towards the front of my car when we started -- when
7 I started talking with him.

8 **Q** What was his demeanor like at that point?

9 **A** Confrontational. He clearly did not want to be
10 talking to law enforcement. He didn't like the fact
11 that we had brought him over there and he was
12 confrontational with me over there.

13 **Q** How so?

14 **A** He basically acted like he wanted to fight me.
15 He was just non -- very noncompliant. And I just,
16 you know, just, basically, I had to -- I literally
17 had to place my hand on my Taser to get him to calm
18 down. And then I advised him I was going to place
19 handcuffs on him, and he did comply, and I was able
20 to do that.

21 **Q** Why did you place cuffs on him?

22 **A** For my safety and his safety. The way he was
23 acting with the crowd we had all around us on both
24 sides of the roadway, you know, I just felt like
25 that was what we needed to do. It was an unsafe

1 situation out there. So we placed him in handcuffs
2 and we sat him down in the car.

3 Q Was he under arrest at that point?

4 A No. And I advised him at that time that you're
5 not under arrest. You're being placed under
6 investigative detention and you're not under arrest
7 at this time. This is for my safety and your
8 safety.

9 Q What is the distinction between being under
10 arrest versus being in investigative detention?

11 A That we were still in the middle of an
12 investigation, basically is what I told him, but
13 because of the unsafe acts that I had out here and
14 the situation surrounding us, he needed to be placed
15 in the car. And the whole time I was -- after
16 getting him in handcuffs, he was telling me, you
17 know, if you take these handcuffs off, I'm going to
18 kick your ass, is basically what he told me.

19 Q When you -- did you pat him down?

20 A I did pat him down on his outer garments at
21 that time for any weapons or anything he may have on
22 him.

23 Q When you were patting him down, did you ask him
24 about the dope?

25 A Around the time that I was patting him down is

1 about the time that they alerted me up at the other
2 car that they had found dope in the car and I asked
3 him if the dope was his.

4 **Q** And what did he say?

5 **A** He said, That's all I have. And then he
6 corrected himself and said, That's not mine.

7 **Q** So he said, That's all I have. And then a
8 second later he said, No, that's not mine?

9 **A** Yes, sir.

10 **Q** What did you do next?

11 **A** I went ahead and sat him in the car. He was
12 still very irate, things were still a little out of
13 control at that time. I sat him down in the car.
14 Captain Thomas had moved in my position to keep an
15 eye on him and I moved up to assist Master Deputy
16 Burt up there to contain his situation and kind of
17 see what he had. As the supervisor, wanted to
18 evaluate what we had going on out there, so I moved
19 up there.

20 **Q** Okay. And then what happened?

21 **A** Probably a little bit less than, I would say,
22 ten minutes or so, Captain Thomas flagged me down
23 and said, Sarge, he wants to speak to you. So I
24 went back to the car to talk to him.

25 **Q** When you say you talked to him, are you

1 referring to the defendant?

2 A Yes, sir.

3 Q And that was -- he was in your patrol car?

4 A Yes, sir. He was in the rear passenger side of
5 my patrol car.

6 Q Okay. What did he have to say?

7 A I went back to the car. I opened the door. I
8 said, Are you calmed down now --

9 THE COURT: Hold on a second. Y'all come up
10 here.

11 (Whereupon, a bench conference was held off
12 the record, in the presence of the jury, but out of
13 the hearing of the jury.)

14 THE COURT: All right. Pose the question,
15 please.

16 BY MR. ROSS:

17 Q Sergeant Finch, when you approached the
18 defendant at that point after he'd calmed down, did
19 you read him his Miranda rights?

20 A I did, yes, sir.

21 Q And how did you read his Miranda rights to him?

22 A I have a card that I carry everywhere I go
23 every day when I'm working and I read them from the
24 card to him.

25 Q Do you have that card with you today?

1 **A** Yes, sir.

2 **Q** Can you read them into the record just like you
3 read them to the defendant?

4 **A** Yes, sir, I will.

5 Suspect's Rights, Miranda Warning. Says, You
6 have the right to remain silent. Anything you say
7 can and will be used against you in a court of law.
8 You have the right to talk to an attorney and have
9 him or her present with you while you are being
10 questioned. If you cannot afford to hire an
11 attorney, one will be appointed to represent you
12 before any questioning if you want. You can decide
13 at any time to exercise these rights and not answer
14 any questions or make any statements.

15 Do you understand these rights as I've
16 explained to you? And his answer was, Yes.

17 Having these rights in mind, do you wish to
18 talk to us now? And he said, Yes.

19 **Q** What did he say?

20 **A** He admitted that the drugs were his and he
21 wanted to cooperate and work with me. And I
22 basically advised him that that's -- that's what we
23 were looking for, that we were there trying to clean
24 the neighborhood up and get this bad element out of
25 that neighborhood and we would appreciate his help.

1 Q How did he go about saying the drugs were his?
2 How did he specifically say it?

3 A He just said, It's mine. He just admitted that
4 it was his. And I advised him at that time that I
5 would get with him later to interview him further.
6 We still had a situation to deal with out there. We
7 were not done on that scene. So we basically just
8 said we were going to meet later to do an interview
9 and get the information -- further information from
10 him.

11 Q Now, was he charged with possession of crack
12 cocaine?

13 A Yes, sir.

14 Q Okay. And who took him -- he was booked,
15 right?

16 A Correct.

17 Q Who took him to get booked?

18 A I did.

19 Q Did he change his story at all?

20 A No, sir.

21 Q And how long a ride is that from West Columbia
22 over to the sheriff's department?

23 A Fifteen minutes probably, or so, maybe a little
24 longer.

25 Q So during that 15 or 20 minutes, did he change

1 his story?

2 **A** He did. He had calmed way down. He was very
3 concerned for his future. He was very concerned, he
4 commented about a child on the way, that kind of
5 stuff. And we started talking about programs that
6 I'm involved in in that neighborhood to try and help
7 young men like himself get himself straight and help
8 other young men like himself in that area. And he
9 sounded like he really wanted to become a part of
10 that program to help clean his neighborhood up at
11 that time. So he was very forthcoming with the
12 information.

13 **Q** Did he say anything about the drugs not being
14 his during that ride?

15 **A** No, sir.

16 **Q** And you said you later sat down with him again.
17 When was that?

18 **A** September the 4th, I believe it was, at the
19 north region headquarters, which is over in Irmo.
20 He came over and we did an interview there in the
21 squad room.

22 **Q** And how did he get there?

23 **A** Gosh, I'm trying to remember who brought him
24 over there. He rode with somebody. I can't
25 remember who was with him now. It may have been a

1 girlfriend or a friend, I'm not sure. It seemed
2 like it was a female that brought him over there,
3 but we were together --

4 Q But he went on his -- he came to that
5 headquarters on his own volition?

6 A Yes, sir, yes, sir. He came of his own free
7 will, yes, sir.

8 Q And did he give you a statement at that time?

9 A He did.

10 Q And was it the same as what he said on the
11 scene?

12 A It was admitting that it was his. And I
13 advised him that my scope was to shut down the drug
14 sale house, that was more my mission. So that was
15 what I was -- that was really more of the scope of
16 my questioning at that time was, you know, what's
17 happening in that house more so than -- I mean, he
18 had already admitted to the drugs, so, you know, I
19 was not interested in that at that point. I was
20 interested in getting more information to shut that
21 house down.

22 Q He provided a written statement, doesn't {sic}
23 he?

24 A Yes, sir.

25 (State's Exhibit Number 13, statement, which

1 was previously marked as Court's Exhibit Number 2,
2 was marked for identification.)

3 Q Showing you State's Number 13, do you recognize
4 that?

5 A Yes, sir, I do.

6 Q Is that the statement he gave?

7 A Yes, sir, it is.

8 Q And in that statement, did he put in writing
9 that he admitted that the drugs were his?

10 A No, he didn't.

11 Q Is the writing consistent with what he told
12 you?

13 A No.

14 Q Okay. And when did that statement occur, the
15 written statement? How long removed from the arrest
16 was that written statement?

17 A About one month later.

18 Q And is that individual in court today?

19 A Yes, he is.

20 Q And can you point him out for me, please?

21 A It's the defendant in the white shirt
22 (indicating).

23 Q That's the individual who said that the drugs
24 were his; is that correct?

25 A Yes, sir.

1 **Q** And that's the individual who said, No, that's
2 all I had; I mean, I didn't have anything?

3 **A** Right. He fumbled his words, yes, sir.

4 **MR. ROSS:** That's all the questions I have. If
5 you would, please answer anything Mr. Casto has for
6 you.

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

8 **THE COURT:** Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. CASTO:

11 **Q** Officer Finch, how are you?

12 **A** Fine, sir.

13 **Q** Now, he did, essentially, go into the heart of
14 your testimony. While he was in the back of the
15 police car on the night of the incident, the car was
16 parked at the scene; isn't that right?

17 **A** Yes, sir.

18 **Q** And I believe that you just testified to the
19 fact that if you want to make, not to use your exact
20 words and I don't want to put words in your mouth,
21 so correct me if I'm wrong, but that if he wanted to
22 come make a statement about what's going on in the
23 community, that he could do so?

24 **A** Yes, sir.

25 **Q** And that -- I believe, that you stated that, in

1 your testimony, that, essentially, you'd help him
2 out if he would help out, right?

3 **A** Yes, sir.

4 **Q** All right. And, essentially, he followed up on
5 that; that offer, so to speak, that you'd extended,
6 right?

7 **A** He came -- he did come over, yes, sir, he did.

8 **Q** In other words, as you just testified to, he
9 came to you, y'all didn't go looking for him, right?

10 **A** Correct.

11 **Q** And it was just you and him in that room when
12 y'all met together; isn't that right?

13 **A** As I recall, it was. It may have been his --
14 whoever drove him over there might have been there
15 too. I don't recall if they were sitting in the
16 room at that time.

17 **Q** And this is at the, I believe it's the north
18 region headquarters or sheriff's office?

19 **A** Right, over in Irmo.

20 **Q** Okay. And he comes in and it's during that
21 time that he -- you speak with him, right?

22 **A** Yes, sir.

23 **Q** He speaks with you; isn't that right?

24 **A** Correct.

25 **Q** And then, basically, this conversation's

1 fleshed out in a written statement, right?

2 **A** Correct. Yes, sir.

3 **Q** And he says that -- he tells you that the
4 things in the car wasn't his, right?

5 **A** At that time, yes, sir.

6 **Q** Okay. And then he goes a step further, and I
7 think that you had actually asked him about, you
8 know, potential dealers in that community; isn't
9 that right?

10 **A** Yes.

11 **Q** And he offers up a name, doesn't he?

12 **A** Yes, sir.

13 **Q** I believe -- is it Marcus Mack?

14 **A** I believe that is one, yes, sir.

15 **Q** And he -- so he names names about what he knows
16 and he says that Marcus Mack could have been how
17 those drugs were in that car, right?

18 **A** He did mention other names, yes, sir, he did.

19 **Q** Okay. Let's go back to --

20 **MR. CASTO:** Beg the Court's indulgence.

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

22 (Pause.)

23 **BY MR. CASTO:**

24 **Q** It sounds like, and correct me if I'm wrong,
25 that while you were on scene back in August of last

1 year, that there was still the presence of this
2 crowd. You had 10 to 15 people over this way and, I
3 believe, a handful of folks in the opposite
4 direction, right?

5 **A** Yes, sir.

6 **Q** And watching every single thing going on; isn't
7 that right?

8 **A** Yes, sir.

9 **Q** Okay. And that Raheem didn't give you any
10 other names that night?

11 **A** No, sir.

12 **Q** It was only later that he did, right?

13 **A** Yes, sir. Correct.

14 **MR. CASTO:** I beg the Court's indulgence.

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

16 (Pause.)

17 **MR. CASTO:** No further questions.

18 **THE COURT:** Redirect.

19 REDIRECT EXAMINATION

20 BY MR. ROSS:

21 **Q** His first statement when you were patting him
22 down, what was that first statement again?

23 **A** That's all I have.

24 **Q** And then what did he say? Did he correct
25 himself?

1 **A** He corrected himself --

2 **MR. CASTO:** Judge, asked and answered.

3 **THE COURT:** Sustained.

4 BY MR. ROSS:

5 **Q** What was his second -- during that first
6 statement that you just testified to, did he mention
7 anything about any other people having those drugs?

8 **A** No.

9 **Q** And he gave a second statement in your patrol
10 vehicle; is that correct?

11 **A** Yes, sir.

12 **Q** And was there anyone else around that could
13 hear what he was saying?

14 **A** Just me and him.

15 **Q** Did he say anything else about anybody else
16 having those drugs?

17 **A** No, sir.

18 **Q** Whose drugs did he say they belonged to?

19 **MR. CASTO:** Objection.

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

21 **MR. CASTO:** Asked and answered.

22 **THE COURT:** Well, I think this can be -- this
23 could go to something that was asked about on cross,
24 so it's permissible. Go ahead.

25 BY MR. ROSS:

1 **Q** That second statement that he gave in your
2 patrol vehicle, did he say they were his or did he
3 point the finger at somebody else?

4 **A** He said they were his drugs.

5 **Q** And then he came back to your office a month
6 later and is that when he pointed the finger at
7 somebody else?

8 **A** Yes, sir.

9 **Q** And, again, when he's in your patrol vehicle
10 and he's giving that second statement, is anybody
11 else around that could have heard what he said, that
12 could have been looking at him?

13 **A** No, sir.

14 **Q** Did he ever come back after that written
15 statement and provide anymore information for you
16 after he put down in writing what his story was
17 going to be?

18 **A** No, sir.

19 **MR. ROSS:** That's all the questions I have.

20 **THE COURT:** Recross.

21 RECROSS-EXAMINATION

22 **BY MR. CASTO:**

23 **Q** When you were patting him down, did he have
24 other objects on him, cell phone, do you recall,
25 odds and ends in his pockets?

1 **A** There was, I believe, we had some money on him.
2 I don't recall other stuff. There may have been
3 some keys. There may be a cell phone. I don't
4 recall right now.

5 **MR. CASTO:** Thank you.

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

7 **THE COURT:** Anything else of this witness?

8 **MR. ROSS:** No, Your Honor.

9 **THE COURT:** Thank you, sir. You may step down.

10 **THE WITNESS:** Thank you, Your Honor.

11 **THE COURT:** Call your next witness.

12 **MR. ROSS:** The State calls Captain Lee Thomas
13 to the stand.

14 BARRON LEE THOMAS,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please be seated. State your full
17 name.

18 **THE WITNESS:** Captain Barron Lee Thomas,
19 Lexington County Sheriff's Department.

20 DIRECT EXAMINATION

21 BY MR. ROSS:

22 **Q** Captain Thomas, you assisted in the arrest of
23 this defendant; is that correct?

24 **A** That's correct.

25 **Q** Before we get to what you did on August 10th,

1 2012, can you tell the jury a little bit about your
2 experience in law enforcement, please?

3 **A** Been with the sheriff's department 17 and a
4 half years, got a Bachelor of Science degree from
5 the University of South Carolina in criminal
6 justice, captain in the operations bureau, special
7 operations -- we, in special operations, assist with
8 a number of different operations with the sheriff's
9 department to include high risk warrant service, any
10 type of suppression details, dignitary details --
11 was a five-year member of the SWAT team or Special
12 Weapon and Tactics Team.

13 **Q** So what were you doing on August 10th, 2012?
14 What were you doing that led to the arrest of
15 Mr. Bonham?

16 **A** I was assisting Sergeant Finch and his unit who
17 was conducting directed patrols in the North Brown,
18 Double Branch, Holland Street area of Lexington
19 County. These directed patrols are targeted at high
20 crime areas or areas that have been brought to our
21 attention either through call volume, as notated
22 through the intel division, or through citizen
23 complaints.

24 **Q** Okay. And tell me what happened next.

25 **A** On that night, myself, Sergeant Finch and

1 Master Deputy Burt, had set up to observe a known
2 drug house on Sumter Street.

3 Q Which house was that?

4 A [REDACTED] Sumter.

5 Q And what time of night were y'all surveilling
6 the house?

7 A We'd been in the area for a couple of hours
8 doing directed patrols, high visibility driving, but
9 this was around dusk, right around dark, so probably
10 about nine o'clock, give or take a few minutes.

11 Q Did you see anything out of the ordinary?

12 A To this incident, we witnessed -- we all three
13 were sitting perpendicular to Holland Street, which
14 looked straight down Sumter Street. I was the
15 furthest car on the right-hand side so I could see
16 vehicles as they turned onto Sumter Street only for
17 half of the road, then I lost sight of them, the
18 other two officers there, but we did observe a white
19 Kia Rio turn left from Holland Street and proceed
20 down to Sumter Street down toward [REDACTED]. And I was
21 advised by Master Deputy Burt and Sergeant Finch
22 that the vehicle did pull into [REDACTED] Sumter Street.

23 Q And how long did it stay at [REDACTED] Sumter Street?

24 A Less than two minutes.

25 Q And then what happened?

1 **A** I was notified by both officers, as we were
2 sitting there, had our windows down, so we
3 communicated freely through the windows, that the
4 vehicle was leaving and was headed down Sumter to go
5 towards Joye Street, because it just makes a
6 right-hand turn is the only way you can go and then
7 it turns into Joye Street. So Master Deputy Burt
8 and myself proceeded down Holland Street because we
9 knew that Joye Street dead ended into North Brown.
10 So we went down Holland so we could take a left on
11 North Brown to see if we could ascertain where that
12 vehicle was going and hopefully make a stop on the
13 vehicle.

14 **Q** Did you catch the vehicle?

15 **A** We did come upon the vehicle as it was rolling
16 to a stop at Ross Street and North Brown Street. We
17 did witness the vehicle coming to a stop. All three
18 subjects of the vehicle then were exiting the
19 vehicle as we pulled up.

20 **Q** And you passed by the vehicle before anybody
21 got out?

22 **A** I did not pass by. I was behind Master Deputy
23 Burt in my patrol car.

24 **Q** Did Deputy Burt pass by before anybody got out?

25 **A** Yes, he was passing by. It was almost

1 simultaneous. When the subjects were starting to
2 exit the vehicle, Master Deputy Burt was pulling by
3 and made a U-turn so he could come back up behind
4 the vehicle, and I stopped parallel to the vehicle,
5 the white Kia Rio.

6 Q So you stopped right up there on it like that
7 (indicating)?

8 A Well, the nose of my patrol vehicle was facing
9 the rear of the subject vehicle. My passenger
10 window was directly beside the passenger window of
11 the Kia Rio.

12 Q Okay. And how far away was your vehicle from
13 that Kia Rio?

14 A Less than three foot.

15 Q Did you see the passenger of the Kia Rio leave
16 the Kia Rio? Did you see him get out of the car?

17 A Yes, I did.

18 Q And how far away from you when he got out of
19 the car?

20 A Less than three foot.

21 Q What did that individual do after he got out of
22 the car?

23 A He exited the vehicle and there was a large
24 group of people, I say large, 10 to 15 people, that
25 were congregated into a yard area on Ross Street.

1 The defendant exited the vehicle through the
2 passenger door and then made a brisk walk towards
3 that group of people that were congregated.

