

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Michael G. Nettles, Circuit Court Judge

RECEIVED

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SC SUPREME COURT

DANNY CORTEZ BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001653

APPENDIX

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (06-GS-26-1349)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 DANNY CORTEZ BROWN) September 12, 13, 2006
8) Conway, S. C.
9)

10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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

13 SCOTT HIXSON, ESQ.
14 ASSISTANT SOLICITOR FOR HORRY COUNTY
15 ATTORNEY FOR STATE

16 RUSSELL LONG, ESQ.
17 ATTORNEY FOR DEFENDANT
18
19
20

21 DIXIE COX EUBANK
22 CIRCUIT COURT REPORTER
23 FIFTEENTH JUDICIAL CIRCUIT
24
25

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JURY OUT/ON RECORD

6

1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 13, AFTER
2 QUALIFICATION OF THE JURY VENIRE, AFTER VOIR DIRE, AFTER
3 SELECTION OF A JURY PANEL, AND WITHIN THE PRESENCE OF THE JURY
4 PANEL.)

5 (A JURY SELECTION FORM WAS PREPARED AND IS ATTACHED
6 HERETO.)

7 (THERE WERE NO MOTIONS MADE AS TO THE COMPOSITION OF THE
8 JURY, AND THE JURY WAS QUALIFIED PURSUANT TO BATSON VS.
9 KENTUCKY AND J.E.B. VS. ALABAMA.)

10 THE COURT: Mr. Hixson, is there anything from the
11 State initially in this case, that we need to take care of,
12 that you know of?

13 MR. HIXSON: Not from the State, Your Honor.

14 THE COURT: Mr. Long.

15 MR. LONG: Yes sir, Your Honor. I would move to
16 sequester the witnesses in this trial.

17 THE COURT: All right. Is there any objection to that
18 from the State?

19 MR. HIXSON: No, Your Honor.

20 THE COURT: All right, sir. Do you have an
21 investigating officer, or someone that you wish to remain in
22 the courtroom the entirety of the trial?

23 MR. HIXSON: Your Honor, I ask Darryl Williams.

24 THE COURT: All right, sir.

25 And will -- is he going to be your first witness anyway?

JURY OUT/ON RECORD

7

1 MR. HIXSON: He is, Your Honor.

2 THE COURT: All right, sir. I'll allow him to stay.
3 Thank you.

4 All right. The jury has selected, counsel, Mr. Paul A.
5 Lynch -- that's juror number one eighty-nine -- as the foreman
6 of this particular jury.

7 MR. HIXSON: Your Honor, I do have one quick -- I
8 should bring to the Court's attention.

9 THE COURT: Yes sir.

10 MR. HIXSON: In addition, there may be an issue come
11 out by -- as the Court is aware, Rabon, is to be here also.
12 She is on my witness list. She is an Evidence Custodian for
13 Horry County, but she is not on the witness list. I don't
14 know if we will get into it, but perhaps I should bring that
15 to the Court's attention at this time. It just came to my
16 attention.

17 THE COURT: All right. So you are asking me to inquire
18 of the jury -- it's Lori Rabon?

19 MR. HIXSON: Yes, Your Honor. If that's appropriate --
20 if you ---

21 THE COURT: All right. Is there any objection to that
22 from the defense?

23 MR. LONG: No sir.

24 THE COURT: All right, sir. What I'll do is, when we -
25 - jury comes in I'll ask them if they know her, or -- and if

1 they do they can still give a fair and impartial trial
2 regarding this particular matter.

3 Anything else from the State then?

4 MR. LONG: I will clarify my -- my motion to sequester
5 does not include Officer Cooper, just like last week, where
6 one of the Court's bailiffs ---

7 THE COURT: All right, sir. Thank you very much. All
8 right, sir.

9 And as we did, obviously last week, Mr. Cooper, if you
10 will be on that side of the courtroom, and not actually
11 dealing with the jury. Thank you, sir.

12 MR. LONG: Your Honor, I have already sequestered my
13 witnesses, except for my client's fian -- this is his mother,
14 who is not a witness, his fiancée, Ms. Monica Brisban, and I
15 would ask the Court that she be allowed to stay in because of
16 her relationship to my client.

17 THE COURT: All right. Is Ms. Brisban a fact witness
18 as to this particular matter in some ---

19 MR. LONG: She is definitely a fact witness.

20 THE COURT: What's the State's position?

21 MR. HIXSON: Your Honor, it was the defense's motion to
22 sequester witnesses, and if she is a fact witness, then she
23 should be ---

24 THE COURT: I am going to apply the equally. Certainly
25 you have got the fact that -- his mother is here. Certainly

JURY IN/SWORN/COURT TO JURY

9

1 she is welcome to stay, but Ms. Brisban being a fact witness
2 in this particular matter, I'm going to ask that she be
3 sequestered also.

4 Thank you.

5 All right, with that, ask the jury to come in, please.

6 (AT THIS TIME ALL WITNESSES, WITH THE EXCEPTION OF DARYL
7 WILLIAMS, ARE SEQUESTERED.)

8 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
9 JURY.)

10 THE COURT: All right, Mr. Lynch, I understand the jury
11 has selected you as the foreperson for this particular jury;
12 is that correct, sir?

13 A. Yes, Your Honor.

14 THE COURT: All right, sir, and Mr. Parrott, you are
15 the alternate, correct; you understand that?

16 A. (NODS HEAD AFFIRMATIVE)

17 THE COURT: All right. When the jury comes in, Mr.
18 Lynch, Mr. Parrott, if y'all would just always occupy those
19 two particular seats. Other than that, the rest of you ladies
20 and gentlemen, if y'all would just fill in wherever you happen
21 to come in. There are no other assigned seats. I just need
22 to know where the foreperson and the alternate always are.

23 We are going to commence the case of the State of South
24 Carolina versus Danny C. Brown. The first thing that will
25 happen is, the Clerk of Court will administer the oath to you,

JURY IN/SWORN/COURT TO JURY

10

1 so if you would please stand.

2 (AT THIS TIME THE JURY PANEL WAS SWORN.)

3 THE COURT: All right, ladies and gentlemen, I know
4 that a few of you have had the experience of sitting on a jury
5 previously. With that, I know that you may be familiar with
6 some of the procedures, but I will remind you, obviously this
7 is a brand new trial; these are new participants; everyone
8 deserves and needs your complete attention to the matter, and
9 I'm speaking to everyone. Obviously you have an important
10 job.

11 As I told you before, you are the backbone, the bedrock
12 of the justice system, not only in this Country, but obviously
13 in this State and in this County. You will be the judges of
14 the facts of this particular matter. The Court will not
15 express an opinion about the facts. I will not intimate nor
16 tell you any opinion I might have about the facts, because
17 number one, it would be improper, number two, that's not my
18 job. That is your job; that is your responsibility; it is
19 your job to be the judges of the facts of this particular
20 matter. You will judge the credibility and the believability
21 of any witnesses that testify before you. You will have the
22 job, at the very end, in your deliberations, to communicate
23 among yourselves, and to decide whether or not the State has
24 proven to you, beyond a reasonable doubt, the Defendant's
25 guilt of the crime charges, that is because, as I told you,

JURY IN/SWORN/COURT TO JURY

11

1 the indictment, the charging document that brought this matter
2 to court, the Defendant has pled not guilty. That puts the
3 burden on the State of South Carolina, and the burden is
4 always on the State of South Carolina to prove the defendant
5 guilty of the crime charged, and it must do so by presenting
6 to you evidence which convinces you of it's truth, and
7 convinces you of the guilt of the defendant beyond a
8 reasonable doubt. That is the burden that the State has.
9 Reminding you again, the Defendant has no burden, has nothing
10 to show to you in this particular matter.

11 Another job that I have, besides giving you the law in
12 this particular case, as I indicated, is to govern the rules,
13 the procedures, how the case will proceed. If the attorneys
14 raise certain objections, if they make certain motions, and
15 they do so in your presence, and I make rulings on those I,
16 again, remind you, I'm telling the attorneys how the case will
17 proceed. I am not making any comment on the facts, and you
18 can't gain any inclination about that. Once again, that's
19 your job; that's your responsibility. I am merely telling the
20 lawyers how the case will proceed, or telling them whether or
21 not certain evidence is proper to be admitted in this
22 particular matter.

23 When I get done with these opening statements we will
24 have the opening comments of the attorneys. Those opening
25 comments are not evidence, cannot be considered by you as

JURY IN/SWORN/COURT TO JURY

12

1 evidence. They are important. They are each side's beginning
2 statements to you as to what they believe is important, what
3 they will be asking you to do as a result of your unanimous
4 verdict, and what they expect that the evidence will show to
5 you during the course of the trial.

6 When we get done with that we will have the evidentiary
7 portion of the trial. That will consist of witnesses who come
8 before you and testify under oath. It might also be the
9 introduction of certain documentary evidence, or certain
10 physical evidence that may come into evidence in this
11 particular matter, and the Court ruling that it's proper to
12 come into the trial of this particular case.