4 Q What do you mean by brisk walk?

5 A Walking with a purpose and very fast.

6 Q Did you ever lose sight of the passenger get
7 out of that Kia Rio?

8 A I lost for a fraction of a second, from the
9 time it would take my head to be looking to turn and
10 get out of my vehicle, so a fraction of a second.

11 Q Was he able to walk away?

12 A Walk away, he may have gotten ten foot or so in
13 front of the subject vehicle.

14 Q Okay.

15 A When I -- I asked him, I said, you know, come
16 back, we need to talk to you.

17 Q And did he come back?

18 A Yes.

19 Q And the person that came back, was that the
20 same person that got out of the vehicle?

21 A Yes.

22 Q And what happened when he came back?

23 A He was very reluctant, questioning him, Why are
24 you harassing me or why do I need to talk to you?
25 And I said, We need to talk to you about, you know,

1 the house you just left.

2 And about that time, Sergeant Finch pulled up
3 behind Master Deputy Burt. Sergeant Finch exited
4 the vehicle and came up and started interacting with
5 the subject and took him back to the rear of the
6 subject vehicle, which would have been the front of
7 my patrol car.

8 Q Now, when Sergeant Finch arrives, do your
9 duties change with the addition of another officer
10 on the scene?

11 A Yes.

12 Q And what did your duties become at that point?

13 A I became a cover officer at that point for
14 Master Deputy Burt. He is the contact officer. He
15 is the officer that is conducting all of the
16 business, if you will, of the stop. I become his
17 eyes of everything that's going on around him. We
18 had a large group to our front. We had another
19 large group to our right. So we're trying to
20 maintain eyes on the vehicle, we're trying to
21 maintain eyes on the passengers of the vehicle at
22 the same time we're maintaining eyes on the people
23 that are surrounding us.

24 Q Okay. What happened next?

25 A At that point, Sergeant Finch, I could hear the

1 defendant become very agitated, very verbal,
2 escalating to almost hostile type of words. As a
3 matter of fact, I did hear him say, I'll kick your
4 ass.

5 **Q** And what did you do when you heard that?

6 **A** When I heard that, I directed my attention from
7 the vehicle back to Sergeant Finch for safety
8 issues. Officer safety is paramount in these
9 situations.

10 **Q** And what did you see Sergeant Finch do?

11 **A** Sergeant Finch was placing him in handcuffs.
12 And when he got him secured, he got him over to his
13 vehicle. Once I saw that Sergeant Finch was under
14 control with the subject, I directed my attention
15 back to Master Deputy Burt and the vehicle and then
16 the people over to our right.

17 **Q** When did y'all search the vehicle?

18 **A** Master Deputy Burt acknowledged to me that we
19 had consent to search the vehicle from the driver
20 that he was dealing with and he started to search
21 the driver's side of the vehicle. At that time, I
22 opened up the passenger door and began my search of
23 the passenger compartment, front passenger
24 compartment.

25 **Q** Did you find anything?

1 **A** Yes, I did. While searching the vehicle, first
2 I searched the passenger seat. And then when I
3 turned to look under the seat, as soon as my -- I
4 looked just a little bit canted, I could see a
5 plastic bag wrapped up with white, yellowish rocks,
6 which, through my training, education and
7 experience, would indicate to me crack cocaine. I
8 notified Master Deputy Burt that I had located
9 something, for him to come over, which he did, came
10 over, looked at it, went and got his digital camera
11 from his patrol car to come back and begin taking
12 photos.

13 **Q** Did you ever take custody or possession of the
14 drugs?

15 **A** No, never touched them.

16 **Q** Okay. Have you seen State's Number 10 before?

17 **A** Yes, sir.

18 **Q** Is this how the drugs appeared when you first
19 saw them underneath the passenger seat of that Kia
20 Rio?

21 **A** Yes, sir.

22 **Q** They were in that exact position?

23 **A** Yes, sir.

24 **Q** What happened after you found the drugs?

25 **A** As mentioned, I notified Master Deputy Burt.

1 He came, started photographing the vehicle,
2 photographing the placement of where -- the
3 substance that we found, trying to give a good
4 description, if you will, for someone who hadn't
5 been there so you could see where in the vehicle it
6 was found. He took the drugs, secured them in an
7 envelope and put them in the trunk of his vehicle.

8 Q Okay. Is the individual who got out of the
9 passenger seat of the Kia Rio in court today?

10 A Yes.

11 Q And can you point him out for me, please?

12 A Yes. It was the defendant sitting at the
13 defendant's table (indicating).

14 MR. ROSS: Nothing further. If you'll please
15 answer anything Mr. Casto has.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MR. CASTO:

19 Q Officer Thomas, how are you?

20 A Good, sir. You?

21 Q Good. You stated that you parked less than
22 three feet away from this Kia Rio; is that right?

23 A Yes. My vehicle came to a stop parallel or
24 adjacent to the Kia Rio.

25 Q Now, when you asked Raheem to come back, he did

1 ultimately come back when you called to him, right?

2 A Yes, sir.

3 Q Basically -- now, as you're out there, your
4 duty shifts with regard to the amount of folks that
5 are present on the scene; is that right?

6 A Now --

7 Q In other words, there were an estimated 10 to
8 15 folks totally uninvolved that didn't get out of
9 the car standing around, right?

10 A Correct.

11 Q And I think that there were additional people
12 looking on in the opposite direction; isn't that
13 right?

14 A Correct. It would have been more towards over
15 the back of my right shoulder.

16 MR. CASTO: I beg the Court's indulgence.

17 (Pause.)

18 Q It was learned while y'all were on the scene,
19 that this was a -- this was a rental car; isn't that
20 right?

21 A Yes, sir, subsequently.

22 Q Okay. And was the renter one of the people
23 that got out of the vehicle that evening?

24 A No, sir, not that we could determine.

25 Q It was someone else?

1 **A** Yes, sir. The name on the rental contract was
2 found in the glove box.

3 **Q** I'll ask you, once the drugs were located, the
4 substance in the bag was tested; isn't that right?

5 **A** To my knowledge, yes, sir.

6 **Q** And do you know if any type of testing
7 whatsoever was done to the bag itself by yourself or
8 any other officer?

9 **A** No, sir.

10 **MR. CASTO:** Nothing further. Thank you.

11 **THE COURT:** Redirect.

12 REDIRECT EXAMINATION

13 BY MR. ROSS:

14 **Q** It was a rental car. How is that relevant to a
15 drug investigation in your experience?

16 **A** In my experience in dealing with that
17 particular area, just the week before actually, we
18 had a case with that same rental company where we
19 found a large amount of crack cocaine in a rental
20 vehicle off of Double Branch, which is adjacent to
21 North Brown.

22 **Q** So it's not out of the ordinary to transport
23 drugs in rental cars?

24 **A** Correct.

25 **Q** And why is that?

1 **A** It doesn't have your name attached to it.

2 **MR. ROSS:** No further questions, Your Honor.

3 **THE COURT:** Recross.

4 **MR. CASTO:** No further questions.

5 **THE COURT:** Thank you, sir. You may step down.

6 How long is your next witness?

7 **MR. ROSS:** Very brief, Your Honor.

8 **THE COURT:** Call your next witness.

9 **MR. ROSS:** State calls Candy Kyzer to the
10 stand.

11 CANDY KYZER,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please be seated. State your full
14 name.

15 **THE WITNESS:** Candy Kyzer, K-y-z-e-r.

16 DIRECT EXAMINATION

17 BY MR. ROSS:

18 **Q** Ms. Kyzer, how are you doing this afternoon?

19 **A** I'm fine.

20 **Q** You're the evidence custodian over at the
21 sheriff's department; is that correct?

22 **A** I'm one of them.

23 **Q** Before we talk about your handling of the
24 evidence in this case, can you tell the jury what
25 that means, what are your job duties?

1 **A** We get in evidence from the deputies or
2 investigators in cases. What they do is they either
3 put it in a locker or hand it to us or put it in a
4 gray box. We sign it in to a computer system that
5 we have, print out barcode labels and then put it in
6 its proper location until it's time needed for
7 either court or testing, whatever comes next.

8 **Q** So, specifically, with regard to drug evidence,
9 how is it stored and handled prior to drug testing
10 and for subsequent use at trial?

11 **A** When we get in the drug like that, we do the
12 same procedure. We look into -- print the barcode
13 label, we put it in our drug room until it's ready
14 to be tested and then we pull it out of the drug
15 room and give it to the person that's going to test.

16 **Q** How does the officer deposit the drug evidence
17 into the evidence room?

18 **A** They can either hand it to us directly, if
19 we're not there, if it's after hours, we have
20 lockers or a gray box that they can put it in. The
21 lockers have a button on the outside that when they
22 put evidence into the locker, they have to push the
23 button and it locks it from their side so nobody's
24 able to get into it. And when we come in the next
25 morning, we're able to unlock it from our side.

1 Q Was evidence turned in in this case against
2 Mr. Bonham?

3 A Yes, it was.

4 Q What was turned in?

5 A A BEST kit.

6 Q Now, what is a BEST kit?

7 A It's a kit that they put evidence -- put drugs
8 in that's other than marijuana for it to be tested.

9 Q Okay. And is a BEST kit marked in any way or
10 how is a BEST kit marked?

11 A It has a specific number that is generated by
12 the company that makes the kits.

13 Q Okay. When was the BEST kit turned in in this
14 case?

15 A This one was turned in August the 10th, 2012.

16 Q And who turned it in?

17 A Nick Burt turned it in.

18 Q And was there a BEST kit number attached to it?

19 A Yes, it was.

20 Q And what was that?

21 A It's C-022696.

22 Q And what was done with it after it was turned
23 in?

24 A Once it was turned in, we entered it into the
25 system that we have, print out a barcode label, put

1 it in our drug lab temp box for it to be sitting
2 there waiting for it to be tested.

3 Q And who actually checked it in?

4 A Beth Holliman.

5 Q And who is she?

6 A She is another evidence custodian.

7 Q How long have you worked with her?

8 A For approximately eight years.

9 Q And how did she document the fact that she
10 received it?

11 A It is logged into our computer system whenever
12 she accepts it, so it automatically puts her name
13 and puts the date and time stamp on it.

14 Q Okay. Can anyone else log that information
15 into the system other than her?

16 A No.

17 Q And why not?

18 A Whenever we sign into our computers, we have to
19 put a specific number or user ID and a password.

20 Q And she logged it in under her name?

21 A Yes.

22 Q And she's the only one that has the password
23 for that?

24 A Yes.

25 Q Okay. And you said it went to the drug room;

1 is that right?

2 A It went to the drug room and drug lab temp box.

3 Q And who has access to this room?

4 A Just the evidence custodians.

5 Q Who has access to the evidence lockers once
6 items have been put in?

7 A The evidence custodians.

8 Q Okay. Were the drugs ever checked back out for
9 testing?

10 A Yes, they were.

11 Q And when was that?

12 A August the 14th of 2012.

13 Q From the point they were checked out to the
14 chemist -- let me back up. From the point they were
15 turned in by Deputy Burt to the point that they were
16 checked out by the chemist, was that BEST kit within
17 the care, custody and control of the evidence room
18 the whole time?

19 A Yes, it was.

20 Q Was it in the same condition and were the
21 contents in the same condition from the point Deputy
22 Burt turned them in to the point they were checked
23 out by the chemist?

24 A Yes, it was.

25 Q And what is the chemist's name?

1 **A** Emily Homer.

2 **Q** And did she subsequently turn that BEST kit
3 back in?

4 **A** She did.

5 **Q** And when was that?

6 **A** On September the 11th, 2012.

7 **Q** And who received it at that point?

8 **A** I received it back in.

9 **Q** Okay. And is the BEST kit in the same
10 condition now as when you received it back in?

11 **A** Yes.

12 **Q** Did you bring the BEST kit in with you to court
13 today?

14 **A** I did.

15 **Q** May I see it, please?

16 **A** (Witness complies.)

17 (State's Exhibit Number 14, BEST kit, marked
18 for identification.)

19 **Q** I'm showing you State's Exhibit Number 14. Is
20 that the BEST kit that you were testifying to in
21 this case?

22 **A** It is.

23 **Q** So that's what -- this is what Deputy Burt
24 turned in?

25 **A** Yes.

1 Q And this is what Ms. Homer checked back in?

2 A Yes.

3 Q And you said there's a barcode. Can you point
4 out where the barcode on this BEST kit is?

5 A It's right there (indicating).

6 Q And that's what the evidence custodian labels
7 the BEST kit with?

8 A Yes.

9 Q And the unique ID number on the BEST kit,
10 that's located on the plastic portion itself?

11 A That's correct.

12 Q Okay.

13 MR. ROSS: Nothing further for this witness,
14 Your Honor.

15 THE COURT: Cross.

16 MR. CASTO: No questions for this witness.

17 THE COURT: Thank you, ma'am. You may step
18 down.

19 Is the chemist next?

20 MR. ROSS: Yes, Your Honor.

21 THE COURT: Ladies and gentlemen, let's take a
22 ten-minute break and I'll get you back out here.
23 Don't discuss the case.

24 (The jury retires to the jury room.)

25 THE COURT: Court's at ease for ten minutes.

1 Thank you.

2 (Brief Recess.)

3 **THE COURT:** Are you ready for the jury?

4 **MR. ROSS:** State's ready, Your Honor.

5 **THE COURT:** Defense?

6 **MR. ROSS:** With the Court's permission, I'll
7 get my next witness.

8 **THE COURT:** That's fine. Thank you.

9 Ready for the jury, Mr. Casto?

10 **MR. CASTO:** Yes, sir, Your Honor.

11 (Pause.)

12 **THE COURT:** Bring them in, Art.

13 (The jury returns to the courtroom.)

14 **THE COURT:** Come up to the clerk, please,
15 ma'am.

16 EMILY HOMER-CONRAD,

17 having been duly sworn, testified as follows:

18 **THE CLERK:** Please be seated. State your full
19 name.

20 **THE WITNESS:** You want me to state my name?

21 **MR. ROSS:** Please.

22 **THE WITNESS:** Emily Homer-Conrad.

23 DIRECT EXAMINATION

24 BY MR. ROSS:

25 **Q** Ms. Homer, how are you today?

1 **A** Good.

2 **Q** You're the chemist over at the sheriff's
3 department; is that correct?

4 **A** Yes.

5 **Q** You tested the drugs in this case; is that
6 correct?

7 **A** Uh-huh.

8 **Q** Before we get to the test that you ran in this
9 case, could you please tell the jury about your
10 qualifications as a chemist?

11 **A** I have a Bachelor's in chemistry from the
12 University of South Carolina and a Master's in
13 organic chemistry from USC. And I've been certified
14 or trained at SLED to do drug analysis. And I've
15 also attended DEA special testing laboratory for --
16 in the area of drug analysis and --

17 **Q** How long have you been with the sheriff's
18 department?

19 **A** Since November of '05.

20 **Q** And you've been working as a chemist since
21 then?

22 **A** Yes. Well, there was about a year's period
23 before I was able to start working as a chemist, but
24 yea -- I mean, I was working as a chemist before,
25 but there is...

1 Q There was some training for that first year?

2 A Uh-huh.

3 Q Have you been qualified as an expert in drug
4 analysis in state circuit court before?

5 A Yes.

6 Q How many times?

7 A Twenty-one.

8 Q Have you been qualified in federal court?

9 A Well, the 21 included federal court.

10 Q Okay. So 20 in state and then 21 -- or one in
11 federal court?

12 A Uh-huh.

13 MR. ROSS: Your Honor, at this point, we'd move
14 her to be qualified as an expert in drug analysis.

15 THE COURT: Voir dire?

16 MR. CASTO: No, Your Honor.

17 THE COURT: She is so recognized.

18 Ma'am, please try to say yes or no and not
19 uh-huh and huh-huh. It's hard for the court
20 reporter to take that down. Don't say uh-huh and
21 huh-huh, please, say yes and no.

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. ROSS:

25 Q Ms. Homer, could you please tell the jury about

1 the chain of custody procedures that you have in
2 place at the drug lab?

3 A Well, I first get evidence from the evidence
4 room. And depending on what I'm doing that day or
5 if I have any other cases I need to finish up, I'll
6 either start working the evidence that day or I will
7 store it in the safe that's within the drug lab
8 itself until I have time to analyze that evidence.

9 Q Who has access to the safe?

10 A Only I do.

11 Q So from the point that you receive the drugs to
12 the point that you turn them back in, are they
13 within your care, custody and control the whole
14 time?

15 A Yes, they are.

16 Q Did you receive a BEST kit to test in this
17 case?

18 A I did.

19 Q And when did you receive it?

20 A On August 14th.

21 Q Okay. I'm going to show you --

22 A Of 2012.

23 Q I'm going to show you State's Number 14. If
24 you could, please look at that and tell me if that
25 is the BEST kit that you received in this case.

1 **A** Yes. It has the same BEST kit number, Caesar
2 22696.

3 **Q** Do any BEST kits have the same number?

4 **A** No.

5 **Q** And you received it on, you say, August 14th?

6 **A** Yes, sir.

7 **Q** When you received it, did you run your tests
8 immediately?

9 **A** No. I analyzed it on August 28th, 2012.

10 **Q** Okay. And when you received the BEST kit, did
11 you check to make sure the seal was intact?

12 **A** Yes, I did.

13 **Q** And was the seal intact?

14 **A** Yes, it was.

15 **Q** Okay. And what tests did you run on the
16 contents of the BEST kit?

17 **A** A presumptive screening and a confirmatory
18 test.

19 **Q** Okay. And what was in the BEST kit?

20 **A** It was a Ziploc bag that contained a tied
21 plastic bag that had a rock substance. And the
22 results of that were a cocaine base crack of .13
23 grams.

24 **Q** And what types of tests did you run again?

25 **A** A presumptive screening and then a confirmatory

1 test.

2 Q Okay. And what did you do after you ran those
3 tests?

4 A Then I put it back into the Ziploc bag that it
5 was originally in and -- the entire BEST kit and the
6 evidence gets sealed in a separate bag that's --
7 that I seal -- or I first initial and then I seal
8 over that so you can tell if the seal has been
9 tampered.

10 Q So you put a separate bag over the BEST kit?

11 A Yes.

12 Q And you seal it?

13 A Yes.

14 Q Are these your initials here at the bottom?

15 A Yes.

16 Q E.H. refers to you?

17 A Yes.

18 Q And did you write these initials on the BEST
19 kit?

20 A I did.

21 Q Okay. And this bag inside of it -- the E.H.
22 right there, are those your initials?

23 A That is. I labeled each item of evidence that
24 refers to -- with the lab number and the item
25 number.

1 **Q** Okay. And is this BEST kit in the same
2 condition now as when you resealed it?

3 **A** It is.

4 **Q** And how do you know that?

5 **A** Because the seal is still intact. I recognize
6 my handwriting. It's the same handwriting on the
7 evidence on the inside, too.

8 **Q** If someone were to open it, would it break the
9 seal?

10 **A** You could tell that it was distorted, yes.

11 **MR. ROSS:** Your Honor, at this time, we would
12 move State's 14 into evidence.

13 **THE COURT:** Any objection?

14 **MR. CASTO:** Yes, sir, Your Honor. We object to
15 this evidence based on matters raised at pretrial
16 and we object to the chain as well.

17 **THE COURT:** Do you want to be heard any
18 further?

19 **MR. CASTO:** No, sir, Your Honor.