13 After we have the evidentiary portion of the trial we
14 will have the closing arguments. The closing arguments,
15 again, are not evidence, can't be considered by you as
16 evidence, again, they are important, each side's summation,
17 each side's presentation. This is what we believe has gone on
18 in the trial. This is what we are asking you to do as a
19 result of your unanimous verdict in this matter.

20 The final thing that will happen is, I will give you the
21 law that applies to the facts, as you so find them to be, and
22 then I will submit the case to you for your deliberations and
23 your unanimous decision in this particular matter.

24 I went over the outline of a trial to emphasize the fact
25 to you, don't have any deliberations among yourselves. Don't

STATE'S OPENING (HIXSON)

13

1 talk about this case among yourselves until I give it to you
2 at the end. To do so would, one, violate your oath, two, you
3 would be making a decision before you know all the facts in
4 the case, before you know the law that applies to the facts as
5 you so find them to be in this case.

6 So with that, I'll now turn it over to the attorneys for
7 their opening statements.

8 Counsel.

9 MR. HIXSON: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes sir.

12 MR. HIXSON: Drugs. A lot of drugs. Trafficking
13 weight drugs. The evidence will show, a hundred and twenty-
14 two point six five, roughly -- six-six grams of powder
15 cocaine. Under the law of the State of South Carolina we have
16 to prove that this Defendant had over one hundred, to two
17 hundred grams of powder cocaine. That's a lot of cocaine.

18 The evidence will show that this Defendant, Danny Cortez
19 Brown, was riding with a co-defendant, Rodney Smith. This
20 Officer performed a traffic stop on him -- you will the
21 details about that -- and subsequent to that arrest,
22 recovered, in Danny Brown's duffle bag, a hundred and twenty-
23 two grams of powder cocaine.

24 It's a pretty straight-forward trial, pretty straight to
25 the point. I've got around five witnesses for the

STATE'S OPENING (HIXSON)

14

1 prosecution, to get a point across to you about the crime that
2 was committed here.

3 Now, my name is Scott Hixson. I'm an Assistant
4 Solicitor. We met downstairs, talked briefly.

5 And we have charged Mr. Brown with trafficking in powder
6 cocaine. Now, unlike T.V. and movies, and things like that,
7 in South Carolina trafficking doesn't mean that you have a big
8 sting operation, and all kinds of helicopters and wireless,
9 and all this kind of stuff, and you are selling and dealing
10 with bales like Miami Vice, or anything like that. We don't
11 have to show that it was sold, or anything like that. We have
12 to show he was in actual constructive possession of an illegal
13 substance, and that substance has tested positive and proved
14 to be crack cocaine -- or powder cocaine -- excuse me. This
15 is pretty straight-forward.

16 Now, Hollywood script writers make a bunch of money
17 trying to get your ticket money to go to the movies to see
18 twists and turns, and different plots, and different things in
19 the movies, and hold you on the edge of the seat all the way
20 to the end, but you know, sometimes in real life, it's really
21 pretty straight-forward. It's just as simple as it is.
22 You've got illegal drug in your stuff; you got arrested with a
23 beer in your hand; the rest is history.

24 Now the one thing I don't want you to think about is,
25 this is a meaningless trial. Regardless of how many witnesses

DEFENSE'S OPENING (LONG)

15

1 are called, or how long something may take, or anything like
2 that, this is the most important thing on earth, right now,
3 for the State of South Carolina, and most especially for Mr.
4 Danny Brown, so obviously it goes without saying, to pay
5 attention. It goes without saying that you will. At the end
6 of the day I'll come back to you, after you have listened to
7 the evidence, and I'll ask you to return a verdict of guilty
8 against this man for trafficking in powder cocaine.

9 Thank you very much.

10 THE COURT: Mr. Long.

11 MR. LONG: Thank you, Your Honor.

12 THE COURT: Yes sir.

13 MR. LONG: Mr. Foreman, ladies and gentlemen, I'm
14 Russell Long. I was introduced to you downstairs. I am a
15 criminal defense attorney. This is what I do, and this is
16 what I love to do. I'm actually one of those fortunate people
17 who loves their work.

18 Today I have the absolute privilege to defend a life-
19 long friend, Danny Brown. Danny Brown has been accused of a
20 crime, a very serious crime, and he has waited almost a year
21 for today. He has waited almost a year for today to pick the
22 thirteen of you, to come into this courtroom, for me to do my
23 job to help him through this. The thirteen of you are exactly
24 the thirteen people, the only thirteen people in this whole
25 world that have the duty, and that have the tough job to sit

DEFENSE'S OPENING (LONG)

16

1 and listen to the evidence, listen to the facts in this case.

2

3 We, the State of South Carolina, Scott Hixson and I,
4 chose you because we could tell, by the little bit that we
5 know about you, that you were the right people for the job.
6 I'm going to tell you before we even get started that Danny
7 and I appreciate every second of your time. We appreciate all
8 of the effort that you give this case, because it is that
9 important. It is the most important thing in that man's life
10 right now.

11 Now this case is going to go longer than the last two
12 hours of today. It's going to go into tomorrow, but we will
13 finish this case tomorrow. So if you can stick it out, I know
14 -- I think three of you were on the jury before now, and I
15 know the three of you, when we called your name you were --
16 kind of looked like you couldn't believe you had gotten called
17 again, but please consider, again, that we chose you for this
18 job. There's a reason for that, and we know that you will pay
19 the close attention to it that it deserves.

20 Now I want you to agree with me on two things right now,
21 and it's very important that you do, because the Constitution
22 of the United States of America, South Carolina, everything
23 that that flag, and all of our law books are built on, include
24 these two principals first. You must agree that Danny Brown
25 is not guilty. Danny Brown is not guilty until, second, the

DEFENSE'S OPENING (LONG)

17

1 State of South Carolina proves otherwise.

2 The system that we have set up -- and it's not -- I hear
3 people -- if you watch the wrong shows on C.N.N., and you
4 listen to the wrong commentator, they will say something along
5 the lines of so and so got out of this because of a
6 technicality. That is not what we are here for. We are not
7 here looking for technicalities. We are here for a trial. A
8 trial -- we talk about trials and tribulations -- a trial,
9 folks, is a difficult time. Danny Brown is not on trial. The
10 State of South Carolina made an accusation. The Horry County
11 Police, the State of South Carolina, has accused a citizen of
12 something. They are on trial. They must prove to you, beyond
13 a reasonable doubt. That means that, at the end of this
14 trial, if you have reasonable doubt, if there are reasons to
15 doubt what they say, you must find Danny Brown not guilty.

16 Our Founding Fathers, every smart man and woman that
17 went before all of us, set those rules, and we have to abide
18 by them. It is very, very important. The reason we have to
19 abide by those rules is because they decided, and I agree,
20 that it's impossible to do the opposite. It is not required
21 that Danny prove his innocence, because that is an impossible
22 thing to do. It is required, however, one hundred percent
23 requirement, that the State of South Carolina carry the
24 burden. Again, the word trial to me is a big word. The word
25 burden is a bigger word. They've got to carry it like a great

1 big giant boulder, all the way to the very end, and convince
2 you.

3 This case is about possession of drugs. Trafficking in
4 cocaine is an awful big word. All trafficking means, in this
5 case, I would submit to you, is a possession of a large
6 amount. The only difference in trafficking and possession is
7 the size of the alleged drugs. Possession, I would submit to
8 you, is only there in a particular instance if you know that
9 you are possessing it. You must know that you have it in
10 order to possess it, in order to traffic. When you listen to
11 the evidence in this case, I want you to keep that kind of in
12 the back of your mind, and you will know where we are headed
13 with this defense. You will understand how this mistake got
14 made in October of 2005, and you can fix it, and we appreciate
15 the fact that you are going to help us.

16 Thank you.

17 THE COURT: All right, Solicitor, your first witness,
18 please.

19 MR. HIXSON: Absolutely, Your Honor. At this time the
20 State would call Daryl Williams to the witness stand, Officer
21 Williams.