20 **THE COURT:** The objections are overruled. Mark
21 that into evidence, please.

22 (State's Exhibit Number 14, BEST kit,
23 admitted into evidence.)

24 BY MR. ROSS:

25 **Q** Did you generate a report after doing your

1 tests?

2 A I did.

3 Q And is that your general business practice to
4 do so?

5 A It is.

6 Q And who keeps a copy of that report?

7 A I do in the safe -- excuse me -- the cabinets
8 are within the lab and they're locked and secured,
9 too.

10 Q And when did you generate a report in this
11 case?

12 A On 8/29.

13 Q Did you bring it to court with you today?

14 A I did.

15 Q May I see it, please?

16 A (Witness complies.)

17 (State's Exhibit Number 15, drug analysis
18 report, marked for identification.)

19 Q Ms. Homer, I'm showing you State's Number 15.
20 Is this a report you generated in this case?

21 A It is.

22 MR. ROSS: Your Honor, at this time, we would
23 move State's Number 15 into evidence.

24 THE COURT: All right. Any objection to this
25 other than previous objections?

1 **MR. CASTO:** No, Your Honor. We -- again, we'd
2 just respectfully object to this evidence based on
3 matters raised pretrial.

4 **THE COURT:** Mark the report into evidence,
5 please, Madame Court Reporter.

6 (State's Exhibit Number 15, drug analysis
7 report, admitted into evidence.)

8 BY MR. ROSS:

9 **Q** And, again, Ms. Homer, did the substances test
10 positive for crack cocaine?

11 **A** Yes, it did.

12 **Q** And is that the same thing as cocaine base?

13 **A** Yes. Uh-huh.

14 **MR. ROSS:** No further questions for this
15 witness, Your Honor.

16 **THE COURT:** Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. CASTO:

19 **Q** No tests were performed on the bag that it came
20 in; isn't that right?

21 **A** On the bag itself, we don't normally -- if
22 there's an actual substance in the bag, then I
23 analyze what's in the bag. It could be a -- it
24 doesn't make any sense to test the bag. It's going
25 to contain residue of the substance that's in it.

1 Q On the inside of the bag, correct?

2 A Uh-huh. Yes.

3 MR. CASTO: Thank you. No further questions.

4 THE COURT: Redirect.

5 MR. ROSS: No, Your Honor.

6 THE COURT: Thank you, ma'am. You may step
7 down. Spell your last name for me. Your married
8 name?

9 THE WITNESS: Homer dash Conrad.

10 THE COURT: I'm sorry. I thought you said
11 Comrade. Thank you.

12 Any other witnesses for the State?

13 MR. ROSS: No, Your Honor. The State rests at
14 this point.

15 THE COURT: All right. Ladies and gentlemen, I
16 told you that when the State rests, I have to confer
17 with the attorneys about some legal issues. Let me
18 get my bearings from them, handle those legal issues
19 and I'll get you back out here and tell you what
20 we're going to do.

21 We're not supposed to go into the next stages
22 of the trial after four o'clock absent some
23 emergency circumstance and I don't know of any. So
24 I suspect what's going to happen is I'm going to
25 bring you back in the morning, but let me find out

1 from the attorneys where we are, talk to them about
2 these legal matters and I'll get you back out here
3 as quickly as I can. Please don't discuss the case.
4 Follow the bailiff.

5 (The jury retires to the jury room.)

6 **THE COURT:** Motions.

7 **MR. ROSS:** Nothing from the State, Your Honor.

8 **MR. CASTO:** Your Honor, at this time, we'd move
9 for a directed verdict. When the evidence is viewed
10 in the light most favorable to the State, we state
11 that they have failed to meet their burden.

12 Your Honor, also, at this time -- well, also,
13 at this time, we wish to renew all prior motions and
14 objections both made during pretrial matters and
15 during the trial as well.

16 **THE COURT:** All right. The motion for a
17 directed verdict is respectfully denied.

18 The issue about the search and the seizure and
19 all of that, I realize that someone else analyzing
20 that may completely disagree with the ruling I made.
21 I tried to do the best I could with what I
22 understood it to be. Like I said, absent the
23 continuation of events, I think the evidence would
24 have been excluded about the -- that resulted from
25 what happened at the house and immediately -- I

1 mean, like the instant the person drove out of the
2 driveway. But looking at the totality of the
3 circumstances, I do think it's sufficient, but I
4 acknowledge that it's a close call. And I reiterate
5 what I said earlier, had the officer stopped the
6 car, I would have had to throw it out.

7 Okay. I have to go over some things,
8 Mr. Bonham, with you now. I have to do this with
9 everybody who's on trial whether they're on trial
10 for murder or some traffic offense. And I need your
11 responses under oath, and this lady has to take down
12 what we say, so please raise your right hand for me.

13 RAHEEM JAMAR BONHAM,

14 having been duly sworn, testified as follows:

15 **THE COURT:** You can have a seat, but I need you
16 to speak up loudly, okay?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Mr. Bonham, we've reached the stage
19 of the trial where the State has rested and the next
20 thing that would happen is that your side is given
21 the opportunity to present evidence for the jury to
22 consider. You understand where we are in the case?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Now, you don't have any obligation
25 to put up any evidence. You're presumed to be

1 innocent. If your side puts up no evidence at all,
2 your lawyer gets to make the last argument to the
3 jury; otherwise, the prosecutor makes the last
4 argument to the jury. You understand that?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Now, with regard to this next
7 stage, you can call witnesses on your behalf. And
8 if you, yourself, want to testify, you certainly
9 may, but no one can force you to testify. You have
10 an absolute right to remain silent. And if you
11 choose not to testify, I'm going to tell that jury
12 they cannot hold your silence against you in any way
13 at all, that they're not to discuss it in the jury
14 room that you elected not to testify and that it's
15 not to enter their minds in making the decision
16 about whether you're guilty or not guilty. Do you
17 understand all that?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Now, this decision about whether
20 you testify, it's your decision to make and yours
21 alone. You know that?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Now, I expect that you might confer
24 with your attorney or anyone whose opinion you value
25 on important decisions, but, ultimately, you're the

1 person on trial and it's your call to make. You're
2 the only one who gets to decide whether you testify
3 or not. You understand that?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** Does he have a prior criminal
6 record that would subject him to impeachment?

7 **MR. ROSS:** Yes, he does, Your Honor. He's got
8 a burglary and he's got a PWID marijuana.

9 **THE COURT:** When was the burglary?

10 **MR. ROSS:** These are all within, I think, 2011.
11 Is that correct, Mr. Casto?

12 **MR. CASTO:** Yes. I'm showing a conviction date
13 of June 9th, 2011.

14 **THE COURT:** Is he on probation?

15 **MR. CASTO:** YOA parole, Your Honor.

16 **MR. ROSS:** PWID marijuana was the same date,
17 Judge. Then I've also got an unlawful possession of
18 a weapon, sawed-off shotgun.

19 **THE COURT:** All of those are convictions from
20 June of 2011?

21 **MR. ROSS:** Yes, sir.

22 **THE COURT:** Got YOA sentences on all of them?

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

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Got them ran concurrently?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you need to talk some more?

3 **MR. CASTO:** Just briefly, Judge.

4 **THE COURT:** Sure.

5 (Pause.)

6 **MR. CASTO:** We're ready to proceed now, Judge.

7 **THE COURT:** Rule 609 of the South Carolina
8 Rules of Evidence provides that for the purpose of
9 attacking the credibility of a witness where the
10 witness is the accused, that evidence of conviction
11 of a crime punishable by imprisonment in excess of
12 one year shall be admitted if the Court determines
13 that the probative value of admitting this evidence
14 outweighs its prejudicial effect to the accused.

15 With regard to the possession of a sawed-off
16 shotgun, the Court is not able to make that
17 determination. With regard to the possession with
18 intent to distribute marijuana, the Court is not
19 able to make that determination. The drug offense
20 and the offense involving a weapon will be of such a
21 nature that the prejudicial effect to the accused
22 would substantially outweigh, in the Court's
23 estimation, any probative value.

24 So that gets me to the burglary charge. The
25 Court is likewise unable to make a determination

1 that the probative value of admitting that evidence
2 outweighs the prejudicial effect to the accused.

3 So the result of that, Mr. Bonham, is that if
4 you elect to take the witness stand, if you elect to
5 testify, I am not going to let the State ask you
6 about your prior criminal record. You understand
7 that?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** The only way that would come in is
10 if you, in some way, open the door for it to come
11 in. Now, you can talk to your lawyer to explain to
12 you further about what opening the door means, but
13 I'll tell you what's happened in the past.

14 In the past, I've made rulings like I just made
15 and I've said if you take -- if the defendant takes
16 the witness stand, the State cannot ask you about
17 these prior convictions. And I've had some people,
18 some defendants, get on the witness stand and make a
19 statement like, Well, I've never been in trouble
20 with the law before, or, I've never messed with
21 drugs before. Well, if you say something like that,
22 you open the door for them to bring in the fact that
23 you had been in trouble with the law before and you
24 got a conviction for possession with intent to
25 distribute.

1 So -- but unless you open the door in some way,
2 and it would have to be something that you did, they
3 can't force you into opening the door, unless you
4 open the door in some way, I'm not going to let them
5 ask you about your prior criminal record. If it did
6 come in, I will instruct the jury that they could
7 only consider that, if at all, on the issue of your
8 credibility, your believability, and nothing else.
9 You understand all that?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Now, Mr. Bonham, I have to ask this
12 of everybody. I don't have any reason to suspect
13 anything, but today have you had any kind of
14 medication, drug, alcohol, anything that adversely
15 affects your thinking?

16 **DEFENDANT:** No, sir.

17 **THE COURT:** Do you suffer from any physical or
18 mental conditions that adversely affect your
19 thinking?

20 **DEFENDANT:** No, sir.

21 **THE COURT:** So you're clearheaded and you know
22 what you're doing?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** And this decision, whatever your
25 decision that you make about testifying or not

1 testifying, that will be your own decision, made of
2 your own free will?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** All right. Here's what I'm going
5 to do, Mr. Bonham: I'm going to make a finding that
6 whatever decision you've made, you understand that
7 you have a right to testify, you have a right not to
8 testify. If you choose not to testify, I'm going to
9 tell the jury they cannot hold your silence against
10 you in any way. If your side puts up no evidence at
11 all, that is, neither you testify nor anyone else on
12 your behalf nor any exhibits come in on your behalf,
13 then your lawyer will get to make the last argument
14 to the jury; otherwise, the State attorney gets to
15 make the last argument to the jury.

16 I'm finding that you understand that the
17 decision that you make in this regard is your
18 decision to make and yours alone. I'm going to find
19 that you have made your decision freely, knowingly,
20 voluntarily and intelligently, that you're not under
21 the influence of any substance that adversely
22 affects your thinking nor do you suffer from any
23 physical or mental condition that adversely affects
24 your thinking.

25 So if anybody attempts to improperly influence

1 you or any of that changes, you need to let me know
2 right away. You understand?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** All right. I give people a few
5 minutes to talk to their lawyers about this. So I
6 have no idea whether you intend to testify or not.
7 It doesn't matter to me, it's your call. But I'll
8 give you a few minutes to talk to your lawyer and
9 then y'all can tell me.

10 I would like to know as soon as possible
11 because I need to tell the jury whether all the
12 evidence is in and give the instruction or whether
13 to tell them we're going to continue and finish with
14 the evidence today or what we're going to do, okay.

15 We're at ease for five minutes. Thank you.

16 (Brief recess.)

17 **THE COURT:** All right. Does the defense intend
18 to offer any evidence?

19 **MR. CASTO:** I beg the Court's indulgence.

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

21 (Pause.)

22 **MR. CASTO:** We're ready to proceed, Your Honor.

23 **THE COURT:** Do you wish to offer any evidence?

24 **MR. CASTO:** No, sir, Your Honor.

25 **THE COURT:** Okay. Mr. Bonham, do you wish to

1 testify or not?

2 **DEFENDANT:** No, sir.

3 **THE COURT:** You do not wish to testify?

4 **DEFENDANT:** No, sir.

5 **THE COURT:** Okay. I'm phrasing my questions
6 poorly. Tell me -- your lawyer tells me that he's
7 not offering any evidence, which means you would not
8 be testifying. Is that your understanding?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** You're in agreement with that?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** All right. Thank you.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 during the break, I was informed that you have all
16 of the evidence that you're going to have to decide
17 the case, and so that there are two stages that
18 remain in the trial, the closing arguments of the
19 attorneys and then the charge, which is where I tell
20 you the law. The charge, my part's going to take
21 about 24 minutes.

22 I need to give you an instruction at this time
23 and it's very important that you pay close attention
24 to this. I emphasize to you, ladies and gentlemen,
25 that the fact that Mr. Bonham elected not to testify

1 is not a factor to be considered by you in any way
2 whatsoever in your deliberations and in your
3 consideration on the question of whether he is
4 guilty or not guilty. His decision not to testify
5 must not be considered by you in any manner
6 whatsoever against him. An accused has a
7 constitutional right to remain silent and the
8 assertion of that right cannot be considered by you
9 in any manner whatsoever against the defendant.

10 Under the oath you've taken, you are to reach
11 no inference and you are to draw no conclusion
12 whatsoever from the fact that Mr. Bonham elected not
13 to testify. His decision not to testify should not
14 be discussed by you in your deliberations, it should
15 not even enter into your minds in making your
16 decision on the question of whether he's guilty or
17 not guilty. The State has the entire burden of
18 proof and the accused has no obligation to prove
19 anything at all.

20 All right. What we're going to do now is I'm
21 going to let you folks go for the day in just a
22 moment and ask you to be back here tomorrow morning
23 at ten o'clock. I'm going to stay here. I'm going
24 to print out for the attorneys what I intend to talk
25 to you about tomorrow and we'll meet a little bit

1 before that. So they'll have overnight to read
2 this, what I've prepared, and make suggestions to me
3 and requests. And then as close to 10:00 as I can,
4 I'll get you in here and we'll get started. And I
5 don't think I'll misjudge quite as bad as I did this
6 morning on the time. Hopefully, I won't. You will
7 hear the closing arguments, you'll get the
8 instruction on the law and you should get the case
9 in the morning.

10 So I hope you have a pleasant evening. If you
11 don't have an umbrella, you're going to get wet. I
12 don't know if any of the security folks have
13 umbrellas that we can help y'all out with or not.

14 But if you -- remember what I told you earlier
15 about all of those admonitions about not discussing
16 the case, and if you have some true emergency that
17 arises, make sure you let us know about it. 10:00
18 a.m. is what time I need you here tomorrow. Thank
19 you. Don't call that number now, just be here at
20 10:00, okay? Thank you.

21 (The jury was excused for the day.)

22 **THE COURT:** All right. I don't know that it's
23 necessary, but I'm assuming you renew your motions
24 at the close of the case.

25 **MR. CASTO:** Yes, sir, Your Honor. I had that

1 question, I guess, as well. I don't know if it's
2 appropriate to do so now, but, at this time, to
3 place on the record, the defense rests. We would
4 like to, as the Court stated, renew all prior
5 motions and objections both in pretrial and during
6 the trial respectfully, Judge.

7 **THE COURT:** All right. Motions, once again,
8 are respectfully denied.

9 All right. I've got a draft of this charge.
10 I'm going to give it to you and ask y'all to meet me
11 at 9:45, so be back here in the morning at 9:45.

12 Mr. Bonham, I'm going let you stay out again.
13 I need you here in the morning at 9:45, all right?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Now, if your lawyer wants you here
16 sooner, you be here sooner for me, please.

17 All right. Thank you very much. Court's in
18 recess until 9:45. Y'all be careful as you leave
19 that you don't -- these jurors, they may not go out
20 into the weather, so be careful as you leave. They
21 might be right there.

22 **MR. CASTO:** Yes, sir.

23 **MR. ROSS:** Judge, the draft, are you going to
24 -- did you say you're going to e-mail it to us or --

25 **THE COURT:** No, I'm going to hand it to you. I

1 need the lawyers to stay.

2 (The proceedings were concluded for June 5,
3 2013.)

4 (The following proceedings were held on June
5 6, 2013.)

6 **THE COURT:** I distributed a proposed draft to
7 the charge last night and I understand there's no
8 input from the State; is that right?

9 **MR. ROSS:** No, Your Honor.

10 **THE COURT:** The defense, I had indicated when I
11 gave it to you, that I had identity in there, but I
12 didn't really know if it was an issue. I suppose we
13 can take it out. Do y'all want to be heard on that?

14 **MR. CASTO:** Your Honor, we agree with the Court
15 that I don't think that it's an issue in this case
16 and we'd ask it be taken out.

17 **THE COURT:** All right. Anything else?

18 **MR. ROSS:** Judge, it is an essential element
19 and I would hate to -- I don't think it would
20 confuse the jury and I would hate to just take
21 something out that's a standard jury charge.

22 **THE COURT:** It's not part of my standard jury
23 charge. It only comes in usually when there's a
24 photo ID or something like that or a lineup.

25 **MR. ROSS:** Well, there is testimony about

1 others being in the area, and I don't know if
2 Mr. Casto's going to get into that in his closing
3 about whether or not the police --

4 **THE COURT:** I agree the mere presence charge
5 should be there, but I just don't think
6 identification is an issue. I'm taking it out.

7 **MR. ROSS:** Yes, Your Honor.

8 **THE COURT:** All right. Now, I'm a little -- I
9 want to make sure I'm right about this. Were there
10 any defense exhibits?

11 **COURT REPORTER:** No, sir.

12 **THE COURT:** So that statement that was a
13 Court's Exhibit that was taken later in the process,
14 that was never entered into evidence?

15 **COURT REPORTER:** No, sir. It was marked as
16 State's, but never entered.

17 **THE COURT:** Okay. It's just for I.D.?

18 **COURT REPORTER:** Yes, sir.

19 **THE COURT:** I was thinking it was a Court's
20 Exhibit.

21 **COURT REPORTER:** It was that too.

22 **THE COURT:** All right. Then the defense gets
23 the last argument. Are you ready?

24 **MR. ROSS:** The State's ready, Your Honor.

25 **THE COURT:** Defense ready?

1 **MR. CASTO:** Yes, sir, Your Honor.

2 **THE COURT:** Bring them in.

3 (The jury enters the courtroom at 10:02
4 a.m.)

5 **THE COURT:** All right. Ladies and gentlemen,
6 as I mentioned to you yesterday, there are two
7 stages that remain, the closing arguments and the
8 charge.

9 At the outset of the trial, I told you that in
10 opening statements, attorneys are not permitted to
11 engage in argument. Well, at this stage, they are
12 permitted to use the art of advocacy to attempt to
13 get you to see things as they would like you to see
14 them on behalf of their respective positions. That
15 does not change the burden of proof. The burden of
16 proof remains with the State throughout the entire
17 trial, and the State has the sole burden of proof
18 and that's to prove the defendant guilty beyond a
19 reasonable doubt.

20 The way this will work is that the State will
21 make the first closing argument and then the defense
22 will make the final closing argument. I always take
23 a brief recess between the time that they finish and
24 the time that I start my part of the jury
25 instructions. So we'll take a short break when they

1 finish. I usually play it by ear, sometimes I take
2 a break between the two arguments depending on how
3 long the lawyers talk. So I invite your close
4 attention.

5 Solicitor, you're recognized for your closing
6 argument.

7 **MR. ROSS:** May it please the Court, Your Honor.

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

9 CLOSING ARGUMENT

10 **MR. ROSS:** If it walks like a duck, if it
11 quakes like a duck, ladies and gentlemen, what is it
12 that you have? You've got yourself a duck.
13 Sometimes things really are just that simple. This
14 case is one of those times. This is one of those
15 very simple cases. No matter how you look at the
16 evidence presented, no matter how you try and spin
17 the facts, it leads to one conclusion: Raheem
18 Bonham is guilty as charged. And that's really the
19 way the system is supposed to work.

20 Mr. Bonham has now had his day in court. His
21 attorney has had the chance to challenge every bit
22 of testimony that came in yesterday. His attorney
23 has had to challenge -- ability to challenge every
24 exhibit that came in, the introduction of these
25 drugs. And no matter how you spin the facts, no

1 matter how you want to challenge the testimony and
2 the evidence in this case, the facts of this case
3 are like that jury box, the facts don't budge.

4 So what's he charged with? Remember the
5 fundamentals is what I've always been taught. What
6 is he charged with? Possession of crack cocaine.
7 And you'll recall there are two types of possession.
8 You've got actual possession and constructive
9 possession, very easy legal concepts, told you about
10 that on Monday.

11 You'll remember Monday you also came in for
12 jury service, you walked down the aisle and Judge
13 Keesley explained, bring all of your belongings with
14 you, bring your stuff with you just in case you're
15 one of the lucky winners to get to sit on this jury.
16 So you walked down the aisle, you stopped here, you
17 got picked and you sat down. And if you had your
18 purse or if you had your book and you came and you
19 sat down in your chair, then you probably put your
20 stuff right underneath your seat.

21 When you were walking down the aisle, you had
22 your book in your hand, you were in actual
23 possession of the book. You put it underneath your
24 seat, you're in constructive possession, just like
25 Raheem Bonham was in constructive possession of

1 those drugs underneath the seat. He had them in his
2 hands, actual possession. Dropped them here when
3 the cops came, constructive possession. So the law
4 is simple.

5 What evidence do we have to prove our case?
6 And I'll rehash that right now. Very simple case,
7 won't take long. The first piece of evidence, the
8 location where the drugs were found, right
9 underneath his seat, right where he was sitting.

10 Before you consider any other piece of
11 evidence, before you think about anything else that
12 was talked about during the course of this trial,
13 wrap your head around that single fact, the drugs
14 were found underneath his seat. How likely is it
15 that he didn't know the drugs were there? How
16 likely is it that he didn't put the drugs there?

17 Before you consider any other piece of
18 evidence, before you consider any other fact, how
19 likely do you think that is? He either knew the
20 drugs were there, he either put them there, he was
21 either in possession of those drugs or Raheem Bonham
22 has got to be the most unlucky person on this earth.
23 So as you listen to the other evidence presented,
24 ask yourself that question, is he the most unlucky
25 person on the earth? Is this all just some giant

1 misunderstanding? Is this a big misunderstanding?

2 Well, now consider the rest of the evidence.

3 What is the other piece of evidence in this case?

4 Well, how about the facts leading up to the police
5 speaking with him.

6 You'll recall the testimony of the officers.
7 They had a house under surveillance. They saw a car
8 drive up to the house just like you drive up to
9 McDonalds in the drive-through, left about two
10 minutes later, and they caught up and they caught
11 the vehicle. Two patrol cars passed by that vehicle
12 as it's rolling to a stop. Captain Thomas is
13 literally three feet away, three feet away from
14 Raheem as he's getting out of the car. And what
15 does Raheem do? He tries to get away. He walks
16 briskly away from this police officer.

17 And you'll remember I asked Captain Thomas,
18 What do you mean walked briskly? What does that
19 mean? He was walking like a man with a purpose, a
20 man with a purpose. His purpose, he dropped the
21 drugs, he knew he was about to get caught red-handed
22 and he was about to hightail it.

23 And I'll return to the original question posed,
24 Are those the actions of somebody involved in a
25 misunderstanding? If he's not guilty, if this is a

1 big misunderstanding, when a police officer is three
2 feet away from you, what you do? If you're out
3 getting in your car in the parking lot of this
4 courthouse and Captain Thomas drives up and he's
5 literally three feet away from you, if it's a big
6 misunderstanding, do you stop and say, Officer, is
7 there a problem? Can I help you, sir? What's
8 wrong?

9 **MR. CASTO:** Objection, we have a matter of law.

10 **THE COURT:** All right. Ladies and gentlemen,
11 please step in the jury room. Don't discuss the
12 case.

13 (The jury retires to the jury room.)

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

15 **MR. CASTO:** Respectfully, we raise our
16 objection that my client has the right to remain
17 silent. Any time -- inference from not speaking or
18 interacting with the police can't be held against
19 them. So, respectfully, we would move that -- for a
20 mistrial at this time.

21 **THE COURT:** Solicitor.

22 **MR. ROSS:** Judge, I think we can argue flight
23 from the police. Judge, I think that's a rational
24 inference that we can make as to his intent. We
25 can't get inside the mind of Raheem Bonham, but we

1 can judge him by his actions. And I think flight
2 from the police is something that's legitimate and
3 we can argue it.

4 **THE COURT:** You can certainly argue flight.
5 The issue, I think, is the assertion that the
6 defendant had an obligation to say something to the
7 police.

8 **MR. CASTO:** Yes, sir.

9 **THE COURT:** Bear with me a moment. Y'all have
10 a seat.

11 (Pause.)

12 **THE COURT:** The motion's denied. I intend to
13 give an instruction however. If you all take
14 exception to the instruction, you can let me know
15 and I'll send the jury back out.

16 Bring the jury in.

17 Your objection to -- your motion for a mistrial
18 is preserved. I'm not saying you have to make it
19 again.

20 **MR. CASTO:** Yes, sir. And as a matter of
21 preservation, I think that, respectfully, we just
22 wanted to place on the record that -- now, is the
23 Court --

24 **THE COURT:** Sir?

25 **MR. CASTO:** I understand that the Court is

1 going to give a curative instruction; is that
2 correct?

3 **THE COURT:** Yes.

4 **MR. CASTO:** And with regard to preservation, I
5 believe in order to preserve that issue, we would
6 kindly and respectfully object to the curative
7 instruction for the fact that we can't unring that
8 bell and it's already been referenced and so we
9 raise the objection. And we feel that the Court's
10 curative instruction cannot properly cure this
11 issue, very respectfully. And once they come out,
12 we'll renew our objection after the instruction's
13 given, just for the record, Judge.

14 **THE COURT:** Thank you.

15 **MR. ROSS:** Judge, before they come in, I'm
16 going to continue down this line of argument, if
17 that's permissible to the Court.

18 **THE COURT:** He has no obligation to speak to
19 the police. You may argue flight, but you can't
20 argue an obligation to speak to the police.

21 Bring the jury in.

22 (The jury returns to the courtroom.)

23 **THE COURT:** All right. Ladies and gentlemen,
24 the objection of defense counsel is sustained. Any
25 assertion that the defendant had an obligation to

1 speak to the police is inappropriate. You must
2 disregard that. There was no obligation on the part
3 of the defendant at that time, depending on your
4 view of the facts or any view of the facts, to speak
5 to the police. So disregard any assertion that he
6 had any obligation to speak to the police that
7 night.

8 All right. Go ahead, Solicitor.

9 You need to put something on the record.

10 **MR. CASTO:** Briefly. We move to strike and we
11 renew our objection made in camera, respectfully.

12 **THE COURT:** All right. The motion is denied
13 and the objection is denied -- overruled.

14 Go ahead, Solicitor.

15 **MR. ROSS:** They brought him over. After he
16 fled, they brought him over. They asked for him to
17 come over and talk to the police. And he did talk
18 to the police, and that's another big piece of
19 evidence in this case, the words that came out of
20 his mouth.

21 You'll remember he was getting agitated. He
22 was threatening Sergeant Finch. So Sergeant Finch
23 patted him down and said, You got anymore dope on
24 you? What did the defendant say? What were the
25 words out of his mouth? No, that's all I had. I

1 mean, I didn't have anything.

2 Is that a sign of a big misunderstanding,
3 That's all I had; I mean, I didn't have anything?
4 Is this a big misunderstanding? Is he the
5 unluckiest person in the world? Or was he in
6 possession of that crack cocaine? I think you know
7 the answer to that question.

8 His words show that he knew that crack was
9 there. And what were the precise words? That's all
10 I had. That shows not only did he know the drugs
11 were there, but he knew it wasn't a kilo. That's
12 all I had. He knew it was just a little bit.
13 That's all I had. He knew not only the drugs were
14 there, but he knew the amount that were found.

15 What else happened? What's the last piece of
16 evidence? These officers gave him a chance to cool
17 off, to simmer down, to calm down, collect your
18 thoughts, then they spoke with him. They read him
19 his rights. They did everything by the book and
20 they asked him about the drugs. And what did he
21 say? He flat out confesses, The drugs are mine. Is
22 this a big misunderstanding or was he caught
23 red-handed? He was caught red-handed and he knew it
24 and he confessed. It's as simple as that.

25 So in this type of case, what is your defense?

1 What are you going to raise? Well, number one,
2 they're going to say, but he came in a month later
3 and said he didn't do it. That's what they elicited
4 on cross-exam. He came in a month later and said he
5 didn't do it. Oh, well, I guess we better go home.
6 He said he didn't do it. Is that the way the system
7 is supposed to work? Is that justice?

8 You give one statement, That's all I had; I
9 mean, I didn't have anything. You cool down. You
10 give the police a second statement in that patrol
11 vehicle, just you and the police officer, nobody
12 else around, you give a second statement, The drugs
13 are mine. And then a month later you come to his
14 office and you say the drugs weren't yours, is that
15 justice? You think that's the way the system is
16 supposed to work? Is that how you avoid getting in
17 trouble in our criminal justice system? If you
18 think so, then find him not guilty.

19 What else are they going to point to? They're
20 going to say, well, the police never got
21 fingerprints on this little baggy here. This is the
22 baggy, it's placed in this evidence bag and then the
23 BEST kit. They're going to say, they never got
24 fingerprints off that bag.

25 Well, ladies and gentlemen, this is not a who

1 done it. The drugs were found underneath his seat.
2 He confessed twice. Should those officers have
3 gotten DNA testing? Should they turn this case into
4 CSI just like you see on TV? Should they call up
5 the State crime lab and get the best and the
6 brightest to scrub this little package? Is it a who
7 done it? Do we have to figure out who the suspect
8 is in this case?

9 What else are they going to raise? Well, in a
10 minute, I'm going to sit down and I'm not going to
11 have a chance to respond to what they're going to
12 say in closing argument, but I can predict that
13 they're going to go through everything these
14 officers did with a fine-tooth comb. That's easy to
15 do months after the fact in a sterile courtroom
16 environment. And as they do that, ask yourself,
17 what did the police officers do right? What did
18 they do right in this case?

19 Well, number one, they took action. There was
20 a complaint of a drug house and they just didn't
21 look the other way. They put eyes on that drug
22 house and they watch it like a hawk. They could
23 have done nothing, but they did their jobs. And
24 when they saw suspicious activity, they took action.
25 They didn't look the other way. They pursued the

1 vehicle.

2 And how did they pursue the vehicle? They
3 didn't flip their blue lights on and start a chase.
4 They didn't immediately round everybody up and
5 arrest them. They approached them and simply asked
6 them some questions. They did what a good police
7 officer does, follow up on suspicions, be cautious
8 and simply ask some questions.

9 They were in a hostile environment that night
10 and they were able to keep the tension down and
11 control that environment. They found drugs. They
12 gave him a chance to explain himself and he admitted
13 twice that they were his. The actions of these
14 officers were textbook.

15 Before I sit down, let me talk to you about the
16 presumption of innocence and the concept of
17 reasonable doubt. Judge Keesley has already
18 explained these concepts a little bit, but I'm going
19 to talk about them as well.

20 Presumption of innocence, what does that mean?
21 In America, everybody is presumed innocent at the
22 start of the trial. When you walk into this
23 courthouse your first day, you step in the
24 courtroom, everything that happened back here
25 doesn't matter at that point, you're presumed

1 innocent. But that's at the start of the trial.

2 Mr. Bonham has now had his day in court.

3 Everybody that walks through those doors over there
4 at the start of the trial is presumed innocent, but
5 now he's had his day in court. The evidence has
6 come in. In a few minutes, the Judge will charge
7 you on the law, and the evidence in this case
8 destroys, shatters that presumption. It's a simple
9 case, drugs under his seat, he tries to get away,
10 twice he admits they're his. Is that a
11 misunderstanding?

12 Reasonable doubt, what does that mean? You
13 hear it all the time, reasonable doubt. You can't
14 convict somebody unless you're convinced beyond a
15 reasonable doubt that he's guilty. Those are not
16 magic words. Reasonable doubt, those aren't magic
17 words, that doesn't mean guilt beyond all doubt,
18 because nothing in this world, nothing on the face
19 of the earth can you be sure of beyond all doubt.
20 There is nothing beyond all doubt.

21 The standard that Judge Keesley will tell you
22 is are you firmly convinced that the defendant is
23 guilty? Are you firmly convinced? Those aren't
24 magic words. Are you firmly convinced that
25 Mr. Bonham is guilty?

1 So if I were to pose a hypothetical to you, say
2 you're at the grocery store, you're walking down the
3 cereal aisle and I were to say drugs were found
4 underneath the defendant's seat, well, at that
5 point, would you be firmly convinced? How about if
6 I told you while you're sitting there in the grocery
7 store that he tried to get away from the cops, would
8 you start to get firmly convinced at that point?
9 How about if I said he admitted the drugs were his
10 not once but twice, are you starting to get firmly
11 convinced?

12 Well, I'm going to sit down now and before I
13 do, I also want to thank you for your jury service.
14 Each and every one of you had other things you could
15 have been doing, you could have been with your
16 family, you could have been at work, but you came in
17 and you served. And remember on Monday, there were
18 a lot of people that were able to get out of jury
19 service, but you didn't, and you should be commended
20 for it.

21 The reason why you should be commended is
22 because nothing these officers do, nothing the
23 police ever does could come to fruition without 12
24 honest citizens coming forward and standing in
25 judgment of the defendant, and that's not an easy

1 thing to do. It's not easy to sit in judgment.
2 It's not easy, but it's necessary. It's necessary
3 to hold people accountable for their actions. It's
4 necessary to apply and respect the law. So now
5 there's just one thing left to do, find him guilty
6 as charged.

7 **THE COURT:** Thank you, Solicitor.

8 Mr. Casto, you're recognized for your closing
9 argument.

10 **MR. CASTO:** Thank you very much. May it please
11 the Court.

12 **THE COURT:** Yes.

13 **MR. CASTO:** Mr. Ross.

14 Remember our setting. Those were the first
15 words that I said to you the first time that I got
16 to stand up and address you yesterday morning. We
17 have a low income, high crime area, high rate of
18 drug activity and this is our setting for our trial.

19 Unfortunately, our setting is even more
20 specific than that. Unfortunately, for Raheem,
21 there's an audience, these folks that live there,
22 and they're watching as law enforcement questions
23 Raheem that evening. The audience is of the most
24 unfortunate kind. They're hostile, they're unruly
25 and they're watching Raheem's every move, watching

1 as Raheem stood by law enforcement. They're
2 watching him interact with him and they're watching
3 Raheem as he's being questioned by them and
4 ultimately driven away by them.

5 And as this goes on and in that snippet of
6 life, Raheem makes a decision, claims the drugs.
7 And so that's it, isn't it? I mean, don't -- at
8 this point, it's case closed, we all go home and
9 we'll be home by lunchtime when we get out of our
10 chair and we'll walk out of that door and nothing
11 else is needed. Oh, really?

12 One thing that I said when I first got up to
13 stand in front of you and address you, two things,
14 keep an open mind throughout the entire trial,
15 that's number one, and, number two, listen at every
16 word that is said from that chair right there, every
17 single one. And when we do that and when we look at
18 that, what was actually said, you might see
19 something different.

20 What was said? Officer Burt, Officer Burt was
21 the first officer that we heard from yesterday.
22 Officer Burt, if Raheem were someone else and is
23 caught telling on someone about these drugs or drug
24 activity in this neighborhood, could there be
25 consequences? Well, it's possible. That's what he

1 said. And isn't that why, when someone cooperates
2 with law enforcement as some type of informant or
3 what have you, isn't that information of who they
4 are, isn't that kept secret; isn't that right?
5 That's correct.

6 Well, that's correct, and the consequences are
7 all too real. What does this tell us about Raheem
8 or anybody else that should dare speak with law
9 enforcement about drug activity in this
10 neighborhood? Well, their fear, their hesitance is
11 founded because of what Officer Burt said. The
12 consequences, there could be consequences is what he
13 said. His fears are founded. Those feelings of him
14 or anybody else are very much real and they're
15 founded. They're what begins on August 10th, 2012,
16 actually picks back up a month later in September of
17 the same year.

18 Officer Finch testified that on August 10th,
19 while this incident was going on while he was
20 speaking with Raheem that night, Raheem was still on
21 scene in the neighborhood, and that horrible crowd
22 was still around. And the crowd of not fans of law
23 enforcement -- one officer said -- used the term
24 heckling, heckling them. And that's our audience
25 while he was speaking with Raheem on the scene that

1 night and while Raheem was in the police car still
2 parked at that incident location, the police car.
3 He could obviously look out the window and see these
4 folks.

5 Officer Finch made an offer, and Officer Finch
6 came and he testified honestly and truthfully about
7 that, I'll help you if you come down and speak with
8 me about what you know about drugs and crime in this
9 neighborhood. And a month later our story picks up
10 there in early September of last year.

11 Raheem meets Officer Finch. And we asked that
12 question, Officer Finch, Do you go looking for him?
13 No. In other words, Raheem came looking for you;
14 isn't that right? Yes. And he met, I believe, at
15 the northern branch of the sheriff's office, not in
16 the neighborhood and away certainly from the crowd.
17 And Raheem went on his own. He wasn't escorted
18 there by law enforcement. It's like -- law
19 enforcement like Officer Finch said.

20 And it's just Raheem and Officer Finch sitting
21 there at that meeting and then all of the sudden
22 away from the watchful eye of the neighborhood and
23 the crowd, Raheem names names of how those drugs got
24 there and even goes on to say about other
25 information about what's going on in that community.

1 He's mentioned someone specific, Marcus Mack, is
2 what he said. And that testimony comes to us
3 through Officer Finch.

4 Okay. So I understand that there are probably
5 consequences for letting law enforcement know about
6 what's going on in the neighborhood and providing
7 information to law enforcement, but how do we know
8 that Raheem just didn't claim the drugs, what other
9 evidence is there? In other words, specifically,
10 what other evidence of his guilt exists in this
11 case? And it's that question, that question right
12 there that gives us our hesitation and our pause and
13 our reasonable doubt in this case.

14 Mr. Ross said something in his closing, he
15 said, you know, is that justice? Well, is that --
16 is that justice? And we submit that it is justice
17 to check and to follow up. Essentially, his
18 freedom's on the line and we think that's fair, we
19 think that's justice and that's what it looks like.