22 THE COURT: Please come around to be sworn, sir.

23 DARYL WILLIAMS, being first duly
24 sworn, testifies as follows:

25 DIRECT-EXAMINATION BY MR. HIXSON:

DARYL WILLIAMS - DIRECT BY HIXSON

19

- 1 Q. Good afternoon, sir.
- 2 A. Good afternoon.
- 3 Q. What do you do for a living?
- 4 A. I am a police officer with the Horry County Police
- 5 Department.
- 6 Q. And about how long have you done that?
- 7 A. I have been with the County for about two years. I was
- 8 with Conway before that.
- 9 Q. And what is your position with the Police Department
- 10 now?
- 11 A. Currently I am in the Training Division. I train other
- 12 officers on primarily computer equipment and programs. I do
- 13 some minor figuring, and I also do patrol, still, about half
- 14 and half.
- 15 Q. So you were working for Horry County back in October
- 16 6th of 2005?
- 17 A. Yes sir.
- 18 Q. Could you please tell -- on that day, did you have an
- 19 opportunity to come across Mr. Danny Cortez Brown?
- 20 A. Yes sir.
- 21 Q. And could you please tell the jury about the
- 22 circumstances that gave rise to you coming into contact with
- 23 him.
- 24 A. Okay. On that day, October 6, 2005, I was on patrol in
- 25 the Myrtle Beach section of Horry County, and I was driving

1 southbound on Kings Highway in the vicinity of 16th Avenue
2 South, I believe. I saw a -- I believe it was a Plymouth,
3 older model, 1972 yellow Plymouth, two occupants, right beside
4 me, and as I looked over at them I saw that the passenger was
5 drinking what appeared to be a beer, and upon seeing -- me --
6 as a passenger Mr. Brown was holding a beer, he took it,
7 tucked it down, appeared to be between his legs, and so I
8 initiated a vehicle stop at that time.

9 Q. Let me interrupt you briefly at that point.

10 A. Yes sir.

11 Q. You said that you were at Sixteen Avenue South in
12 Myrtle Beach?

13 A. Yes sir.

14 Q. Now, was that in Horry County?

15 A. Oh, indeed, I mean ---

16 Q. I just have to ask that question.

17 A. Okay.

18 Q. Now, could you give me a little detail, or give the
19 jury some detail about the circumstances surrounding that.
20 That's a pretty important point.

21 Were you in a marked patrol vehicle?

22 A. Yes sir. I was in -- basically dressed similar to I am
23 now, in a marked Horry County police patrol vehicle, yes sir.

24 Q. Now, what would you say the lighting conditions were
25 around that period of time?

DARYL WILLIAMS - DIRECT BY HIXSON

21

1 A. Well, at that time it was -- like I said, it was around
2 seven o'clock, just a little bit thereafter. It was beginning
3 to get dark, as you say, but in my opinion it was still pretty
4 bright. My visibility was still high. I don't think the
5 street lights were on at that time. I'm not sure. But my
6 visibility was pretty -- I didn't have my headlights on yet.

7 Q. Now what relative position -- I think you indicated you
8 were driving up to the vehicle.

9 A. Yes sir.

10 Q. Could you please describe that in some more detail?

11 A. Okay. South Kings Highway has two lanes in either
12 direction. I'm in the left lane. This other vehicle was in
13 the right lane, and I was coming up from behind the vehicle,
14 and I basically came up just a hair shy of being parallel to
15 the vehicle. Upon coming up to the vehicle I could see
16 basically, kind of diagonally straight toward -- into the
17 vehicle. The vehicle has pretty large, long door, you know,
18 older two-door model car, where you have a lot of visibility,
19 because you have the large window opening. And, you know, as
20 I came up, then I saw it. Came up all the way, just about
21 parallel to them, looked over, you know, just to kind of
22 confirm, and then I backed off and initiated that stop.

23 Q. So did he make eye contact -- did the Defendant make
24 eye contact with you?

25 A. Yes sir.

1 Q. Did he react when he saw you?

2 A. Like I said, initially upon seeing me -- and he had the
3 can in his hand, he looked back, we connected eyes, and his
4 eyes got real big like, you know, ut oh, and he put it down,
5 and then I went from there.

6 Q. Did you indicate you made a traffic stop at that time?

7 A. Yes sir.

8 Q. Please tell the jury about that.

9 A. Okay. Upon pulling behind that vehicle I initiated a
10 traffic stop. Basically I turned on my blue lights, and the
11 vehicle did stop there in the roadway. Upon the vehicle
12 stopping I approached the vehicle from the driver's side.
13 Like I said, there were two -- there was the driver and the
14 passenger. I chose the driver's side at that time for, you
15 know, just reasons of instinct, and upon approaching that
16 vehicle I primarily spoke with the passenger. The driver, you
17 know, he sat there kind of -- just not saying anything, and I
18 spoke with the passenger. I asked him about the beer I had
19 seen. I introduced myself, how are you guys doing; I'm an
20 officer with the Horry County Police Department; I see you've
21 got a beer over there; what kind is that, you know, I was
22 small-talking. He said, I -- I don't have a beer. Sure you
23 do; what's that between your legs. He pulls it up, and it was
24 a beer. I don't remember what -- exactly what kind it was,
25 but it was a beer. And so I commenced to talk and eventually

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1 circled around the car to the passenger's side, and I asked --
2 I said, are there any more beers. He says, no. I said, are
3 you sure; let's see it; I'm going to be honest with you. I
4 said, okay, well, come on and step out; I want to see if
5 there's any more in there. And upon him stepping out of the
6 vehicle is when I went ahead and placed him under arrest for
7 open container, which is basically having an open beer in the
8 vehicle in South Carolina.

9 Q. Now, prior to removing him from the vehicle, asking him
10 to step out, I should say, did you observe anything in the
11 passenger floorboard area of the vehicle?

12 A. Yes sir.

13 MR. LONG: Object to the leading, Your Honor.

14 THE COURT: All right, Mr. Hixson, don't lead your
15 witness, sir.

16 MR. HIXSON: Thank you, Your Honor.

17 A. May I respond to that?

18 THE COURT: Ask -- ask another question, Mr. Hixson.

19 A. Okay.

20 MR. HIXSON: Thank you, Your Honor.

21 Q. Before asking him to come out of the vehicle, did you
22 observe anything in the vehicle?

23 A. Yes sir. Actually when I first approached the vehicle
24 from the driver's side -- and you know I'm looking in the
25 vehicle, trying to observe everything that's going on, as a

1 safety issue -- I did observe a black -- what appeared to be a
2 black duffle bag on the passenger side floorboard, between the
3 legs of the passenger, and that's kind of why I wanted to get
4 over there on that side, and I kind of crossed over and the
5 whole time I'm sitting -- talking with him, and kind of
6 looking at the bag. It just appeared to be a closed black bag
7 at that time.

8 And as I go on I did get that passenger out of the
9 vehicle, and I did place him under arrest, placed the cuffs on
10 him and -- pardon me -- and then I did secure that bag and
11 take it and put it on the sidewalk.

12 Q. Did you ask him, Mr. Brown, anything about that bag?

13 A. I did. I asked him, I said, is this your bag, and he
14 said yes.

15 Q. All right. You indicated, I believe, you had placed
16 the Defendant under arrest.

17 A. I did.

18 Q. Could you please tell the jury more of what happened
19 during that period of time, and subsequent to that?

20 A. Okay. Of course I got him out of the car before
21 getting the bag out, and as he stepped out of the car, you
22 know, he is stepping -- just imagine, you know, a vehicle
23 right there in the roadway, and I'm basically -- there's not
24 too much room between the sidewalk and the car, basically.
25 I'm standing there. I can't recall whether I was up on the

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1 sidewalk or actually in the street. But he steps out, and I
2 kind of placed him under arrest kind of quickly. I thought it
3 was a safety issue, because he looked like a pretty big guy,
4 and I didn't want to -- and being there was another subject in
5 there, if I had to go ahead and tangle with him I didn't want
6 to -- I wanted to make it quick, more or less. So he ---

7 Q. Why -- I apologize.

8 A. I'm sorry.

9 Q. Why did you remove the bag from the vehicle at that
10 time?

11 A. Because it is an unknown bag. It could -- as a safety
12 issue for me. It's a lot of options I have at that point, but
13 I would say, let me separate this bag from -- you know, there
14 could be anything there, a weapon, for instance, so I wanted
15 to separate that bag from the other person, because I didn't
16 know if it would pose a threat, so like I said, I placed it on
17 the sidewalk

18 And it was drizzling that day. It was -- just started
19 to drizzle, and it actually progressed into a rain as the time
20 went on, and there wasn't any street traffic in that vicinity.
21 As I said, it was just starting to get dark, and eventually
22 did, of course, and so throughout the whole duration of the
23 traffic stop I don't believe there was any other, you know,
24 outside people, other than when I did eventually call an
25 officer to the scene for backup, and then later they called

1 the narcotics detective to the scene.

2 Q. Did you place Mr. Brown in your vehicle?

3 A. I did. After I got him out of the car I placed him
4 under arrest, and put that bag on the sidewalk, I did take him
5 back to my vehicle, and put him in the rear passenger
6 compartment.

7 Q. Okay.

8 MR. HIXSON: I would like to approach the witness, Your
9 Honor.

10 THE COURT: Yes sir.

11 Q. I'm going to show you what's already been marked as
12 State's Exhibit 1. It's not in evidence yet. Do you
13 recognize that item?

14 A. Yes sir.

15 Q. And what is that?

16 A. That looks like the bag that I'm just speaking about
17 that was sitting on the passenger's floorboard.

18 Q. Now, I notice that it doesn't appear that that's on the
19 sidewalk.

20 A. No, this bag -- excuse me -- this picture -- I believe
21 this picture was taken in our Horry County Police Department
22 in Detective Delpercio's office.