20 And, specifically, not in the abstract, but,
21 specifically, what did we hear? Officer Burt, did
22 you or any other officer submit the plastic bag the
23 drugs were in for testing? No. Did you or any
24 other officer that you know of submit the drugs for
25 fingerprint testing? No. Did you or any other

1 officer submit the plastic bag the drugs were in for
2 DNA testing? No. Why? The other officer said,
3 Raheem said they were his, to each question, to
4 fingerprints, to DNA. And the questions stopped
5 there. There is no more analysis.

6 But something more is at play here. You see,
7 that night obviously, without dispute, the drugs
8 were in law enforcement's possession once they were
9 seized. They had them in their hand. And then we
10 followed up and we asked, Well, you know, how hard
11 is it to take the next step? How hard is it to
12 follow up just to check and just to see? Is that
13 reasonable? Does it give you pause or hesitation?

14 You see, Officer Burt told us that it's easy to
15 do. Actually, that fingerprint analysis, that can
16 even be done in-house and they can do that. DNA, a
17 little bit tougher. It's not done in-house. It can
18 be sent to the State Law Enforcement Division. It
19 can be sent to them, but they would do it, all they
20 had to do was send it.

21 And it's not enough to meet their burden of
22 proof and that reasonable doubt exists in this case.
23 The burden of proof is much higher than in a civil
24 trial. It's even higher when someone's freedom is
25 on the line and it's not enough.

1 Ultimately, we asked, well, you know what I
2 mean, are we grasping at straws or can't
3 fingerprints or DNA, I mean, would they really be
4 left on the bag? Well, Officer Burt is the one that
5 tells us, When the drugs were found what did you do;
6 Well, I got my camera, we didn't touch them. Why
7 not? Well, we didn't want to move them. And what
8 else? We didn't want to contaminate them. We
9 didn't want to contaminate the evidence. That's
10 what he said. That's definitely possible.

11 We heard throughout the trial this car was a
12 rental car and the officers learned who rented it.
13 Did we hear any testimony whatsoever, any follow-up
14 or even so much as a phone call with that person?
15 They even knew the name of the person who rented the
16 car. There was no testimony whatsoever. This
17 wasn't followed up on and it's not enough to meet
18 their high burden of proof.

19 When Raheem meets privately with Officer Finch
20 and names names about how there's drugs there,
21 specifically gave the name Marcus Mack, any
22 testimony about any follow-up whatsoever with Marcus
23 Mack? No. And it's not enough to meet their high
24 burden of proof.

25 Now, how to evaluate this case. By

1 illustration, we're going to take a look, a very
2 strange time of the year to bring this up, of the
3 summer, and we're going to talk about, by way of
4 illustration, football, so now we've got to wait
5 till fall for it to roll back around again, and
6 specifically the NFL. The NFL has been with us for
7 about a hundred years. And for most of that time,
8 there was only one color flag in the game, these
9 yellow flags. Whenever there was a penalty for
10 whatever reason, they would throw these flags out on
11 the field for some type of foul or penalty.

12 Well, for years, the games got on just fine and
13 then we insert modern technology into that, now we
14 have these red flags. And, basically, what they are
15 is that it's allowed to do video review of every
16 play. And so if either team thinks that the referee
17 blew the call, you can throw one of these red flags
18 to challenge that decision, did the players step out
19 of bounds, was it a catch, things like that, and the
20 red flag is thrown. And the rule in the game of
21 football is that the call on the field stands by the
22 referee unless what? Unless there's indisputable
23 video evidence that the call should be reversed.

24 Talk about the presumption of innocence, and we
25 disagree somewhat with the State in that the

1 presumption of innocence will be much like the Judge
2 tells you, that it abides before Raheem's trial
3 began, during Raheem's trial and even abides with
4 you all as you deliberate back in that jury room.
5 It doesn't stop at that door and it doesn't stop at
6 that one either (indicating) once this trial begins.
7 It abides with him.

8 And I want you, I don't want to spoil the
9 surprise, but listen out when you hear those words
10 and that description of that robe of righteousness
11 because what we're talking about is the presumption
12 of innocence. It's no abstract legal theory,
13 something that's old and is a -- it's alive and
14 well, it's living and breathing and it abides with
15 us, but, particularly, it's wrapped around him
16 throughout the course of that trial and even in that
17 jury room with you.

18 You see, what's our standard in this case, talk
19 about the game of football, what's our standard in
20 this case? Reasonable doubt. Well, don't take my
21 word for it, take how South Carolina courts have
22 defined that term. Reasonable doubt, the type of
23 doubt that would cause an ordinary or reasonable
24 person to pause or to hesitate before they act.

25 You know, last point and I'll close, you know,

1 there's a concept and -- we grew up and they write
2 excellent books and stories about things that
3 occurred centuries ago, maybe even as much as a
4 thousand years before, stories about knights,
5 villains, dragons, Sir Lancelot, and particularly
6 King Arthur and his Round Table. And the idea with
7 that concept is it's kind of a little picture of
8 the big picture of what's going on with you on this
9 jury, that 12 people sit around and no one's opinion
10 is more valuable than the next, all have equal say.
11 And you look to yourself and if you find that pause
12 or that hesitation before you act, your feeling,
13 your feeling is just as valid as the others who sit
14 around that table. Don't let anybody take it from
15 you, don't let it be stolen. It's just as right as
16 your neighbor's.

17 Reasonable doubt is alive and well in the trial
18 of this case and the State has failed to meet their
19 burden of proof. Very respectfully, we ask that you
20 speak to that. They failed to meet their burden of
21 proof and cannot carry it. Reasonable doubt is
22 alive and well. We ask you to find Raheem not
23 guilty. Thank you.

24 **THE COURT:** Thank you, Mr. Casto.

25 Ladies and gentlemen, we'll take a short recess

1 and I'll get you back out here and give you the
2 instructions on the law. Don't discuss the case.
3 Follow the bailiff, please.

4 (The jury retires to the jury room.)

5 **THE COURT:** All right. We're going to be at
6 ease for a few minutes. We're going to order lunch
7 for the jury, so as soon as they're finished, we'll
8 get started.

9 (Brief recess.)

10 **THE COURT:** During the charge, please stay
11 still and stay quiet, don't do anything to distract
12 the jury. Absent an emergency, don't be moving
13 around, don't be making noises, just stay still and
14 stay quiet, please.

15 All right. Bring the jury for me, please.

16 (The jury returns to the courtroom.)

17 CHARGE OF THE COURT

18 **THE COURT:** Members of the jury, all of the
19 evidence has been presented, you've heard the
20 arguments of counsel and now it's time for me to
21 instruct you on the law that applies to the case.
22 Thank you for the manner in which you've conducted
23 yourselves. Please continue to pay close attention
24 during this next stage.

25 Now, first, you need to understand some basic

1 ground rules. You, the jury members, are the sole
2 judges of the facts. You decide all of the issues
3 of fact. You alone determine the truth of the
4 evidence, its effect, its value and its weight. You
5 alone judge the credibility of witnesses, in other
6 words, whether or not a witness' testimony is
7 believable.

8 Now, in that regard, you may believe all that a
9 witness said or none of it. You may believe part of
10 what a witness said and not believe the rest. You
11 may believe one witness against many or many against
12 one. You may consider any interest, bias, prejudice
13 that you feel that a witness has in the case. You
14 may consider the demeanor of the witness and the
15 opportunity for knowledge that the witness had. You
16 may consider the lack of evidence presented by the
17 State.

18 But you are not to exercise these
19 considerations arbitrarily. What I want you to do
20 is to use your common sense, use your sense of logic
21 and reason and your good judgment.

22 The Rules of Evidence allow for opinion
23 testimony to be given under certain circumstances,
24 and one area where that's allowed is where someone
25 by virtue of education, training or experience is

1 permitted to testify as an expert witness. Now, the
2 mere fact that an expert witness is allowed to
3 render opinions under our rules does not require you
4 to accept the opinions given if you choose not to do
5 so. You may accept or reject the testimony of an
6 expert witness just as you may any other witness in
7 whole or in part.

8 Now, it's not proper for me to give you a
9 charge on the facts of the case. I cannot discuss
10 the facts with you. I'm not permitted to convey to
11 you an impression as to what, if any, personal
12 opinions I may develop about the facts as the case
13 goes on. So if, during any stage of this trial, you
14 develop an impression that I've got a personal
15 opinion about the facts, you must remove that
16 totally from your mind. You're the sole judges of
17 the facts.

18 I am the judge of the law that applies in the
19 case and under your oath, you have to accept and
20 apply the law as I give it to you. That means if
21 you have conflicting ideas about what the law is or
22 what it should be, you have to abandon those. I
23 give you the law, you apply it to the facts as you
24 determine them to be and, in that way, you reach
25 your verdict.

1 It's also my duty to determine what evidence is
2 admissible. If I have ruled something inadmissible
3 or instructed you to disregard something or given
4 you an instruction, you must follow it. You're not
5 to consider anything that I told you to disregard in
6 arriving at your verdict. Base your verdict on the
7 competent evidence before you, consider the
8 testimony of the witnesses and the exhibits admitted
9 in the trial.

10 I need to explain to you that there are two
11 types of evidence generally presented during a
12 trial. There's direct evidence and there's
13 circumstantial evidence. Direct evidence is
14 evidence of direct perception, including the
15 testimony of a person who asserts or claims to have
16 knowledge, actual knowledge, of a fact, such as an
17 eyewitness. Circumstantial evidence is proof of a
18 chain. It's proof of a chain of facts and
19 circumstances indicating the existence of the fact.

20 Now, the law makes absolutely no distinction
21 between the weight or value to be given to either
22 direct or circumstantial evidence, nor is a greater
23 degree of certainty required of circumstantial
24 evidence than of direct evidence. What you are to
25 do is to weigh all of the evidence in the case, and

1 after weighing all of the evidence, if you're not
2 convinced of the guilt of the defendant beyond a
3 reasonable doubt, you must find him not guilty.

4 I remind you and emphasize once again that the
5 fact that Mr. Bonham elected not to testify is not
6 to be a factor by -- to be considered by you in any
7 manner whatsoever in your deliberations and on your
8 consideration of the question of whether he is
9 guilty or not guilty. His decision not to testify
10 must not be considered in any manner whatsoever
11 against him. An accused has the constitutional
12 right to remain silent and the assertion of that
13 right cannot be considered by you in any manner
14 whatsoever against Mr. Bonham in your deliberations.

15 Under the oath you have taken, you have
16 promised us that you will reach no inference and you
17 will draw no conclusion whatsoever from the fact
18 that Mr. Bonham elected not to testify. His
19 decision not to testify should not be discussed by
20 you in the jury room, it should not enter into your
21 minds in making your decision on the question of
22 whether he is guilty or not guilty. The burden of
23 proof is entirely on the State and the accused has
24 no obligation to prove anything at all.

25 Now, testimony has been given in this trial

1 about statements allegedly made by this defendant to
2 law enforcement officers. In evaluating those
3 alleged statements, you first need to determine
4 whether the State has proven that the defendant, in
5 fact, made the statement.

6 If the State has not proven beyond a reasonable
7 doubt that the defendant, in fact, made the
8 statement that's asserted, then you cannot consider
9 that statement, that alleged statement, in any
10 manner whatsoever against the defendant. If you
11 find that the defendant made a particular statement,
12 there are requirements concerning statements made in
13 response to police questioning when a person is in
14 custody.

15 You may have heard about Miranda warnings. And
16 while police officers are permitted to detain a
17 person, secure the person for safety and ask limited
18 questions as part of a preliminary investigation,
19 once the person is taken into custody or had his
20 freedom of movement deprived by the police in any
21 significant way, the police cannot interrogate the
22 defendant without first providing that person his
23 Miranda warnings.

24 The Miranda warnings are that you have the
25 right to remain silent; any statement you make can

1 and will be used against you in court; that you have
2 the right to an attorney; and if you do not have the
3 resources to hire an attorney, the court will
4 appoint one at no expense; that you have the right
5 to consult with the attorney before questioning --
6 before answering any questions or making any
7 statements; that you have the right to have the
8 lawyer present with you at all times during all
9 interviews and all interrogations; and that you may
10 stop answering questions at any time and assert
11 these rights at any time.

12 Now, while those exact words do not have to be
13 used, the substantial equivalent of them must be
14 communicated by the police to the person being
15 interrogated in order to constitute Miranda warnings
16 before the interrogation.

17 Now, the State has to prove that the defendant
18 was properly warned of his constitutional rights,
19 the Miranda warnings, prior to the questioning and
20 giving of the statement if the defendant was in
21 custody at the time. If not, then you are to
22 disregard the alleged statement and you cannot use
23 it in any way against the defendant.

24 The next thing the State has to prove is that
25 the defendant knowingly and intelligently waived his

1 constitutional rights and made the statement to the
2 police.

3 And the final requirement is that the statement
4 in question must have been given voluntarily. The
5 State has to prove to you that the statement was the
6 expression of the defendant's own free will and that
7 it was not improperly induced by compulsion, duress,
8 force or fear or by the promise of some reward or
9 hope of reward. Unless the statement was made
10 freely and voluntarily, then you may not use it in
11 any manner against the defendant.

12 If a statement was made by the defendant while
13 in custody and the statement was made to a law
14 enforcement officer in response to the officer's
15 questions and interrogation, I instruct you that you
16 cannot use that statement against the defendant
17 unless you're satisfied that the State has proven
18 beyond a reasonable doubt every requirement that
19 I've just discussed with you: that the statement
20 was, in fact, made by the defendant after Miranda
21 warnings were given, that there was a knowing and
22 intelligent waiver of his rights by him, and that
23 the statement was made freely and voluntarily.

24 All right. Now, the defendant in this case,
25 Mr. Bonham, is presumed to be innocent. This is no

1 mere legal theory. It is a fundamental and
2 substantial right to which everyone is entitled.
3 It's been described as being like a robe of
4 righteousness that's placed around an accused and it
5 remains with him through every stage of the trial.
6 It continues to exist after you go back to your jury
7 room to deliberate so that he is protected. He is
8 presumed to be innocent unless you, the jury,
9 determine that the State has proven him guilty
10 beyond a reasonable doubt.

11 A defendant is not required to prove his
12 innocence. He is not required to prove anything.
13 The burden is entirely on the State to prove the
14 guilt of the defendant beyond a reasonable doubt,
15 and it's required that every essential element of
16 the offense charged be proven by the State beyond a
17 reasonable doubt. Now, that doesn't mean that the
18 State has to prove the guilt of the defendant beyond
19 all doubt or beyond every doubt, the appropriate
20 standard is proof beyond a reasonable doubt.

21 Some of you may have served as jurors in civil
22 court and if you have, you know that the burden of
23 proof in civil court is a lesser standard. It
24 requires proving that something is probable, it's
25 more likely than not, and that's called the greater

1 weight or preponderance of the evidence. But we're
2 not in civil court, we're in criminal court. And in
3 criminal court, the standard is much higher and the
4 proof must be much stronger than what is required in
5 civil court. The burden of proof, as I've told you
6 repeatedly, in criminal cases is proof beyond a
7 reasonable doubt.

8 So what do I mean by that term? Proof beyond a
9 reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt. There are few
11 things in the world that we know with absolute
12 certainty and in criminal cases, the law does not
13 require proof that overcomes every possible doubt.
14 If, based on your consideration of the evidence, you
15 are firmly convinced that the defendant is guilty of
16 the crime charged, then you are to find him guilty.
17 If, on the other hand, you think there is a real
18 possibility that he is not guilty, you must give him
19 the benefit of the doubt and find him not guilty.

20 There is no obligation on the part of the
21 defense to raise any doubt or any other possibility.
22 The defendant is presumed to be innocent and the
23 State has the entire burden of proof and the State
24 has to prove to you that the defendant is guilty to
25 the exclusion of any other real possibility.

1 Now, let's turn to the specific charge that's
2 alleged in this case. The defendant is charged with
3 possession of crack cocaine or cocaine base. It's
4 alleged that the defendant did in Lexington County,
5 on or about August 10, 2012, knowingly, willfully,
6 intentionally and unlawfully possess a controlled
7 substance, specifically cocaine base, crack cocaine.

8 I caution you again, ladies and gentlemen, that
9 the indictment is a charging paper. It has no
10 evidentiary value and you may not give it any.

11 It is illegal for any person except properly
12 licensed medical professionals to possess a
13 controlled substance. Cocaine base, crack cocaine
14 is a controlled substance under the law.

15 Now, the definition of cocaine base is this:
16 Cocaine base means an alkaloidal cocaine or freebase
17 form of cocaine which is the end product of a
18 chemical alteration whereby the cocaine in salt form
19 is converted to a form suitable for smoking.
20 Cocaine base is commonly referred to as rock or
21 crack cocaine.

22 Now, to prove the defendant guilty of this
23 charge, the State has to prove beyond a reasonable
24 doubt that the substance in question was, in fact,
25 cocaine base, crack cocaine.

1 Now, possession is something that may occur in
2 either of two ways: There may be actual possession
3 or there may be constructive possession. To prove
4 possession, the State has to prove beyond a
5 reasonable doubt that the defendant had both the
6 power and the intent to control the disposition or
7 use of the controlled substance in question.

8 Actual possession means that the defendant was
9 in actual physical custody of the controlled
10 substance. Constructive possession means that the
11 defendant had dominion and control or the right to
12 exercise dominion and control over the controlled
13 substance in question.

14 Mere presence at the scene where drugs are
15 found is not enough for the State to prove
16 possession. The State has to prove to you beyond a
17 reasonable doubt that Mr. Bonham had possession of
18 cocaine base, crack cocaine either by actually
19 possessing it or constructively possessing it. The
20 State has to prove to you that the drug was under
21 his dominion and control and that he had actual
22 knowledge of the presence of the drug in question,
23 that he knew the drug was there and was within his
24 dominion and control and he intended to exercise
25 dominion and control over it. If the State has

1 failed to prove that the defendant knew the drugs
2 were present and were within his dominion and
3 control, then you must find him not guilty.

4 To prove the defendant guilty, the State has to
5 prove to you beyond a reasonable doubt that the
6 defendant was acting with the necessary criminal
7 intent. The criminal intent required for unlawful
8 possession of a controlled substance is that the
9 possession must have been willful and knowing on the
10 part of the defendant. To act knowingly means to
11 act with knowledge, to act consciously, not
12 something that occurs by accident. Knowingly means
13 that it is an intentional act, a willful act.

14 Now, intent is a mental state. It may be shown
15 by acts and conduct of the defendant and other
16 circumstances from which you may naturally and
17 reasonably infer the necessary intent.

18 The last thing I have to tell you about the law
19 is that the defendant is entitled to every
20 reasonable doubt arising in the entire case. If
21 upon any issue of fact essential to a conviction,
22 you have a reasonable doubt as to how that should be
23 resolved, you must resolve that doubt in the
24 defendant's favor. If upon reviewing the entire
25 case, you have a reasonable doubt as to whether the

1 State has proven the defendant guilty of the offense
2 charged, then the defendant is entitled to that
3 reasonable doubt and a verdict of not guilty.

4 If, on the other hand, upon reviewing the
5 entire case, you find that the State has proven
6 every essential element of the crime charged against
7 this defendant beyond a reasonable doubt, it is
8 equally your duty to find the defendant guilty of
9 the charge.