23 Q. And is that a fair and accurate representation of the
24 bag that you remember removing from that vehicle?

25 A. I would say so, yes.

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1 Q. Now, when you first saw the bag what was -- I think you
2 indicated it was closed?

3 A. Yes sir.

4 Q. Could you please describe it's position -- or position
5 to the jury?

6 A. Like I say, it was in the passenger's side floorboard.
7 It was a -- had a zipper. I'm not exactly sure if it was
8 straight across or kind of, you know, smiley face or what have
9 you, but it was zipped shut. Upon finding -- you know, upon
10 securing him in the vehicle I returned back to the subject's
11 vehicle, basically, and I'm kind of talking to the driver,
12 kind of some small talk. I wanted to deal with him later, but
13 I just wanted to get a glance into the bag, so I did unzip the
14 bag, and look in. It was personal items like, perhaps
15 deodorant, undergarments, something to that effect, and there
16 was a bag of Fritos potato chips, corn chips, whatever --
17 however you -- and it was open, so it was kind of crumpled
18 shut, I believe, so I went and just opened it up to get a look
19 into the bag, and then I seen inside that bag a -- what
20 appeared to be a plastic bag with a white powdery substance,
21 which is -- you know, looks -- appears to be cocaine.

22 So at that time, you know, flags go up in my head. I
23 said, oh, so I just resecured it, zipped it back, didn't say a
24 word about it, started dealing with the driver of the vehicle
25 at this time.

1 MR. HIXSON: May I approach the witness also, Your
2 Honor?

3 THE COURT: Yes sir.

4 Q. Let me show you what has been marked for exhibit only -
5 - it's not in evidence yet -- as State's 2. Do you recognize
6 that?

7 A. Yes sir.

8 Q. Now, does that appear to be the substance that you saw
9 in that Fritos bag?

10 A. It appears to be.

11 Q. Now, when you first saw that, did it have that
12 packaging like that around it?

13 A. No.

14 Q. Okay. So what was the nature of the packaging again?
15 I know you already answered that question, but ---

16 A. It was a plastic bag, probably a -- you know, like
17 I'm -- I'm not sure what you call it, a little zip bag, but it
18 was a -- just a plastic bag. These are clearly evidence bags.
19 I'm familiar with them ---

20 Q. And you indicated ---

21 A. ---And it wasn't in this originally.

22 Q. You indicated you saw that inside that Fritos bag?

23 A. Yes sir.

24 MR. HIXSON: At this time the State would like to
25 publish -- we move State's 1 into evidence, Your Honor, at

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1 this time.

2 THE COURT: Any objection?

3 MR. LONG: No sir.

4 MR. HIXSON: And we would like to publish that to the
5 jury, Your Honor.

6 THE COURT: Any objection to that?

7 MR. LONG: No sir.

8 THE COURT: State's 1 is in evidence without objection.

9 (PHOTO OF BLACK BAG ADMITTED INTO EVIDENCE AS STATE'S
10 EXHIBIT NUMBER 1.)

11 Q. Now, upon seeing what was in that Fritos bag, what did
12 you do at that time?

13 A. Like I said, upon seeing what was in that bag -- of
14 course what it appeared to be at that time -- I re -- I don't
15 know how I closed the bag, probably crumpled it, or whatever,
16 but I kind of -- I didn't even go in the bag with my hand. I
17 just kind of opened the bag and saw it, closed the bag, closed
18 the duffle bag back, left it there on the sidewalk, and then I
19 commenced to deal with the driver at this time, and eventually
20 I got his -- I asked for his driver's license, and ran a check
21 on that, and he did come up driving under suspension. His
22 license was suspended. So at that time he was placed under
23 arrest for that.

24 And at this time I already had called another unit, and
25 I had -- soon upon seeing that I radioed for the narcotics

1 Detective, and Officer Delpercio is his name. He responded.

2 I'm not sure exactly what time it was.

3 Q. Now you indicated you radioed a narcotics officer?

4 A. Yes sir.

5 Q. And why, generally, would you do that?

6 A. It's just our practice, the Police Department practice,
7 that whenever I encounter something to -- that large amount of
8 drugs, you want to call a narcotics detective because he
9 specializes in that sort of thing. Similarly, if I were to be
10 called out to a homicide scene, or something like that. We
11 want to call a homicide detective so he can -- people
12 specialize in these different things.

13 Q. Now, at some point in time did Detective Delpercio
14 arrive?

15 A. Yes sir, he did. I'm not sure exactly what time it
16 was, but he came as fast -- as soon as he could.

17 Like I say, it was still light rain going on, and at
18 that -- upon his arrival I believe both subjects were in
19 police cars. One was -- Mr. Brown was in my car, and Mr.
20 Smith was -- who was the driver, was in another police car,
21 because another officer did come to the scene, and we put them
22 into separate vehicles.

23 Upon him coming I showed him the bag. I said, okay,
24 this bag appears to have some drugs in it, and then he took
25 custody of the bag.

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1 Q. Now, prior to Mr. Delpercio, Detective Delpercio taking
2 custody of this stuff, did you maintain the integrity of this
3 bag?

4 A. Oh yes. As I said, I reclosed it immediately, and it
5 had no further contact from anyone, until Detective Delpercio
6 came on the scene.

7 Q. Did you tamper with that in any way?

8 A. No sir.

9 Q. Did you alter it's contents?

10 A. No sir.

11 Q. Did you protect it from everybody else, to make sure
12 that they couldn't do that?

13 A. Yes sir. Even once the other officer came on the scene
14 I told her, I said, we've possibly got some drugs in this bag;
15 I'm leaving it there on the sidewalk; just keep an eye on it
16 and protect, you know, the general security of the area, and
17 he said, hey, you know, I ain't got no problem; I don't want
18 to touch it; I don't want to be in your chain of custody. I
19 said, great. So -- and it stayed there the whole time.

20 Q. And you -- you turned custody of it over to Detective
21 Delpercio?

22 A. Yes sir, I did.

23 Q. Now prior to removing -- or during the period of time --
24 - getting back to try to reference you, when you were
25 discussing this with the Defendant, did you maintain kind of

1 visual surveillance? Did you see what was going on in the
2 car?

3 A. When I was talking with Mr. Brown?

4 Q. Right.

5 A. As I say, he stepped out the vehicle, and he -- in just
6 a normal way anyone, I guess, would step out of a vehicle. I
7 eventually placed -- well, I placed him under arrest pretty
8 quickly so if -- I mean, he had -- kind of had his back to me.
9 It wasn't totally with his back to me, but he kind of pivoted.
10 It's hard to explain but -- and I had to deal with him

11 directly. You know, I try to keep a visual what's going on on
12 the whole scenario because you have another subject in there,
13 but I can't honestly say that I watched him the whole time,
14 because Mr. Brown was my main point of interest at that time.

15 Q. Let me ask a direct question. Did you see the driver
16 of the car get into that black bag at any time?

17 A. I did not see that.

18 MR. HIXSON: I have no further questions for this
19 witness at this time, Your Honor.

20 Please ask -- answer any questions that Mr. Long may ask
21 you.

22 A. Yes sir.

23 THE COURT: Cross-examination, Mr. Long.

24 CROSS-EXAMINATION BY MR. LONG:

25 MR. LONG: Thank you, Your Honor.

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- 1 Q. Officer Williams, did you know Danny Brown before you
2 met him on October the 6th, 2005?
- 3 A. Did I know him, sir?
- 4 Q. Yes sir.
- 5 A. No sir.
- 6 Q. Did -- you never -- you had never met him before?
- 7 A. No sir.
- 8 Q. Did you know any of his family, or his fiance, Ms.
9 Monica Brisban, before October the 6th, 2005?
- 10 A. I knew -- or since I know Ms. -- what's her name,
11 Brisbon?
- 12 Q. Brisbon.
- 13 A. I believe my -- I didn't know that was her last name,
14 but yes.
- 15 Q. Did you know she was engaged to Danny?
- 16 A. No sir.
- 17 Q. All right. Now, October the 6th of 2005, at 7:20 at
18 night, you were driving down Highway 17, southbound, correct?
- 19 A. Yes sir.
- 20 Q. And you would agree with me that, on October the 6th,
21 at 7:20, it's dark?
- 22 A. I would not say it's dark, no.
- 23 Q. And would you agree with me that the time had already
24 changed back at that point?
- 25 A. Like I say, I'm not sure on what day it does, but that

1 sounds about right. But I recollect the day -- like it was a
2 year -- over a year ago, of course, but I can safely say it
3 was still enough light to see a beer can.

4 Q. Okay. Well -- and I understand you to say there's
5 still enough light, but I'm trying to figure out -- you said
6 it was still daylight and you didn't even have your headlights
7 on.