10 And that's the law.

11 Folks, when you go back to decide the case,
12 you're going to have with you all of the exhibits
13 that have been admitted in the trial and you're
14 going to have this verdict form. On this verdict
15 form, you will tell us your decision in the case.

16 Now, with regard to the exhibits, there are
17 special rules related to certain things that the
18 Supreme Court tells us we have to instruct the jury.
19 So even though it's common sense, I am required in
20 any case that involves the allegation of illegal
21 drugs, that you not open the packet, okay. There
22 are special rules about ammunition and there are
23 special rules about guns and there are special rules
24 about drugs. So even though I feel a little silly
25 telling you that, don't open the packet that has the

1 alleged drugs in it.

2 Now, with regard to the verdict form, you're
3 going to find on here that it has a caption at the
4 top, which is just the name of the defendant and the
5 case number that's been assigned to the case. And
6 it reads: As to the charge of possession of cocaine
7 base, crack cocaine, we, the jury, unanimously find
8 the defendant, and you have two options, you may
9 find the defendant not guilty or you may find the
10 defendant guilty of possession of cocaine base,
11 crack cocaine, unlawful possession of cocaine base.

12 Now, Mr. Foreman, part of your job is to record
13 the verdict for me. I think you'll find the form
14 self-explanatory, just check the option chosen by
15 the jury and sign your name on the signature line.

16 I'm supposed to tell you also that you're not
17 to infer that I'm trying to suggest to you anything
18 by the order in which I listed those. I've got to
19 put one option first and one option second.

20 When you have reached your verdict, knock on
21 the door and the bailiff will respond to your knock.

22 Now, I've told you now at least a dozen times
23 not to discuss the case until I tell you to. Well,
24 it's not time yet. The law says that I have to go
25 over with the attorneys what I just told you, and

1 that's just common sense. We don't want you back
2 there deciding the case using the wrong law. So if
3 I said something wrong, they have to be given a
4 chance to point that out to me and if I agree with
5 them, I'll bring you back out and correct it.

6 As I mentioned to you yesterday, my practice is
7 that I print out the draft of the charge in advance.
8 I gave this to them last night. They had it all
9 night to look at it, the attorneys. I met with them
10 before you got here this morning and we've already
11 been over this. But as you probably saw, I don't
12 ever read verbatim, a lot of it's just memorized, so
13 sometimes I say things I don't even know I said. I
14 may say the wrong party or something like that.

15 So here's the signal you need to look for: If
16 I'm satisfied with what I've told you, I will send
17 back the verdict form and the exhibits, I will bring
18 the alternate out and when it is just the 12 of you
19 in that jury room, no bailiff, no alternate, and
20 you've got the exhibits and the verdict form, you
21 start talking about the case, you don't need to wait
22 another second, but don't talk about it until then.

23 We've ordered your food. When it gets here,
24 obviously they'll bring that in for you. Thank you
25 very much for your attention. You may retire to

1 your jury room. Follow the bailiff, please.

2 (The jury retires to the jury room.)

3 **THE COURT:** Please state for the record
4 exceptions, additions or objections to the charge,
5 from the State?

6 **MR. ROSS:** None, Your Honor.

7 **THE COURT:** And other than what you've already
8 raised, Mr. Casto, do you have anything else?

9 **MR. CASTO:** No, sir, Your Honor.

10 **THE COURT:** All right. Thank you.

11 All right. Check the exhibits and the verdict
12 form, please, and when you're satisfied, let me
13 know.

14 (Pause.)

15 **THE COURT:** All right. Bring the alternate out
16 for me, please.

17 (The alternate enters the courtroom.)

18 **THE COURT:** Ms. Kuntz, all the jurors made it
19 through the trial without problems, so we will not
20 have to have you serve during the deliberations. I
21 want to thank you very much. They'll mail a little
22 check to you. You'll get it about ten days from the
23 end of the week.

24 You have an exemption for three years from
25 serving on the jury, that's 2013, '14 and '15

1 calendar years. Since you actually sat on a jury,
2 you're disqualified for a year. It only applies to
3 state court, civil or criminal, but try to remember
4 when you served if you can. The computers are
5 supposed to purge you, but sometimes it doesn't work
6 out that way.

7 You're welcome to stay if you wish to stay.
8 You're free to go if you wish to go. The food's
9 been ordered so if you want to wait, we'll make a
10 little room available for you somewhere to wait. If
11 you want to wait out here, that's fine too. But if
12 not, just tell the bailiff and you're free to go.

13 **JUROR:** Okay. Thank you.

14 **THE COURT:** Thank you so much.

15 (The alternate was excused.)

16 **THE COURT:** We're at ease pending a verdict.

17 What I'd like for you all to do is just wait
18 around a few minutes, say ten minutes or so, and
19 then -- just in case they get a quick question or
20 something. And then if you want to go eat, I ask
21 that you go somewhere that's not a leisurely lunch
22 and give us a cell phone number or some way to get
23 in touch with you in case something happens. I'll
24 check back with you in about ten minutes.

25 It should take about 45 minutes for them to get

1 their food. Once they get their food, they're going
2 to have to eat too.

3 All right. We're at ease pending a verdict.

4 Mr. Bonham, I need to take you into custody
5 now.

6 (The jury commences its deliberations at
7 11:30 a.m.)

8 (A recess transpired.)

9 (The following occurred at 11:57 a.m.)

10 (Court's Exhibit Number 4, jury note, marked
11 for identification.)

12 **THE COURT:** I received a note from the jury.
13 It reads, Can we have a copy of Finch's statement?

14 I'm not really sure what they want. Do you all
15 have any suggestions or input?

16 **MR. ROSS:** Judge, my thought is they're asking
17 for a copy of the written statement, which neither
18 party has introduced into evidence.

19 **THE COURT:** A statement from whom?

20 **MR. ROSS:** Finch is the officer that took the
21 statement. So I assume it's the defendant's
22 statement that Officer Finch took.

23 **THE COURT:** Mr. Casto, do you have any idea?

24 **MR. CASTO:** No more insight, Your Honor. I
25 raise -- and I think about this, there's a part of

1 me that feels like, well, what if they want to hear
2 his testimony.

3 **THE COURT:** All right. Bring the jury out.

4 (The jury returns to the courtroom at 12:03
5 p.m.)

6 **THE COURT:** All right. Mr. Foreman, I received
7 a note from the jury that reads, Can we have a copy
8 of Finch's statement?

9 I'm not really sure what you're asking for. If
10 what you're asking for is Finch's testimony, then
11 what can be done is we can replay the backup tape,
12 it's called digital, but replay that. If what
13 you're asking for is some written statement, unless
14 the document was entered into evidence in the trial,
15 then there's no way to enter it now. So you'd have
16 to make the decision based on the evidence that was
17 presented. So is it you want to hear the testimony
18 of Officer Finch?

19 **FOREMAN:** Yes, sir.

20 **THE COURT:** All right. I'll have to give the
21 court reporter an opportunity to get set up. And
22 like I said, we're just playing back the backup
23 system. So we'll get that set up and we'll bring
24 you back in and let you hear that, all right. Thank
25 you.

1 (The jury retires to the jury room at 12:05
2 p.m.)

3 (Pause.)

4 **THE COURT:** Will the attorneys get with the
5 court reporter and make sure we know what to replay
6 because she's saying that that's when I sent the
7 witness out? If that's the one where I changed my
8 ruling, then obviously -- where I changed my ruling
9 about the cross-examination of the witness based on
10 the response on the second statement or third
11 statement, however you want to put it, then the jury
12 wouldn't need to hear any of that. Check with Stacy
13 and y'all get it squared away. Let me know when
14 you're ready.

15 (Pause.)

16 **THE COURT:** Bring the jury in.

17 (The jury returns to the courtroom at 12:16
18 p.m.)

19 (Whereupon, the testimony of John William
20 Finch was played for the jury.)

21 **THE COURT:** All right. Ladies and gentlemen,
22 step back in the jury room, continue your
23 deliberations, please.

24 (The jury retires to the jury room to
25 continue its deliberations at 12:43 p.m.)

1 **THE COURT:** Anything need to be put on the
2 record?

3 **MR. ROSS:** No, Your Honor.

4 **MR. CASTO:** No, sir, Your Honor.

5 **THE COURT:** We're at ease pending a verdict.

6 (A recess transpired.)

7 **THE COURT:** I've been informed the jury has a
8 verdict. I have no way of knowing what the jury's
9 decided. Please do not show any sign of approval or
10 disapproval with the verdict, don't shake your head
11 in agreement or disagreement, don't say anything,
12 don't make any sounds, please stay still and stay
13 quiet.

14 Bring the jury in.

15 (The jury returns to open court to report
16 its verdict at 1:09 p.m.)

17 **THE COURT:** All right. Madame Clerk.

18 **THE CLERK:** Mr. Foreman, have you reached a
19 verdict?

20 **FOREMAN:** Yes, ma'am.

21 **THE CLERK:** Please pass it up by the bailiff.

22 (The clerk hands the verdict to the Judge.)

23 **THE COURT:** Publish the verdict, please.

24 **THE CLERK:** Indictment 2013-GS-32-967, the
25 State versus Raheem Jamar Bonham, as to the charge

1 of possession of cocaine base, crack cocaine, we,
2 the jury, unanimously find the defendant guilty of
3 unlawful possession of cocaine base, crack cocaine;
4 is so signed by the Foreperson, June 6, 2013.

5 Mr. Foreman, ladies and gentlemen of the jury,
6 if this is your verdict, please indicate each of you
7 by raising your right hand.

8 All hands raised, Your Honor.

9 **THE COURT:** Thank you.

10 Are there any matters to take up prior to the
11 jury being discharged, from the State?

12 **MR. ROSS:** No, Your Honor.

13 **THE COURT:** From the defense?

14 **MR. CASTO:** We'd ask the jury to be polled,
15 Your Honor.

16 **THE COURT:** All right. Ladies and gentlemen,
17 the clerk is going to call the roll. As your name
18 is called, raise your hand so she knows where to
19 look. She's basically going to ask you these
20 questions: Was this your verdict and is it still
21 your verdict? So answer her accordingly.

22 **THE CLERK:** Eric Eckstrom. Was this your
23 verdict and is it still your verdict?

24 **JUROR:** Yes, ma'am.

25 **THE CLERK:** Kevin Ackim. As to the verdict,

1 was this your verdict, is it still your verdict?

2 JUROR: Yes, ma'am.

3 THE CLERK: Jimmy Amick. As to the verdict,
4 was this your verdict, is it still your verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: Patricia Wheeler. As to the
7 verdict, was this your verdict, is it still your
8 verdict?

9 JUROR: Yes, ma'am.

10 THE CLERK: Cecil Curry. As to the verdict,
11 was this your verdict, is it still your verdict?

12 JUROR: Yes, ma'am.

13 THE CLERK: Charlotte Hartung. As to the
14 verdict, was this your verdict, is it still your
15 verdict?

16 JUROR: Yes, ma'am.

17 THE CLERK: Elizabeth Ross. As to the verdict,
18 was this your verdict, is it still your verdict?

19 JUROR: Yes, ma'am.

20 THE CLERK: Jody Britt. As to the verdict, was
21 this your verdict, is it still your verdict?

22 JUROR: Yes, ma'am.

23 THE CLERK: Richard Fraser. As to the verdict,
24 was this your verdict, is it still your verdict?

25 JUROR: Yes, ma'am.

1 **THE CLERK:** Laura Kotti. As to the verdict,
2 was this your verdict, is it still your verdict?

3 **JUROR:** Yes, ma'am.

4 **THE CLERK:** Roy Wellborn. As to the verdict,
5 was this your verdict, is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Monique Cook. As to the verdict,
8 was this your verdict, is it still your verdict?

9 **JUROR:** Yes, ma'am.

10 **THE CLERK:** All jurors polled, Your Honor.

11 **THE COURT:** Thank you.

12 Anything else prior to the jury being
13 discharged, from the defense?

14 **MR. CASTO:** Yes, sir, Your Honor. We'd move
15 for a new trial at this time.

16 **THE COURT:** All right. Ladies and gentlemen,
17 that's going to conclude your jury service. You
18 don't have to call in, you don't have to come back.
19 You're through for the term. You have an exemption
20 for jury duty at the state court level 2013, '14 and
21 '15. Try to remember when you served. You do not
22 have to serve during that time. Since you actually
23 sat on the jury, you're disqualified for a year,
24 again state court, civil or criminal, will not help
25 you in federal court, magistrate's court, municipal

1 court.

2 I have to take up some things outside the
3 presence of the attorneys -- outside the presence of
4 the jury. See, I told you sometimes I say things I
5 don't know what I'm saying. I used to come back and
6 meet with the jurors. I'm not permitted -- no judge
7 is permitted to comment on the jury's verdict in any
8 case, but I could maybe answer questions and talk
9 about things and if the jurors had questions or
10 comments or criticisms or complaints.

11 I got a lot out of it. I thought the jurors
12 got a lot out of it, but there were some issues that
13 arose from some other locations and the Chief
14 Justice decided that it was better that we not
15 communicate with the jury off the record. So if you
16 have some legitimate issue that you want to address,
17 if you'll write to me, I'll try my best to respond.

18 Now, since we've changed the way we did things
19 several years ago, I've only gotten one letter from
20 a juror and that was because she was upset that in
21 another county that one of the ladies on the jury
22 apparently sold Avon products and was very
23 aggressive with the fellow jurors trying to sell
24 Avon during the whole proceeding. I can't help you
25 with stuff like that. I did forward it on to the

1 judges in the second circuit, but there's nothing I
2 can do about that.

3 But if you have some issue that, you know,
4 about the way you were treated or anything that you
5 think we could improve upon, let me know and I'll
6 try my best to make sure it's passed along to the
7 proper person. If that's me, I'll try to take
8 proper action.

9 Okay. You're free to go. Thank you.

10 (The jury was excused.)

11 **THE COURT:** Okay. Now motions.

12 **MR. CASTO:** Yes, sir, Your Honor. We move for
13 a new trial. We wish to, at this time, renew all
14 prior motions and objections both pretrial and
15 during the trial. Specifically, based on the
16 evidence, no reasonable jury could have found my
17 client guilty beyond a reasonable doubt based on the
18 evidence.

19 **THE COURT:** All right. The motion's
20 respectfully denied.

21 Are y'all ready for sentencing?

22 **MR. ROSS:** The State's ready, Your Honor.

23 **THE COURT:** Do you have a sentencing sheet?

24 **MR. ROSS:** I do, Your Honor.

25 **THE COURT:** May I see it?

1 **MR. ROSS:** I'll pass it up to you.

2 (Pause.)

3 **THE COURT:** Okay. What's the State's input
4 regarding sentencing?

5 **MR. ROSS:** Your Honor, the facts of this case
6 essentially speak for itself. I don't know if Your
7 Honor had an opportunity to look at the photos
8 during trial, I didn't publish them, but if Your
9 Honor feels relevant, we can pull them out.

10 **THE COURT:** I did not see the photographs,
11 but --

12 **MR. ROSS:** It's a bag of crack is all.

13 It's a simple case, a small amount of crack,
14 Your Honor. The reason why we took the case to
15 trial, we took jury time, we took Your Honor's time
16 is, quite frankly, his record. This was not
17 something we would be willing to just dismiss. His
18 record is pretty substantial. He's 19 years old and
19 he's already got, 2011, simple possession of
20 marijuana, drug paraphernalia.

21 But more significantly also in that year, Your
22 Honor, he's got a burglary in the third degree first
23 offense, PWID marijuana. Those were two separate
24 incidents that pled on the same date. He's also got
25 a possession of a sawed-off shotgun. He received

1 YOA sentences for those offenses, Your Honor.

2 I do believe Sergeant Finch would like to
3 address the Court if Your Honor would hear him.

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

5 **SERGEANT FINCH:** Your Honor, we just wanted to
6 add that, you know, we gave this young man every
7 opportunity, sir. I mean, this was -- the way we
8 look at it is he was just playing games with the
9 sheriff's department. And so we, you know, we just
10 feel like he was playing games with us and I just
11 wanted to make you aware of that. We gave him every
12 opportunity to do the right thing in this case, sir.

13 **THE COURT:** All right. Thank you, sir.

14 Mr. Casto.

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

16 **THE COURT:** Do you have anything on sentencing?

17 **MR. CASTO:** Yes, sir. I'd like to -- if it's
18 all right, if I can present mitigation at this time.

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

20 **MR. CASTO:** Very respectfully, Judge, it's not
21 an old case and so my client and I didn't really
22 have, you know, a ton of time to get to know one
23 another like many clients, but, you know, I met
24 Raheem and we talked about the case. He is still 19
25 years of age. And he told me a little bit about his

1 background. He has his GED. The type of work that
2 he's engaged in in his young life has been painting
3 work. He resides in West Columbia with his mother
4 and does have a young child who is one -- one year
5 old.

6 His plan in place, he tells me, as far as the
7 next step for him is possibly to go to Midlands Tech
8 to do welding. He needs to take his placement test
9 he informed me.

10 But, you know, I think that one thing that has
11 been on his mind was the fact that, well, he's now
12 in the position of being a father. This event took
13 place back in August of this past year. He hasn't
14 gotten in anymore trouble and he knows that, you
15 know, that he wanted me to take this matter to
16 trial. And just to place on the record that I know
17 that he's disappointed, but in the same breath, the
18 jury's spoken and, you know, we respect what they
19 had spoken to.

20 He did two days in jail for this offense. So
21 he was arrested, spent the night and got out the
22 next day, Your Honor.

23 What we'd ask the Court to consider in crafting
24 a sentence is his age. Hopefully, the fact that due
25 to that, there is some type of, some type of silver

1 lining in all of this and that maybe he can better
2 himself through some type of probation or program
3 that he would need to complete. We'd respectfully
4 ask for as much mercy as possible and ask the Court
5 to consider a probationary sentence in this case.

6 **THE COURT:** Thank you.

7 Mr. Bonham, do you want to say anything?

8 **DEFENDANT:** Yes, sir.

9 **MR. CASTO:** I beg the Court's indulgence.

10 (Mr. Casto confers with the defendant.)

11 **DEFENDANT:** I'm just kind of disappointed in
12 the verdict.

13 **THE COURT:** Yes, sir. Well, if you wish to
14 appeal, it has to be done in writing, it has to be
15 done promptly. The Office of Indigent Defense,
16 Appellate Defense, would pick up your case. But you
17 need to file a notice of appeal. So if you wish to
18 appeal it, tell Mr. Casto and he'll file the notice.
19 And I encourage you to do it because if you decided,
20 for whatever reason, not to go forward with your
21 appeal, that'd be fine, but if you wanted one later,
22 you can't get it if you wait too late. So just tell
23 Mr. Casto if you want to file your notice of appeal.

24 **MR. CASTO:** One additional thing I neglected to
25 mention, Your Honor. I met his mom this morning.

1 She's here and she's been very interested in what's
2 going on. His girlfriend is also present. I just
3 wanted just to speak that into the record that they
4 have always been here.

5 You know, I've never had any issue with finding
6 Raheem, locating him, having him come to court.
7 And, in addition, the judge -- the Court let him
8 stay out last night and he came back and we only had
9 just a short bit of the trial left. And every time
10 -- his temper's never changed or anything. And
11 every time I call his number, Raheem always picks
12 up, Judge. And I just wanted to place that on the
13 record.

14 **THE COURT:** Who do you paint for?

15 **DEFENDANT:** I was doing some under the table
16 work with a guy named George. He owns his own
17 business. But the last job we did he didn't get
18 paid so I didn't get paid, so that kind of ended. I
19 just recently got accepted in Midlands Tech, so I
20 start the semester after the summer, but...

21 **THE COURT:** What high school do you attend?

22 **DEFENDANT:** Airport High School.

23 **THE COURT:** What grade did you finish? I know
24 you got your GED, but how far did you go in school?

25 **DEFENDANT:** I made it to the ninth grade.

1 **THE COURT:** If there's nothing else, the
2 sentence of the Court is that you be committed to
3 the South Carolina Department of Corrections for one
4 year. Pay your court costs within 180 days of being
5 released from confinement in prison. Good luck to
6 you, sir.

7 **MR. ROSS:** Thank you, Your Honor.

8 **MR. CASTO:** Your Honor, if I may, would the
9 Court consider an appeal bond in this case?

10 **THE COURT:** Yes, sir, if you file the appeal.

11 **MR. CASTO:** Yes, sir. And we'd ask,
12 respectfully, to place on the record, he qualifies
13 for our services, he's indigent, at the public
14 defender's office, and we'd ask for a PR bond or a
15 low, low surety bond, Judge.

16 **THE COURT:** File the appeal and I'll consider
17 it.

18 **MR. CASTO:** Yes, sir. Thank you.

19 **THE COURT:** Thank you.

20

21 END OF PROCEEDINGS

22

23

24

25

C E R T I F I C A T E

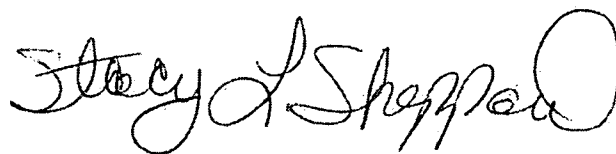
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 3rd, 5th - 6th of June, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 23, 2013

A handwritten signature in black ink, reading "Stacy L. Sheppard". The signature is written in a cursive, flowing style. The first name "Stacy" is written in a smaller, more compact script, while "L. Sheppard" is written in a larger, more expansive script. The "L" is particularly large and loops around the "S". The final "D" in "Sheppard" has a large, open loop that extends to the right.

Stacy L. Sheppard, RPR
Circuit Court Reporter

WITNESSES

Lexington County Sheriffs Department

N Burt

Law Enforcement Case #: 12014686

MDR

ARREST WARRANT NUMBER

2012A3210200275

ACTION OF GRAND JURY

TRUE BILL

Dubran Stale
Foreperson of Grand Jury
Date: 6/3/13

VERDICT

Guilty

Carl Lyle
Foreperson of Petit Jury
Date: 06/06/13

DOCKET NO. 2013GS3200967

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2013

THE STATE

vs.

Raheem Jamar Bonham

CDR #: 3009

Indictment for

Possession of Crack Cocaine

§ 44-53-0375(A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

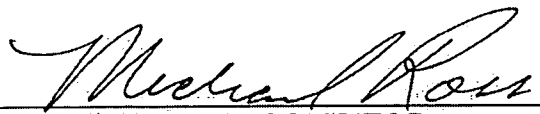
INDICTMENT FOR
Possession of Crack Cocaine

§ 44-53-0375(A)

At a Court of General Sessions, convened on March 2013, the Grand Jurors of Lexington County present upon their oath:

That Raheem Jamar Bonham did in Lexington County, South Carolina on or about August 10, 2012 knowingly, willfully, intentionally, and unlawfully possess a quantity of crack cocaine, or cocaine base, a controlled substance under the provisions of § 44-53-110, et. Seq. and in violation of § 44-53-375(A) Code of Laws of South Carolina, 1976, as amended.

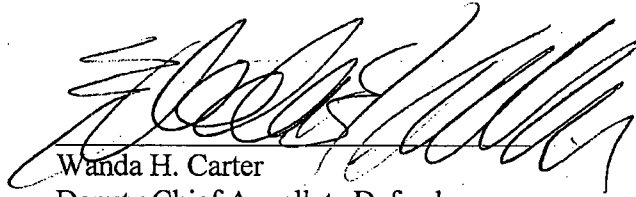
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 2, 2014

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

BRIEF OF APPELLANT

WANDA H. CARTER
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion to suppress the drugs seized by police following a vehicle stop and search in the case because the stop was not supported by any reasonable suspicion that criminal activity was afoot.

STATEMENT OF THE CASE

Appellant Raheem Jamar Bonham was convicted of possession of crack cocaine per jury trial held during the June 2013 term of the Lexington County General Sessions Court before Judge William P. Keesley. Appellant was sentenced to imprisonment for a period of one year. Bennett E. Casto represented appellant at trial, and Assistant Solicitors Michael D. Ross and Gill Bell appeared on behalf of the state.

Appellant appealed his conviction and sentence in the case. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion to suppress the drugs seized by police following a vehicle stop and search in the case because the stop was not supported by any reasonable suspicion that criminal activity was afoot.

Prior to trial, defense counsel moved to suppress the drugs seized in the case because the search and seizure here followed an illegal stop in violation of the Fourteenth Amendment. Tr. 35, l. 8 – p. 36, l. 2. An in camera hearing followed.

During the in camera hearing, Police Officer Nicholas Burt testified that around 9:45 pm on August 10, 2012, he observed a white Kia pull into the driveway of a suspected drug house for two minutes, and that he could see the tail lights of the Kia all the while (during which time no one exited the Kia), and that he then saw the Kia exit the driveway. Officer Burt stated that he pursued the vehicle until it came to a stop in the neighborhood. Tr. 42, 1.1-p. 56, 1.25.

At the close of the in camera hearing, defense counsel argued that the police stop, search, and seizure were illegal acts because the events that occurred in this case were not tantamount to reasonable suspicion that a drug transaction occurred. In other words, seeing the Kia pull into a driveway of a suspected drug house and sit for two minutes while no one exited the car and no one exited the house, and then seeing the Kia back out and exit the driveway did not constitute a scenario giving rise to reasonable suspicion to stop the Kia and detain the occupants inside upon drug transaction suspicions. Tr. 91, 1.6-p. 96, 1.21; Tr. 108, 1.5-p. 109. 1.18. The trial judge court denied the motion to suppress since the Kia allegedly stopped on its own and because appellant's exit from the car after the stop gave rise to reasonable suspicion to detain him and search the vehicle. Tr. 119, 1.15-p. 122, 1.8 .

At trial, the Police Officer Burt explained that neighbors had filed complaints of suspected drug activity emanating from the house in question. Officer Burt explained also how the search of the Kia came about in the case. Apparently, there were three occupants inside the Kia: the female driver, a male front seat passenger, and a female back seat passenger. After the stop, the female driver gave Officer Burt consent to search the Kia. Shortly thereafter, Officer Burt stated that he heard Officer Thomas confirm that crack cocaine was found under the front passenger seat. App. 141, l.1- p.148, l.6. Tr. 220, l.18- p. 221, l.25. Thereafter, Officer Finch detained appellant. Tr. 190, l.15 – p.191, l.10, Tr. 197, l.7 –p. 199, l.22. Officer Finch stated that appellant denied ownership of the crack cocaine initially, but later admitted that he was in possession of the crack cocaine. Tr.200, l. 3-9, Tr. 201, l. 7 – p. 202, l. 21; Tr. 205, ll. 8-21.

During Officer Burt's testimony, he stated the following:

A. [The Kia] pulled into the driveway and I could see the back third of the car...[and] taillights just up and to the back door.

Q. Okay. Could you see any of the occupants in that vehicle?

A. No

Q. Did the taillights ever turn off?

A. No. They remained lit the entire time

Q. Okay. Could you see anybody come out to the car from where you were positioned?

A. No.

Q. Could you see anybody leave the car from where you were positioned?

A. No.

Q. How long did the car stay there?

A. Just under two minutes. App.43, l. 19 – p. 44, l. 12.

A routine stop violates the Fourth Amendment if there is no purpose justifying the stop. State v. Pichardo, 367 S.C. 84, 623 S.E. 2d 840 (2005). In State v. Taylor, 401, S.C. 104, 736 S.E. 2d 663 (3013), the Court held that an investigative detention is constitutional only if supported by a reasonable suspicion that the person detained is engaged in criminal activity; and further that:

Courts must look at the cumulative information available to the officer...and not find a stop unjustified based merely on a “piecemeal refutation of each individual fact and inference....just as one corner of a picture might not reveal the picture’s subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion.” United States v. Mason, 628 F. 3d 123, 129 (4th Cir. 2010); United States v. Branch, 537 F.3d 328 (4th Cir. 2008).

Also, the Taylor Court cited to two leading Fourth Circuit Court of Appeals cases considered to be instructive on the subject of the constitutionality of investigative detentions: United States v. Lender, 985 F. 2d 151 (4th Cir. (993), and United States v. Sprinkle, 106 f.3d 613 (4th Cir (997). In both Lender and Sprinkle, a key factor considered in analyzing the constitutionality of a stop was the officers’ observations indicating the existence of possible drug transactions. For example, in Lender, the police officers observed the defendant huddled with a few other men together in a high crime (drug) area and noticed that the defendant’s hands were stuck out for the onlookers to view his palms. The Lender Court held that this observation of the defendant’s visible hands supplied reasonable suspicion to make an investigatory stop on drug suspicions in the case. In Sprinkle, the Court did not uphold the investigatory detention after finding no reasonable suspicion for a

stop where the officers saw a male in the driver's seat of a car parked in a high crime drug area huddled up with a male in the passenger seat over the console area of the car because there was no observation of any transaction involving drugs passing through their hands to support suspicions of drug transactions in progress in the case.

Our South Carolina Courts view police officers' observations of possible drug transaction as a key factor also in assessing the constitutionality of investigatory stops in Fourth Amendment cases. For example, the Taylor Court upheld the officers' reasonable suspicion to stop the defendant (bicycle rider) because he was seen on a bike in a drug area huddled up with another male, and the Court added that "unlike the scenario in Sprinkle, the record d[id] not reflect that police were unable to observe [the defendant's] hands" and the resulting assumption suggesting a drug transaction was in progress appeared confirmed. However, to the contrary, compare the case of State v. Fowler, 322 S.C. 263, 471 S.E. 2d 706 (1996), which was similar factually to the case at bar, where the Court reversed and held that there was no reasonable suspicion to stop and detain the defendant simply because he had just came from the yard of a suspected drug house, and was walking suspiciously, and cut through the back of some other houses to get to the road because the officers did not "see a drug transaction" and did not see "the defendant throw anything down," but rather made "broad generalizations" based on the defendant's demeanor and knowledge about his one prior drug conviction.

Likewise, in the case at bar, the officers did not observe any actions from the occupants of the Kia that suggested that a drug transaction was percolating. First off, note that like in Fowler, the house (where the Kia pulled into the driveway) was not a known drug house but a "suspected" drug house. Also, the Kia never parked in the driveway in

question. To the contrary, the taillights stayed on and the Kia sat in the driveway without parking. Moreover, no occupant from inside the Kia exited and went up to the suspected drug house. Furthermore, no one from the suspected drug house went out to the Kia. Additionally, the Kia left the suspected drug house after a quick two minutes. Here, we have no observations by police of anything that rose to a level that suggested that a drug transaction occurred in this case. Hence, no reasonable suspicion existed in support of a stop of the Kia by officers in this case. As in Fowler, the officer here made a broad generalizations that about a car entering and exiting the driveway of a suspected drug house and without more clearly erred in assuming that such actions meant that a possible drug transaction in progress.

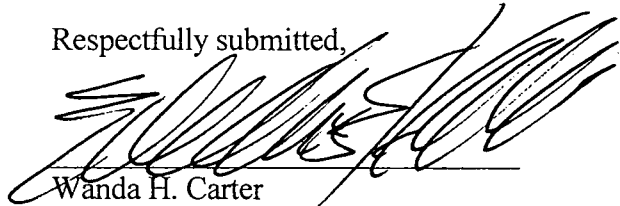
The state referred to the case of State v. Corley, 383 S.C. 232 679 S.E. 2d 187 (2009), in support of the investigative detention in this case; but in Corley the drug house where the car was parked was a “known” drug house, and also in Corley, a man parked his car at the drug house, and actually walked up to the rear of the drug house, and then walked back to his parked car and drove away. These observations in Corely constituted reasonable suspicion that a drug transaction took place. The police observations in the instant case fell woefully below what the officers observed in Corley.

In the instant case, the observations of the Kia witnessed by the police did not rise to reasonable suspicions that criminal activity (a drug transaction) was afoot and thus the stop, search, and seizure carried out by the police were illegal and unconstitutional actions in violation of the Fourth and Fourteenth Amendments. Thus, the trial judge erred in denying appellant’s motion to suppress the drugs seized in this case as tainted fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

CONCLUSION

Based on the foregoing argument, appellant requests that his case be reversed and remanded to the lower court for a new proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of September, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

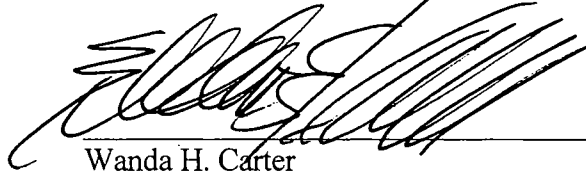
RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

CERTIFICATE OF SERVICE

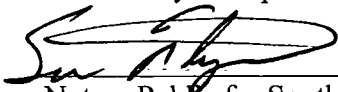
The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Raheem Jamar Bonham, at 3018 Princeton Road, West Columbia, SC 29170, this 3rd day of September, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of September, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's motion to suppress the drugs discovered in the search of the rental car in which he was a passenger where: (1) the police did not stop the vehicle in question and instead engaged in a consensual police encounter after the driver independently stopped the car; (2) as a passenger, Appellant had no legitimate expectation of privacy in the vehicle or the passenger compartment where the drugs were found; (3) the brief investigative detention of Appellant was reasonable under the totality of the circumstances; and (4) there was no nexus between the investigative detention and the discovery of the drugs during the consent search of the car.

STATEMENT OF THE CASE

Appellant was indicted at the June 2013 term of the grand jury for Lexington County for possession of crack cocaine (2013-GS-32-967). He was represented by Bennett E. Casto, Esquire. (R.p.1). On June 3-6, 2013, Appellant proceeded to trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable William P. Keesley to one (1) year's imprisonment. (R.p.314-p.317). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and a motion to be relieved as counsel. By Order dated August 14, 2014, this Court denied the motion to be relieved and directed the parties to brief the following issue and any other issue of arguable merit: "Whether the trial court erred in denying Bonham's motion to suppress the drug evidence." Appellant subsequently filed a Brief in support of his Appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

On the evening of August 10, 2012, three officers with the Lexington County Sheriff's Department (LCSD) were conducting surveillance on a known drug house in Lexington County. At 9:45 p.m. they saw a white Kia Rio pull into the driveway and stay for less than two minutes before backing out and driving away. The officers left their surveillance location in three patrol cars in an attempt to intercept the Kia; however, it pulled over and stopped just before the police caught up to it. As the officers were parking, they saw three individuals getting out of the Kia. Appellant got out of the front passenger seat and began walking toward a group of ten to fifteen people who were standing nearby. Two of the officers asked Appellant to come back and placed him in brief investigative detention when he became argumentative and made threats. At that point the third officer had determined the car was not stolen and approached the driver to ask if the police could search the car. The driver gave unlimited consent to search. The officers found a plastic bag under the front passenger seat which contained two yellowish-white rocks believed to be crack cocaine.¹ They subsequently placed Appellant under arrest. (R.p.36, line 12-p.56, line 25; p.61, line 23-p.90, line 16).

Prior to trial, Appellant moved to suppress the drugs found in the search of the automobile. He argued the police made an unlawful stop and seizure which violated the Fourth Amendment. (R.p.35, line 15-p.36, line 2). The State called the three LCSD officers to testify about the encounter and search during the ensuing suppression hearing. First, the State called the arresting officer, LCSD Deputy Nicholas Edward Burt (Burt). He was part of the crime suppression task force, which had been conducting surveillance on a known drug house in Lexington County. Burt explained there had been eight or nine

¹ Laboratory testing later confirmed the rocks were indeed crack cocaine.

complaints about the house from January through June of 2012 and that he had personally made a drug arrest based on a marijuana sale from the drug house in July. (R.p.36, line 12-p.41, line 25).

At 9:45 p.m. on the night of August 10, 2012, Burt and two other officers on the task force saw a white Kia Rio pull into the house's driveway. The car stayed for just under two minutes before backing out and driving away. Burt testified that based on his training and experience this scenario was consistent with a drug sale or buy. He also noted the house is in a neighborhood with a high crime rate. The three officers left their surveillance point in three separate marked patrol cars, driving two different routes through the neighborhood in an attempt to intercept the white Kia. The Kia pulled over and stopped on the street just before the police caught up to it. As Burt turned his car around to stop, he saw three people beginning to get out of the Kia. A black female got out of the driver's seat, a second black female got out of the back seat on the driver's side, and Appellant got out of the front seat on the passenger side. Burt ran the license tag and registration through dispatch and discovered the car was not stolen. He then made contact with the driver, obtained her driver's license, and determined her license was suspended. Burt asked the driver for consent to search the car and within five minutes of the initial contact she gave unlimited consent to search. (R.p.42, line 1-p.52, line 23).

Upon searching the car, the police found a plastic bag under the front passenger seat which contained two yellowish-white rocks believed to be crack cocaine. They also found information in the glove compartment confirming what they had learned from running the registration, that the car was owned by a rental agency. Although the person

listed on the rental agreement was not one of the three people in the car, Burt had no indication the driver of the vehicle was not in lawful possession or that she could not give consent to search. Appellant was not listed on the rental agreement. (R.p.52, line 24-p.56, line 25).

Next, the State called Sergeant John William Finch (Finch) to the stand. Finch was serving as a backup officer during the August 10, 2012 surveillance operation. He noted the history of complaints about the drug house and the prior drug arrests stemming from activity at that house. Finch described similar observations to those made by Burt, including seeing the Kia spend less than two minutes at the house before driving away quickly. He confirmed that although the officers were pursuing the Kia, it had already stopped by the time they caught up and saw the three individuals getting out. (R.p.61, line 23-p.69, line 11). Finch saw Appellant exit the vehicle and begin walking toward a crowd of ten to fifteen people who were hanging around the side of the road. The officers told Appellant to return the car and when Appellant became aggressive and threatening, Finch placed him in investigative detention. After the other officers found the drugs in the car, Finch asked Appellant if it was his dope. Appellant first replied, "That's all I've got" and then said, "no, that's not mine." Finch arrested Appellant and read him his Miranda rights. Appellant then told Finch the drugs were his and said he wanted to cooperate. (R.p.69, line 12-p.80, line 4).

Finally, the State called Captain Barron Lee Thomas (Thomas) to the stand. He was also assisting Finch and the suppression unit on the night of the incident. Thomas described leaving the surveillance point to try to find the Kia after it left the house. He testified the Kia had already stopped and that the driver and two passengers were

beginning to exit when he stopped his vehicle and got out. Thomas described his interactions with Appellant which ultimately led to Appellant being handcuffed and placed in investigative detention. Burt advised Thomas the driver had given consent to search the car. Thomas looked in the passenger side of the Kia and immediately noticed the plastic bag containing the drugs sitting at the base of the front passenger seat on the floor. (R.p.81, line 22-p.90, line 16).