8 A. And I did not, no. It was ---

9 Q. Assuming it got dark right around -- right after five
10 o'clock -- because the time had changed, right? That's about
11 what time it gets dark ---

12 A. I'm not sure. I can't say that.

13 Q. You don't know. Well, let's -- we know it was 7:20
14 when you saw this car going down the highway ---

15 A. Okay.

16 Q. Right?

17 A. Yes sir.

18 Q. ---Because you reported that in your Incident Report,
19 right, 7:20?

20 A. Yes sir.

21 Q. So, at 7:20, with light drizzling rain, you say you
22 were in the left-hand lane, and this car was in the right-hand
23 lane, and you pull up beside it, and you were able to look
24 through the window, the driver's side window, and across to
25 the passenger window, and see a beer can in Danny Brown's

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1 hand?

2 A. Yes sir.

3 Q. What color was the beer can?

4 A. It was silver.

5 Q. How many ounces?

6 A. I'm not sure.

7 Q. Was it one of the great big ones, or was it a regular

8 old beer can, twelve ounces?

9 A. I'm not sure. I -- if I had to guess, I would say a

10 smaller one, but I'm not sure.

11 Q. Was he holding it in his left hand or his right hand?

12 A. I believe it was his right hand.

13 Q. Okay. Did you bring the beer can with you here to

14 court?

15 A. No sir.

16 Q. Where is the beer can?

17 A. We didn't take it into evidence.

18 Q. You did not take it into evidence?

19 A. No.

20 Q. It's the reason why you stopped this car, and it's the

21 reason why you arrested Danny Brown. Why did you not take

22 that into evidence?

23 A. Because most of the time when we have a charge like

24 this we don't take that type of thing in evidence. It's -- I

25 knew it -- I knew it was beer; he knew it was beer, and he

1 affirmed, said yeah, I've got a beer, you know. I'm not even
2 sure if -- no, we did -- I did write him a blue ticket for it.
3 I want to say yes. But it was definitely the pretext for me
4 to make the stop. I would not have stopped him had he not
5 been drinking a beer can.

6 Q. I know. That's why I was wondering why you don't have
7 the beer can with you. You do not have it. Okay. The beer
8 can -- when you asked him about the beer can, and then he
9 finally pulled the beer can out, was it full, empty, half-
10 full, hot, cold? What was the condition of it?

11 A. It was not full. I want to say it was -- I want to say
12 it was still cool. Maybe it looked -- you could see some
13 condensation I believe. It wasn't full. It was -- I remember
14 when he pulled it up finally, and I kind of retrieved it, it
15 was crumpled a little bit, I guess from pressure on it.

16 Q. Okay. Now, when you retrieved it. When were -- where
17 were you standing when you retrieved the beer can?

18 A. On the passenger's side of the vehicle.

19 Q. Okay. So he held the beer can until you walked from
20 the driver's side back around to the passenger's side, right?

21 A. Yes. He kept it down between his legs.

22 Q. And before you did that you walked up to the driver's
23 side window, and the driver rolled his window down for you; is
24 that right?

25 A. I'm not -- I can't say for sure.

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1 Q. You didn't ask the driver for his driver's license and
2 registration?

3 A. Not at that time, no. I just told him, like, hey
4 driver; how are you doing; hold on for a minute; I'll deal
5 with you in a moment, and I commenced to talk with Mr. Brown.

6 Q. And then, without asking the driver any questions you
7 walked back around the back of the vehicle?

8 A. That is correct.

9 Q. In front of your vehicle, right?

10 A. Yes.

11 Q. Around to the passenger's side, right?

12 A. Yes.

13 Q. Now, you are in the right-hand lane of Highway 17
14 Business, 16th Avenue South, heading south, and there's a curb
15 there with the sidewalk, correct?

16 A. Yes.

17 Q. So did you ask Danny Brown to roll his window down, or
18 did he roll it down for you, or was it already down?

19 A. I don't recall.

20 Q. It was raining, right?

21 A. It was -- well, no, at the initial time of the stop it
22 was not raining yet. It was probably just very, very light
23 drizzle, if that, and like I say, it commenced to begin to
24 rain as time passed.

25 Q. So you don't know if you asked him to roll his window

1 down, or if he rolled ---

2 A. You know what, let me -- let me clarify it. Actually,
3 upon driving -- when I first saw the two they -- I know for
4 sure the driver's side window was open. My windows were open.
5 I know that. And I looked over, that window was open, so it
6 even helped in the visibility, being able to see into that
7 car. Whether -- and so therefore, upon approaching the
8 driver's side it was already open. I can answer that. The
9 passenger's side, I don't recall. I want to say it was open,
10 because I don't recall having any obstruction in talking with
11 him from that side.

12 Q. So you walked over to the passenger's side -- and let's
13 assume that -- because we don't know for sure -- assume that
14 the window is down -- and you said what to Danny Brown?

15 A. I asked him about the beer can. Like I said, before I
16 went around I believe I said -- I asked him did he have any
17 more. He said no. Then I commenced to, you know, talking. I
18 said, well, you know, I want to see -- I want to -- what was
19 it? I can't remember the jargon, but basically I wanted to
20 find out was there any more beer cans, so then I asked him out
21 of the vehicle, yes sir.

22 Q. Okay. And he told you there were no more beer cans?

23 A. He did.

24 Q. And in fact, there were no -- there were none?

25 A. No, that was the only one.

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1 Q. So did you reach in and get the beer can from him, or
2 did he hand it out to you?

3 A. I want to say neither, actually. I want to say I just
4 asked him out of the vehicle, and he probably had it in his
5 hand. Upon getting out of the vehicle probably placed it on
6 top of the car, or something like that. I don't recall
7 actually him handing me a beer, or ---

8 Q. So you don't know if he handed it to you; you don't
9 know if you took it from him?

10 A. I said he did not -- we did not exchange hands had -- I
11 don't know if he took it out of the car -- wait, let me back
12 up. He did not hand me a beer can, no. I didn't reach in and
13 get a beer can. That's against -- I'm not going to reach in
14 and get anything from a person on traffic stop. That's a
15 safety hazard. He got out of the vehicle, and when he got out
16 he may have had the can in his hand, or what have you. I
17 eventually did take the can out, but as for hand to hand the
18 can, no.

19 Q. Okay. So after he got out of the vehicle you would
20 have taken the can out of his hand, right?

21 A. If he had a can in his hand I would have probably taken
22 it out of his hand.

23 Q. Well, you said he had a can.

24 A. That's not what I said. What I said was, we did not do
25 a hand to hand thing. Okay. He had -- he had a beer can in

1 the car. Okay. I asked him out of the car, and we are kind
2 of going on some tangent, but he -- he got out of the car, and
3 upon him getting out of the car I placed him under arrest kind
4 of rapidly, okay. In that -- whether or not he had a can in
5 his hand and all I don't recall, because my main objective was
6 to go ahead and get some cuffs on this individual, for his and
7 my safety. Okay.

8 Q. Okay. So if he had a beer -- we don't know that, if he
9 did have a beer can in his hand you would have taken the beer
10 can out of his hand before you put handcuffs on him?

11 A. Possibly. It depen -- my objective was to get cuffs on
12 him.

13 Q. And you did put cuffs on him, and he did not have a
14 beer can in his hand when you finished ---

15 MR. HIXSON: Your Honor, this has be asked and answered
16 quite a few times.

17 THE COURT: I'm going to allow it. Thank you, sir.

18 MR. HIXSON: Thank you, Your Honor.

19 THE COURT: You may continue.

20 Q. That -- when he got out of the car, you would agree
21 with me that he would have stepped out of the car facing you;
22 is that correct?

23 A. How -- the manner in which he got out of the car was
24 he, of course, stepped out first with his right leg, then
25 attempted to stand up. He didn't get out directly facing me.

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1 He got out kind of sideways. He was in -- let's say he was
2 kind of facing forward, toward the front of the car, and ---

3 Q. Okay.

4 A. ---At this time, as he is getting out, I'm kind of
5 going to him, and helping him get out, more or less, and by
6 the time he stood totally up, pretty much had him handcuffed
7 at that time, and then I did turn him to face the vehicle,
8 basically.

9 Q. Okay. Were you standing up on the sidewalk or ---

10 A. As I said, I don't recall. It's a possibility, but I
11 don't recall that for sure.

12 Q. So you don't know if you were on the sidewalk before
13 you arrested him, or if he stepped out onto the sidewalk?

14 A. We were -- I'm right there at -- basically there is not
15 much space between the sidewalk and the vehicle. I could have
16 been on the sidewalk, hal -- at one point on it, back and
17 forth, but I'm standing right there in that close, give or
18 take, couple of inches.