Next, the trial court heard arguments in regard to the motion to suppress. Appellant complained that the officers intended to intercept the white Kia despite not having seen anyone get out of or approach the car during the two minutes it was at the drug house. He then noted the car was not pulled over for any type of traffic violation. Appellant initially argued the "stop" occurred when Thomas told Appellant to come back to the car after he attempted to walk away. He further argued there was no reasonable articulable suspicion of criminal activity for the police to initiate the encounter and claimed the drugs should be suppressed as a result of the "unconscionable stop." (R.p.91, line 5-p.96, line 21). The State responded that under the totality of the circumstances, the brief investigative detention of Appellant shortly before the discovery of the drugs was reasonable and constitutional after the initial encounter. (R.p.96, line 23-p.99, line 20). The trial judge then gave his initial impressions about Appellant's motion. He noted there had been no evidence the officers actually stopped the vehicle and said the officers seemed to have acted properly in telling Appellant to come back when he tried to walk away from the car. The judge commented that Appellant's entire challenge seemed to be an attempt to assert the rights of somebody else in regard to the consent search of the vehicle rather than his own. (R.p.100, line 25-p.104, line 18).

After hearing additional arguments and case references from the parties, the trial court denied Appellant's motion to suppress. In regard to the initial encounter, the trial court found the police did not stop the vehicle and that it had stopped on its own. In regard to the investigative detention, the trial court found Appellant's behavior after the car stopped combined with the officers' prior observations at the known drug house were sufficient to justify briefly detaining Appellant. Finally, the trial judge found the search of the car was proper because the driver gave consent. (R.p.104, line19-p.123, line 17).

At trial, LCSD officers Burt, Finch, and Thomas provided testimony similar to that given at the pretrial hearing. They also provided additional details about the surveillance, their encounter with the white Kia Rio, the consent search of the car, the drugs discovered under the passenger seat during the search, and Appellant's various statements in regard to whether the drugs were his. (R.p.141, line 1-p.166, line 14; p.174, line 20-p.175, line 16; p.184, line 7-p.207, line 6; p.210, line 19-p.212, line 20; p.213, line 14-p.222, line 15-p.225, line 4). The State also presented testimony from LCSD evidence custodian Candy Kyzer in regard to the chain of custody and LCSD chemist Emily Homer-Conrad in regard to lab tests confirming the substance was crack cocaine. The Best evidence kit containing the drugs and Homer-Conrad's written report were both admitted into evidence over Appellant's renewed objections. (R.p.225, line 11-p.240, line 15).

At the conclusion of the State's case, Appellant moved for a directed verdict and renewed all prior motions and objections he had made pretrial and during trial, including the motion to suppress. The trial judge held: "[L]ooking at the totality of the circumstances, I do think it's sufficient, but I acknowledge that it's a close call. And I

reiterate what I said earlier, had the officer stopped the car, I would have thrown it out.”

(R.p.242, line 8-p.243, line 6). Appellant elected not to testify and offered no evidence in his defense and again renewed his motions, which were again denied by the trial court.

(R.p.250, line 25-p.254, line 8). After closing arguments, the trial judge charged the jury on the applicable law, including general jury instructions on the burden of proof, the presumption of innocence, reasonable doubt, the role of the judge and the jury, direct and circumstantial evidence, the jury’s duty to assess the credibility of the witnesses, criminal intent, actual and constructive possession, mere presence, and the elements of the crime.

(R.p.258, line 9-p.295, line 10). After the jury returned a guilty verdict, Appellant moved for a new trial and renewed all prior motions and objections. The motions were denied.

(R.p.308, lines 11-20). The trial court sentenced Appellant to one year’s imprisonment.

(R.p.314, lines 1-7; Sentencing Sheet).

ARGUMENT

The trial court properly denied Appellant's motion to suppress the drugs discovered in the search of the rental car in which he was a passenger where: (1) the police did not stop the vehicle in question and instead engaged in a consensual police encounter after the driver independently stopped the car; (2) as a passenger, Appellant had no legitimate expectation of privacy in the vehicle or the passenger compartment where the drugs were found; (3) the brief investigative detention of Appellant was reasonable under the totality of the circumstances; and (4) there was no nexus between the investigative detention and the discovery of the drugs during the consent search of the car.

Appellant contends the trial judge erred in denying his motion to suppress drugs seized by the police following the search of a vehicle in which he was a passenger. He maintains the vehicle was illegally stopped in violation of the Fourth and Fourteenth Amendments of the United States Constitution because no reasonable suspicion existed to support the stop that led to the search. Appellant argues the officers did not observe any actions from the occupants of the vehicle to suggest a drug transaction occurred and therefore the vehicle stop was illegal and the drugs discovered during the search should have been suppressed as fruit of the poisonous tree. The State disagrees and submits Appellant's argument is without merit for several reasons. First, the motion to suppress was properly denied because the vehicle was not seized within the meaning of the Fourth Amendment. Instead, the officers merely initiated a consensual encounter after the car stopped on its own, and were then given consent to search by the driver. Thus, the search was entirely a product of consent and invoked no constitutional scrutiny. Second, even if this Court determines the stop and/or search of the car was unconstitutional, Appellant was not entitled to the benefits of the exclusionary rule because he had no legitimate expectation of privacy in that vehicle or the passenger compartment where the drugs were

found. Third, to the extent this Court construes Appellant's current claim as a challenge to a seizure of his person while under investigative detention after the car stopped rather than a challenge to the stop/seizure of the car, the detention was nevertheless reasonable under the totality of the circumstances. Finally, even if this Court determines Appellant's investigative detention was an unconstitutional seizure, he was not entitled to suppression of the drugs because there was no nexus between that constitutional violation and discovery of the drugs during the consensual search of the car. For all of these reasons, the trial court properly denied Appellant's motion to suppress the drugs discovered in the vehicle. Because the ruling was supported by the evidence, Appellant's conviction should be affirmed.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010); State v. Brockman, 339 S.C. 57, 66, 28 S.E.2d 661, 666 (2000); State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. Tindall, 388 S.C. at 521, 698 S.E.2d at 205; State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456; State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court

will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

1. Consensual Encounter

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. That guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005).

In arguing the vehicle stop was not supported by reasonable suspicion, the predicate question raised by Appellant’s argument in this case is whether the officers “seized” the car, thereby triggering the Fourth Amendment, or simply initiated a consensual encounter invoking no constitutional scrutiny. See Pichardo, 367 S.C. at 100, 623 S.E.2d at 848; State v. Williams, 351 S.C. 591, 597-98, 571 S.E.2d 703, 707 (Ct. App. 2002). A consensual encounter has been defined as simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official. Pichardo, 367 S.C. at 100, 623 S.E.2d at 848; Williams, 351 S.C. at 599, n.2, 571 S.E.2d at 708, n.2. Mere police questioning does not constitute a seizure for Fourth Amendment purposes. Florida v. Bostick, 501 U.S. 429, 434 (1991); Pichardo, 367 S.C. at 100, 623 S.E.2d at 849. The test for determining if a particular encounter constitutes a seizure within the meaning of the Fourth Amendment is whether in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Michigan v. Chesternut, 486 U.S. 567, 573 (1988); United States v. Analla, 975 F.2d 119, 124 (4th Cir. 1992); Pichardo, 367 S.C. at 100,

623 S.E.2d at 849. Reasonableness is measured in objective terms by examining the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39 (1996); Pichardo, 367 S.C. at 101, 623 S.E.2d at 849.

Here, the evidence presented at the suppression hearing clearly supported the trial judge's conclusion that by stopping independently on the side of the road, rather than in response to blue lights or other police actions, the white Kia Rio was never seized by the LCSD officers. All three officers testified that although they were pursuing the car with the intent to intercept it, they never got to that point because the car stopped on its own before they caught up to it. The officers did not activate their blue lights and did nothing to cause the car to stop. Appellant offered no evidence to the contrary. Under the totality of the circumstances, the car was simply not seized within the meaning of the Fourth Amendment and the police initiated a consensual encounter. Thus, the subsequent search of the car was entirely a product of consent and invoked no constitutional scrutiny. The trial court properly denied the motion to suppress and Appellant's conviction should be affirmed.

2. No Expectation of Privacy

Even assuming that the stop of the vehicle was somehow improper, Appellant was not entitled to the benefits of the exclusionary rule because he failed to establish that his own constitutional rights were violated by the stop and the consent search. The evidence and testimony presented during the suppression hearing established that Appellant was neither the driver nor an authorized user of the rental car. Appellant did not have --- and did not assert that he had --- a legitimate expectation of privacy in either the rental vehicle or the property seized. Absent such a legitimate expectation of privacy in the

vehicle stopped and searched by the officers, Appellant could not properly challenge the propriety of the stop and search conducted by the officers and was not entitled to have the drugs excluded from evidence during his trial. Accordingly, even if the trial court erred in ruling the stop was proper, its decision should not be reversed on appeal.

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. For purposes of the Fourth Amendment, a search occurs when “an expectation of privacy that society is prepared to consider reasonable is infringed.” United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual’s possessory interest in property or with the individual’s freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n.16 (1968) (“Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.”). However, the rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969). As a result, a criminal defendant asserting a challenge to an allegedly unreasonable search or seizure must establish that his own personal Fourth Amendment rights were violated by that search or seizure in order to be entitled to the benefits of the exclusionary rule. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); see Rakas v. Illinois, 439 U.S. 128, 132, n.1 (1978) (“The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.”).

“[C]apacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the

protection of the Amendment has a legitimate expectation of privacy in the invaded place.” Rakas, 439 U.S. at 143 (citing Katz v. United States, 389 U.S. 347, 353 (1967)).

A legitimate expectation of privacy is both subjective and objective in nature. State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004). In order to establish a legitimate expectation of privacy, an individual must show: (1) that the individual had a subjective expectation that the area searched would remain free from intrusion; and (2) that the individual’s subjective expectation is one that society recognizes as reasonable. Id.; see Minnesota v. Olsen, 495 U.S. 91, 95-96 (1990) (instructing that a subjective expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable).

In Appellant’s case, the evidence and testimony presented during the suppression hearing established that Appellant was merely a passenger in the vehicle. As a passenger, he had no legitimate claim to the vehicle, no lawful right to control the vehicle, and no possessory interest in the vehicle. See United States v. Hargrove, 647 F.2d 411, 412 (4th Cir. 1981) (“[O]ne who can assert no legitimate claim to the car he was driving cannot reasonably assert an expectation of privacy in a bag found in that automobile. . . . A person who cannot assert a legitimate claim to a vehicle cannot reasonably expect that the vehicle is a private repository for his personal effects, whether or not they are enclosed in some sort of a container[.]”). Appellant did not have an expectation of privacy in the rental vehicle that society accepts or recognizes as legitimate and could not properly claim that his own constitutional rights were violated by the alleged stop of the vehicle and the resulting search. See U.S. v. Kennedy, 638 F.3d 159, 165 (“[A]s a general rule, the driver of a rental car who has been [l]ent the car by the renter, but who is not listed on

the rental agreement as an authorized driver, lacks a legitimate expectation of privacy in the car unless there exists extraordinary circumstances suggesting an expectation of privacy.”); Rakas, 439 U.S. at 148-149 (recognizing that a mere passenger in a vehicle would normally not have a legitimate expectation of privacy in the vehicle’s trunk or glove box or in the area underneath the vehicle’s seats).

In challenging the propriety of the alleged stop and search of the rental vehicle during trial, Appellant did not present any evidence or testimony to establish that he had a subjective or legitimate expectation of privacy in the vehicle or any of the items in the vehicle. Thus, he failed to establish that his own constitutional rights were violated by the search. See Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) (“Petitioner, of course, bears the burden of proving not only that the search of Cox’s purse was illegal, but also that he had a legitimate expectation of privacy in that purse.”); McKnight, 291 S.C. at 114, 352 S.E.2d at 473 (“One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated.” (italics in original)); see also State v. Robinson, 396 S.C. 577, 583, 722 S.E.2d 820, 823 (Ct. App. 2012) (“For Robinson to establish a Fourth Amendment violation, he must show a legitimate expectation of privacy on the porch.”). Because Appellant failed to establish that he had a legitimate expectation of privacy in the area searched by the officers, Appellant could not properly claim the protections of the Fourth Amendment in challenging the propriety of the search during trial or on appeal. See United States v. Salvucci, 448 U.S. 83, 85 (1980) (“[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated.”); Rakas, 439 U.S. at 134 (“A person who is aggrieved by an illegal search and seizure only

through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.").

Therefore, the drugs discovered following the stop of the rental vehicle were properly admitted into evidence during trial. Accordingly, even assuming that the stop and search of the rental vehicle were somehow improper, the decision of the trial judge should not be reversed on appeal. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). Appellant's conviction should be affirmed.

3. Reasonable Suspicion

Although not articulated in his brief, Appellant may claim he is also arguing the trial court erred in finding the police had reasonable suspicion of criminal activity to justify detaining him once he exited the car and started to walk toward the crowd. To the extent this Court construes Appellant's current claim as encompassing a challenge to a seizure of his person while under investigative detention rather than merely a challenge to the stop/seizure of the car, it was nevertheless reasonable under the totality of the circumstances. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. Maryland v. Buie, 494 U.S. 325, 331 (1990); State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977). For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). The reasonableness of a stop or detention "is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996). Indeed, "a

minor traffic violation arrest will not be rendered invalid by the fact it was a 'mere pretext for a narcotics search.'" State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191-92 (Ct. App. 2009) (citations omitted). "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Whren v. United States, 517 U.S. 806, 813 (1996); see also Provet, 405 S.C. at 108, 747 S.E.2d at 457 (noting the officer's subjective motivations are irrelevant to the analysis).

Reasonable suspicion consists of "'a particularized and objective basis' that would lead one to suspect another of criminal activity." State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)); see United States v. Arvizu, 534 U.S. 266, 273 (2002) ("[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity 'may be afoot'."). Reasonable suspicion "is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act." United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004). "In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.'" State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The reasonable suspicion standard is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. Illinois v. Wardlow, 528 U.S. 119, 123 (2000); see State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007) ("Reasonable suspicion is more than a general hunch but less

than what is required for probable cause.”); State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (“Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.”). In order for an officer to have reasonable suspicion regarding the presence of illegal drugs, the officer is required to have a particularized and objective basis arising from the totality of the circumstances that would lead an individual to suspect drugs are located in a lawfully stopped vehicle. State v. Banda, 371 S.C. 245, 254 n.4, 639 S.E.2d 36, 41 n.4 (2006).

Thus, in determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 (“Courts must look at the ‘cumulative information available’ to the officer . . . and not find a stop unjustified based merely on a ‘piecemeal refutation of each individual’ fact and inference[.]” (citations omitted)). Instead, all of the circumstances of the stop, including the officer’s own experience and specialized training, must be considered as a whole to determine whether the officer’s actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (“[J]ust as one corner of a picture might not reveal the picture’s subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion.”). “In applying the concept of reasonable suspicion to the various facts of a case, ‘[i]t is the entire mosaic that counts, not single tiles.’” Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel

can establish reasonable suspicion when viewed together in totality. United States v. Sokolow, 490 U.S. 1, 9 (1989).

The State submits that even if the acts of asking Appellant to return to the car and then handcuffing him and placing him in a patrol car when he became belligerent constituted an investigative detention, the trial court properly found that detention was supported by reasonable articulable suspicion. Before and during the course of the stop, the police officers developed reasonable suspicion based on objective factors that would lead an individual to suspect drugs were located in the vehicle. These factors included: (1) knowing that more than one recent drug arrest had been made from the house under surveillance; (2) knowing the neighborhood as a whole was a high-crime area; (3) observing the suspect vehicle pull into and then leave that drug house in under two minutes; (4) observing that vehicle drive away from the known drug house at a high rate of speed; (5) discovering the suspect vehicle was a rental; and (6) observing Appellant's behavior of walking quickly away from the vehicle as soon as the police approached the driver to initiate the consensual encounter after the stop.

The officers who initiated the encounter and briefly detained Appellant described these factors, all of which combined to make them suspect Appellant was engaged in criminal activity. As the trial court found, the combined impact of all factors, considered in light of the officers' knowledge and experience, provided ample basis for their suspicion of illegal activity and justified the brief detention for investigation. Indeed, the factors taken as a whole provided the officers with reasonable suspicion Appellant was engaged in criminal activity.

Applying the appropriate deferential standard of review, the evidence and testimony presented during the suppression hearing established the police conducted the stop in a reasonable manner and developed reasonable suspicion justifying their investigative detention once the stop occurred. See Segura v. United States, 468 U.S. 796, 806 (1984) (“By its terms, the Fourth Amendment forbids only ‘unreasonable’ searches and seizures.”). Accordingly, the trial judge properly denied Appellant’s motion to suppress after finding the investigative detention to be proper under the totality of the circumstances, and his ruling was supported by the evidence. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (“South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court’s ruling.”); Provet, 405 S.C. at 107, 747 S.E.2d at 456. Appellant’s conviction should be affirmed.

4. Lack of Nexus

Here, the drugs were discovered solely as a result of the voluntary stop of the car and the consent given by the driver to search the car during the encounter. Nothing about Appellant’s concomitant detention led to the discovery of the drugs in the car. Even if Appellant had walked away from the car unencumbered the officers would have found the drugs he left in the car. Both those drugs and Appellant’s identity would have been inevitably discovered.² The discovery would have led to Appellant’s arrest whether he was detained by the officers at the scene or not. Because there was no nexus between the

² The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence that the same evidence seized unlawfully would have been discovered inevitably by lawful means. State v. Jenkins, 398 S.C. 215, 227, 727 S.E.2d 761, 767 (Ct. App. 2012). Here, the alleged unlawful detention did not lead to seizure of the evidence at issue; therefore, the inevitable discovery doctrine is not directly applicable. Nevertheless, it illustrates why the exclusionary rule would likewise be inapplicable to the circumstances of Appellant’s case.

investigative detention and the drugs, suppression was not warranted under the circumstances of Appellant's case even if the detention was not lawful. Cf. State v. Brown, 401 S.C. 82, 88-89, 736 S.E.2d 263, 266 (2012) (recognizing that exclusion of evidence exacts a heavy toll on both the judicial system and society at large and therefore exclusion is not deemed appropriate where it does not serve the exclusionary rule's sole purpose of deterring future Fourth Amendment violations). Appellant's conviction should be affirmed.

CONCLUSION

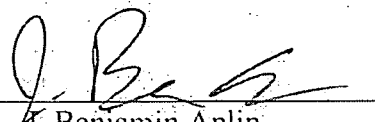
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
January 16, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
William P. Keesley, Circuit Court Judge

Appellate Case No. 2013-001364

THE STATE, ...RESPONDENT

v.

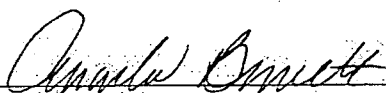
RAHEEM JAMAR BONHAM, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Brief of Respondent*, dated January 16, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Wanda H. Cater, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certified that all parties required by Rule to be served have been served.
This 16th day of January, 2015.


Angela Bennett
Administrative Assistant

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