19 Q. Okay. So you would say there were a couple of inches
20 between the car and the curb?

21 A. Yes.

22 Q. All right. So he stepped out, you arrested him for
23 open container?

24 A. Yes sir..

25 Q. And then you did what with him?

- 1 A. And then I placed him into my patrol vehicle.
- 2 Q. Okay. And then you went back -- then you asked him --
- 3 after you placed him in your car you asked him whose bag it
- 4 was in the car?
- 5 A. No sir. Actually I asked him before, as we stood
- 6 there, before we left, right there at that passenger side
- 7 door. I had him -- hands on him. He was cuffed, and I had my
- 8 other -- right hand free, and I pointed down and said, is that
- 9 your bag. He said, yes, so then I reached into the bag ---
- 10 Q. Put it on the sidewalk?
- 11 A. Yes sir.
- 12 Q. Then you walked back to your car, with him handcuffed,
- 13 right?
- 14 A. Yes sir.
- 15 Q. And then you opened the door, and you put him in the
- 16 back seat?
- 17 A. Yes sir.
- 18 Q. And you closed the door?
- 19 A. Yes.
- 20 Q. And then you stood up and started heading back toward
- 21 the driver's side of the vehicle, right?
- 22 A. No. No sir.
- 23 Q. You went to the passenger's side?
- 24 A. Yes.
- 25 Q. And did what?

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1 A. I went to the passenger's side, and I said some words
2 to the driver, you know, kind of -- hey, what's going on in
3 there, you know; your buddy is over here drinking, you know,
4 you know better than that; what's going on; are you drinking
5 too, you know, and stuff like that, and then I went to briefly
6 inspect the bag, as I kind of small-talked with the driver.

7 Q. So the driver wasn't under arrest for anything at this
8 point?

9 A. Not at that time.

10 Q. And you hadn't even run his driver's license and
11 registration?

12 A. Not at that time, no sir.

13 Q. And you are talking to him. Was he nervous acting?

14 A. Yes sir.

15 Q. Very nervous acting?

16 A. I would say so.

17 Q. The driver of the car was very nervous acting?

18 A. Yes sir.

19 Q. Was Danny Brown nervous acting when you were talking to
20 him about the beer can?

21 A. No.

22 Q. And when Danny Brown asked you if there are any more
23 beers in the car, and he said no, he was actually telling the
24 truth, right? (Sentence seems incorrectly worded.)

25 A. When I asked him that, I believe he was.

1 Q. And when he asked you whose black bag that was, he said
2 mine? (Sentence seems incorrectly worded.)

3 A. He did.

4 Q. Right. Now, so you -- while you talked to the driver
5 of the vehicle you went through the bag and you say you
6 found -- you opened the bag, black duffle bag -- do you have
7 that black duffle bag here with you today?

8 A. I believe we have some pictures of it.

9 Q. Do you have the bag here?

10 A. The bag -- I believe the bag was returned to him, the
11 duffle bag itself, and miscellaneous property in it, like
12 underwear and all that, but the evidence as far as narcotics,
13 that is retained, yes.

14 Q. All right. So, you are looking through the duffle bag,
15 and you say you found a Frito bag, and you looked inside the
16 Frito bag and there was a bunch of white powder?

17 A. Yes sir.

18 Q. Then at that point what did you do?

19 A. At that point I got a roaming narcotics detective -- he
20 can look into this -- and I -- then I started to talk with the
21 driver more aggressively, to find out what's going on, and of
22 course I ran his identification. He came up the driver's
23 license suspended.

24 Q. So you did not place the driver of the car under arrest
25 for possession of these drugs at that moment?

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- 1 A. No. At that moment -- actually I had already completed
2 taking the driver's car keys, put them on the hood, or told
3 him to, and he just -- I basically just -- I thought of it
4 like this. Here we go, we've got this one guy sitting in the
5 back there, under arrest, got a bag with drugs, two guys
6 together; I don't know their relationship -- I'm pretty sure,
7 upon me seeing this, he know -- you know, I'm thinking maybe
8 he knows this, life is going on, so I don't know what's going
9 on at this time, so I got him just remain, cool small-talking
10 it with him, until the other unit got there, and then, as soon
11 as it got there we went -- took him out to the car and placed
12 him under arrest.
- 13 Q. Under arrest for what?
- 14 A. For driving under suspension.
- 15 Q. So you must have run his driver's license?
- 16 A. We did. I just said that we did.
- 17 Q. Okay. You ran his driver's license before the other
18 unit got there?
- 19 A. Upon me talking to him I said, well, let me see your
20 I.D., and then I did run it.
- 21 Q. All right. Now after you placed him under arrest did
22 you go back and search the vehicle?
- 23 A. Upon me placing him under arrest, shortly thereafter --
24 I didn't touch the vehicle just yet. Shortly after Detective
25 Delpercio came on the scene and I basically directed him

1 toward the bag on the sidewalk, told him what I think we got.
2 He took custody of that, and then we initiated a search of the
3 vehicle.

4 Q. Did you find anything else in that vehicle when you
5 initiated that search?

6 A. Did I find anything?

7 Q. Yes sir.

8 A. I found -- I -- upon the search -- Detective Delpercio
9 did most of the searching of the vehicle. Practically -- most
10 of the passenger compartment he searched. I probably searched
11 maybe twenty percent, at most, of it. I did look into the
12 truck, primarily, and in the truck I found a lot of, you know,
13 miscellaneous electronic equipment, and different things, but
14 Mr. -- Detective Delpercio found other things in the vehicle.
15 He did. I didn't. He did.

16 Q. Okay. Now, this whole thing could have been video
17 taped?

18 A. Yes sir.

19 Q. Why not?

20 A. Unfortunately my tape had just ran out, and our
21 Sergeant was off that day -- I think he was sick -- and we
22 usually get some from him, so I was -- I was going to get with
23 a gun, probably one of the Corporals, and get a tape from them
24 after -- that's kind of why I was going down that way. I was
25 going in to get -- pick up some money from another officer,

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1 and get a tape. It just so happened it happened in that
2 window, after the tape ran out.

3 Q. So -- and your car is -- so it is equipped with a video
4 camera?

5 A. It is.

6 Q. And it is equipped so that when the blue lights come on
7 the video camera comes on?

8 A. Yes sir.

9 Q. And so when you flipped your blue lights on the video
10 camera did not come on. Is that because you did not have a
11 tape in there, or was it because the tape was all used up?

12 A. The tape was all used up.

13 Q. You had a tape in there?

14 A. Yes, but it was used up.

15 Q. Why did you not rewind it a little bit and capture this
16 arrest?

17 A. Well, I don't think you can do that actually.

18 Q. You can't do that?

19 A. No. I don't think so. Once it has been recorded over,
20 you can't like re-record -- you know, it's kind of a safety
21 mechanism, so it -- you don't want to like -- say you want to
22 cover something up, you can't. That system there won't allow
23 you. You probably have to take it to an outside video
24 recorder or whatever, and do something to it, but I ---

25 Q. Had you just gotten on work, or had you been on work

1 for a long time?

2 A. I'm sorry.

3 Q. Had you just gotten on work that day?

4 A. Just got on, pretty much, starting at six.

5 Q. You started with yesterday's video tape?

6 A. Yes. I didn't finish the video -- I -- upon starting

7 that day -- I had done another stop before this, and I did see

8 that my tape ran out. Actually I think I did discover it just

9 upon that stop, but it was -- at this time it wasn't time for

10 me to run into Wal-Mart and get a tape in the middle of a

11 traffic stop, you know.

12 Q. Okay. So there clearly is no video tape of this

13 arrest?

14 A. No sir, unfortunately not.

15 Q. All right, now, after Danny Brown is clearly in the

16 back seat of your car, and you have gone up and searched the

17 duffle bag, and you've gone and arrested the driver, and the

18 other people have come and searched the car, you take Danny

19 Brown back to J. Reuben Long; is that correct ---

20 A. Yes sir.

21 Q. ---To the jail?

22 A. Yes sir.

23 Q. Did you talk to him on the way to the jail about

24 anything?

25 A. I didn't ask Danny Brown any questions. He kind of

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1 made some statements here and there, but I asked him no
2 questions personally.

3 Q. When you got to J. Reuben Long did you participate in
4 an interview with Danny Brown?

5 A. I did not.

6 Q. You were not in the room when he was interviewed?

7 A. When you say he was in it -- I was in the room when
8 they searched him, and you know, some in-house things, but as
9 for him being interviewed, no. I think -- to my knowledge
10 Detective Delpercio did that.

11 Q. All right. Were you in the room when Rodney Smith, the
12 driver of the car, was interviewed?

13 A. No sir.

14 MR. LONG: That's all I have. Thank you.

15 THE COURT: Redirect.

16 MR. HIXSON: Briefly, Your Honor.

17 REDIRECT-EXAMINATION BY MR. HIXSON:

18 Q. I think you indicated -- defense counsel asked about
19 statements that Mr. Brown admitted to the beer that he had in
20 his hand?

21 A. Yes.

22 Q. Prior to that did he deny having a beer in his hand?

23 A. Yes, he did.

24 Q. So the first thing out of his -- the first thing he
25 said was that, I don't have a beer?

1 A. Yes. I asked him -- this is when I was on the driver's
2 side of the vehicle -- say, what kind of beer you got; I'm not
3 drinking a beer; I don't know what you are talking about; I
4 said sure you do, the beer right there between your legs;
5 looked down, and he said, what -- what beer; right there, and
6 he finally went oh, you know, come on, man, you know.

7 Q. Also defense counsel asked about the demeanor of the
8 occupants of the vehicle.

9 A. Yes sir.

10 Q. I believe you testified that Mr. Smith was nervous.

11 A. He was, yes sir.

12 Q. Could you please, in more detail, describe what you
13 perceived Mr. Brown's demeanor to be.

14 A. He appeared to be pretty laid back, I mean, you know.
15 I don't -- I had never met him before. I don't know how he
16 is, but he appeared to be -- it appeared to be artificially
17 laid back, more or less like a -- trying to be cool, just
18 trying to -- you know, you have one guy who is like, hey, I'm
19 nervous, you know, I'm just -- like a deer in headlights, and
20 the other guy is like, I got this, you know, let's be cool. I
21 can't say, you know, if that's not his normal demeanor, but it
22 seemed suspicious to me, personally, just as the nervousness
23 of the other occupant seemed suspicious, so I mean, I kind of
24 governed how I handled myself.

25 Q. Did he have that same demeanor when he was denying that

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1 he had a beer in his hand?

2 A. Yes.

3 MR. HIXSON: That's all the questions.

4 THE COURT: Anything on those questions.

5 MR. LONG: Real quick.

6 RECROSS-EXAMINATION BY MR. LONG:

7 Q. Officer, are you saying that it seemed suspicious to
8 you that Danny wasn't nervous?

9 A. Yes. And I may explain that. Two guys, together.
10 Like I say, I don't know them, I don't know their
11 relationship. Who knows, they could have been brother, or
12 they -- you know, but one guy extremely nervous, and the other
13 guy is just, you know, acting -- what appeared to me as being,
14 you know, artificially cool. It seemed like, ho, what's going
15 on here, so I'm not saying that that in itself was meaning
16 that, you know, he was guilty of anything. It just kind of
17 made me suspicious, made me keep my eyes open a little bit
18 more.

19 MR. LONG: All right. Thank you.

20 A. You are welcome.

21 THE COURT: Solicitor.

22 MR. HIXSON: No further questions, Your Honor.

23 THE COURT: You may step down, sir.

24 A. Thank you.

25 MR. HIXSON: At this time the State would call

1 Detective Tom Delpercio.

2 MR. LONG: Before he comes back, may we approach?

3 THE COURT: Yes sir. Come around to the side, please.

4 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

5 THE COURT: Have him come on, please sir.

6 THOMAS DELPERCIO, being first duly
7 sworn, testifies as follows:

8 DIRECT-EXAMINATION BY MR. HIXSON:

9 Q. Good afternoon, sir.

10 A. Good afternoon, sir.

11 Q. What do you do for a living?

12 A. I'm a Sergeant with the Investigation Division of the
13 Horry County Police Department.

14 Q. And how long have you worked for Horry County Police
15 Department?

16 A. Approximately seven years.

17 Q. And were you working for the Horry County Police
18 Department around October 6th of 2005?

19 A. That is correct.

20 Q. And what were your duties at that time?

21 A. At that time I was a Detective agent assigned to the
22 Narcotics and Vice Division of the Horry County Police
23 Department.

24 Q. And it may be kind of obvious, but just tell the jury
25 what Narcotics -- what that Division does in Horry County.

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1 A. We handle primary illegal drug complaints, and/or vice
2 complaints, i.e., prostitution, gambling, things like that.

3 Q. You were working October 6th of 2005, that day?

4 A. Yes, I was working and then I went off, and I believe I
5 was called out to the incident.

6 Q. I'm called out, what do you mean by that?

7 A. We take in rotation as Narcotics and Vice Agents, and
8 on-call rotation about once every other month for a week, and
9 any time a patrolman or other officer needs assistance with
10 any drugs or vice related crime then we are called out if it's
11 after normal working hours.

12 Q. Were you, in fact, called out on that day?

13 A. That is correct.

14 Q. And please tell the jury about what happened after that
15 call.

16 A. Refer to -- just to my notes. It was October 6. I'm
17 not exactly sure about the hour. It was in the evening hours.
18 I was called out to make contact with an Officer Williams, at
19 which time I made phone contact and he advised me he had a
20 large quantity of what he believed was an illegal narcotic
21 known as cocaine, the drug cocaine, on a traffic stop. He
22 gave me his location and I responded out to the scene.

23 Q. You, in fact, arrived?

24 A. Yes sir.

25 Q. And then if you could please tell the jury what you did

1 when you got there.

2 A. Sure. Upon arrival I met with Officer Williams. He
3 explained the situation and how he the stop. He showed me a
4 quantity of white powder substance that was inside a clear
5 plastic bag that was inside a Fritos bag. The Fritos bag was
6 inside a black duffle bag.

7 Q. Now I'm going to show what's already been marked -- I
8 believe it's already in evidence as State's Exhibit 1. Do you
9 recognize that item?

10 A. That is the item I'm speaking of.

11 Q. And is that a fair and accurate representation? You
12 remember that call?

13 A. Yes.

14 Q. Would you please -- could you please -- just please
15 tell the jury what happened after that.

16 A. Okay.

17 Q. Did you, in fact, take custody of the duffle bag while
18 at the scene?

19 A. I did take custody from Officer Williams of the duffle
20 bag and the contents inside, at which time -- again, asking
21 details of the nature of the stop I approached -- look at my
22 notes real quick. Officer Williams advised me that the duffle
23 bag was taken from between the Defendant's feet, I believe in
24 the car area, the passenger side area of the vehicle.

25 At that time Mr. Brown was in the custody of the Horry

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1 County police car when I got there. I approached him, advised
2 him verbally of his Miranda Rights, and asked him if he would
3 speak to me about the situation. He did not want to speak at
4 that time.

5 At that time I moved over to a second patrol car that
6 was there, and spoke to a second person, Mr. Rodney Smith, who
7 was the driver of the vehicle, and at the time -- I don't
8 believe at that point in time I advised him of his Miranda
9 Rights. I don't believe Mr. Smith said anything at that time.

10 Q. Did you have occasion to search that vehicle pursuant
11 to the arrest?

12 A. Yes. Yes sir. Under a lawful search incident to
13 arrest of the vehicle, in the passenger area, and pursuant
14 also to guidelines of doing inventory of the vehicle before
15 towing, we searched that vehicle.

16 Q. And did you find anything inside that vehicle?

17 A. I did. I did find a second smaller bag containing
18 several different types of illegal drugs.

19 Q. And where did you find that?

20 A. That bag was underneath the driver's seat.

21 Q. The driver's seat?

22 A. Yes sir.

23 MR. HIXSON: Your Honor, I would like to approach the
24 witness with Exhibit marked State's 3.

25 THE COURT: All right, sir.

1 Q. Do you recognize that?

2 A. Yes. That is the black pouch and the contents that
3 were located on the driver's seat.

4 Q. And where was that photograph taken?

5 A. That photograph taken was on the -- on the chair at my
6 office, after we got back in a controlled environment.

7 Q. Okay.

8 A. On the night in question it was -- the weather was -- I
9 believe it was pretty bad, so we didn't do too much out on the
10 scene, plus it was on the side of the highway. We usually
11 just take the evidence and secure it.

12 Q. But could you give the jury an indication of size
13 differences in the duffle bag versus the pouch.

14 A. In comparison?

15 Q. Yes.

16 A. Okay. The pouch itself, as seen in that picture, would
17 probably be a little bit smaller, actually, than the quantity
18 of cocaine that was found in the duffle bag itself.

19 Q. Let me introduce -- move this.

20 MR. HIXSON: At this time, Your Honor ---

21 Q. Is that a fair and accurate representation of the
22 condition of the contents of that pouch at the time when you
23 saw it?

24 A. The items were in the pouch at the time I first
25 discovered it, but that is the items that were inside the

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1 pouch, spread out for the photograph.

2 Q. And that's a fair and accurate representation?

3 A. Yes sir. Yes.

4 MR. HIXSON: At this time the State would move 3 into
5 evidence, Your Honor.

6 MR. LONG: No objection, Your Honor.

7 THE COURT: In evidence without objection.

8 (PHOTO OF CONTENTS OF BLACK BAG ADMITTED INTO EVIDENCE
9 AS STATE'S EXHIBIT NUMBER 3.)

10 Q. Also I would like to approach the witness with what's
11 been marked State's 2. That's not in yet, Your Honor.

12 THE COURT: All right, sir.

13 Q. Do you recognize that?

14 A. Yes, I do.

15 Q. And what do you recognize that to be?

16 A. This appears to be the powder substance, that was
17 believed to be cocaine, that was found inside the black duffle
18 bag, in several little bags.

19 Q. And is that what was found inside the Frito-Lays bag?

20 A. That is the white substance -- I believe it as in a
21 clear plastic bag when it was inside the Frito bag, but that
22 is the substance. It appears to be the substance.

23 Q. While I think you indicated -- and I apologize for
24 interrupting you. I think you indicated something about the
25 sizes between the two of them, and I wanted to let you see

1 that. Could you please continue testifying as it relates to
2 the size of the black pouch versus the duffle bag.

3 A. Sure. The black -- the black pouch, as seen in the
4 photograph, was maybe a little bit bigger than a cigarette
5 case, that was found on the driver's seat, that contained
6 small amounts of several different narcotics, or drugs. The
7 black duffle bag was more like a gym bag, like a small carry-
8 on bag to take on an airplane, or to a gym, and that's where
9 this was located, and it was indicated to me that that black
10 duffle bag was found between the Defendant's feet, in the
11 passenger's side of the vehicle at the time of the stop.

12 Q. Now subsequent -- you, yourself, found that black pouch
13 under the driver's seat?

14 A. The small black pouch I found, yes, under the driver's
15 seat.

16 Q. At that time did you place the Defendant, Rodney Smith,
17 under arrest for anything at that time, on D.U.S.?

18 A. Mr. Smith was already -- if I'm not -- if memory serves
19 me, he was already under arrest for driving without a driver's
20 license. So then I did -- advised him he was under arrest for
21 that.

22 As we moved to the Detention Center I, again, met with
23 Mr. Smith, again, advised him of his Miranda Rights, in
24 writing, on a form at this time, because I was able to. He
25 signed the form understanding his rights and wishing to waive

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1 them, and provided me a statement stating that the drugs that
2 were found under the driver's seat were, in fact, his.

3 Q. Now after discovering -- after Mr. -- Officer Williams
4 turned those narcotics over to you, did you protect the
5 integrity of those items?

6 A. Yes, I did.

7 Q. Did you tamper with them in any way?

8 A. Did not tamper. We placed them as per procedure into a
9 "Best Kit", to be submitted through evidence to the lab to be
10 tested.

11 Q. Now, could you explain to the jury what "Best Kit" is.

12 A. Sure. A "Best Kit" is the State used kit in South
13 Carolina, or any drug -- usually for a drug or narcotic,
14 except for marijuana, to be tested by a lab. It is a brown
15 envelope that contains a plastic one-time sealing envelope, to
16 where the -- once the plastic envelope is sealed, if it is
17 attempted to be unsealed, the integrity of it will be lost,
18 and you will if it's been damages. It also has separate forms
19 to provide a chain of custody with it. So the brown envelope
20 has a sticker on it with a -- what's called a "Best Kit"
21 number, tracking number, and the envelope and the subsequent
22 forms all have the same number.

23 The first thing we do is take that "Best Kit", we make
24 sure all the numbers match, make sure there's not a problem,
25 then we take the evidence -- we do a field test kit most

1 times, which I did on this substance here, which showed
2 positive results. We mark that into our incident report. And
3 we take the substance and we place it into the "Best Kit",
4 with the proper forms filled out for who it was taken from,
5 date time, case number, then we seal it all in that self-
6 sealing envelope, then we take it and we submit it to
7 evidence, and the only time that would be reopened is by the
8 chemist checking the substance.

9 Q. Now, what are all those safeguards for? What are they
10 intended to do?

11 A. We protect the integrity of the evidence.

12 Q. To make sure no one tampered with it?

13 A. That's correct.

14 Q. Did you prevent anybody else from tampering with this
15 also when it's in your custody and control?

16 A. Yes. Once -- Once I received this from Officer
17 Williams I am the only person until it was placed into
18 evidence. I don't know -- once we place it in evidence to a
19 secure facility then I -- they take their procedures from
20 there, but nobody else tampered with this.

21 Q. And are there any indications or markings of any kind
22 on that package to indicate ---

23 A. Yes sir. On the "Best Kit" bag itself, right here,
24 there is a place for the agency name -- it's H.C.P.D., Horry
25 County Police Department, date sealed, October 6th, '05,

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1 appears to be control number, which is 002901, which will
2 match any of the forms, and then there is a place for me to
3 print my name, and also a place for my signature.

4 Q. What did you do with that package after you took
5 custody and control of it from Officer Williams?

6 A. Okay. I secured that till we got back to the Horry
7 County Police Department. It was locked in the security of my
8 vehicle, along with several other pieces of evidence we had.
9 Once we got back to my office I carried it in. We started to
10 sort out evidence. I had this with me at all times. Any drug
11 evidence the control agent just keeps with him, just to
12 protect the integrity of the case. I submitted it into the
13 "Best Kit", and then take it across the hall, and we have the
14 evidence office, and we submit it to a lockable area, to where
15 then the Evidence Technicians will get it when they come in
16 the next day, and nobody can get in there to get to it before
17 then.

18 Q. And briefly describe your -- you indicated an evidence
19 lock-up. Just briefly describe what that is.

20 A. Okay. Well, there are several. We have a secured
21 wooden door with several locks that has a drop slot in it, and
22 then we also have lockers that you -- there's a key on the
23 outside, almost like a bus depo locker, but after you secure
24 it there's a whole, about the size of a half dollar, where you
25 take the key and drop it in, so nobody else can get into that

1 locker, except through evidence, from the inside.

2 Q. And the Evidence Custodian then has the key to get the
3 evidence bag?

4 A. That's correct. They have a master key from the inside
5 of their office, that is secured all the way around. When
6 they come in to collect their evidence they go in from the
7 inside, open the lockers and collect what was put in from the
8 outside, so -- in fact, nobody ---

9 Q. That also protects the integrity of the evidence?

10 A. That's correct.

11 Q. Well, at some point in time did you receive a phone
12 call from your evidence technician in reference to a black
13 duffle bag and some personal items?

14 A. Yes. I don't remember the exact day. I know I was
15 contacted by, I believe, Lori Rabon, one of our Evidence
16 Technician Supervisors, reference if I -- it would be all
17 right to release some items to Mr. Brown. I know there was
18 the black duffle bag itself, a cell phone, and I believe some
19 miscellaneous clothes -- excuse me -- and I was asked if that
20 would be okay to release those.

21 At that time they -- they posed no evidentiary value.
22 We had photographed the black duffle bag. We knew that we had
23 pictures of that. The illegal drugs were in the custody of
24 the evidence area, so we knew that, so the phone and the
25 clothes really served no evidentiary purpose, so I had no

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1 problem at that time. I told her it would be fine with me to
2 release that back to Mr. Brown.

3 MR. HIXSON: I have no further questions for Detective
4 Delpercio at this time, Your Honor.

5 THE COURT: Cross-examination.

6 MR. LONG: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. LONG:

8 Q. Detective Delpercio, you searched the driver's side
9 portion of this Plymouth, and found a black -- small black
10 pouch full of drugs, right?

11 A. That's correct.

12 Q. And when was it that you asked Rodney Smith who that
13 belonged to?

14 A. I believe that was at J. Reuben Long, later on that
15 evening.

16 Q. Okay. And you just -- I believe you just testified --
17 I want to clarify -- that the white powder bag would have been
18 too large to put inside of that little white pouch, correct?

19 A. That bag in your hand probably would have fit in the
20 pouch if the other substance weren't in it, but I don't
21 believe they would have fit together.

22 Q. So with the drugs that were already in that pouch
23 underneath the driver's side, there was not room for this in
24 there?

25 A. In that pouch, I would say no, probably not.

1 Q. Okay. Now, when you interviewed Rodney Smith back at
2 J. Reuben, did you ask him if he knew Danny Brown?

3 A. One second. Let me refer to my notes, sir.

4 I actually don't have it on my notes. I'm looking at a
5 statement of Mr. Smith. It does not say anything about Mr.
6 Brown on that statement. I don't recall if I asked him if he
7 knew Mr. Brown.

8 Q. So you -- if he told you, I don't even know that guy; I
9 was just giving him a ride; you don't remember?

10 A. I remember that Mr. Smith -- I can tell you what I
11 remember talking about. I don't recall if I asked him if he
12 was just giving him a ride, or I don't remember that
13 testimony, no. I don't remember that statement.

14 Q. Did you tape record your interview with Rodney Smith?

15 A. No. No.

16 Q. Why not?

17 A. South Carolina does not require that we do. I usually
18 just talk to somebody and have them handwrite a statement and
19 sign it. It's just not investigative technique I use.

20 Q. You don't ever record people's statements when you sit
21 down and talk to them?

22 A. Thirteen years as a policeman and I never had -- I have
23 never had the need, no.

24 Q. Do you have a tape recorder?

25 A. No. At that time I did not actually. It was hooked to

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1 my phone in my office.

2 Q. And so when you did interview him you did not tape it,
3 but you did interview him. He told he was a drug dealer,
4 right, Rodney Smith?

5 MR. HIXSON: Your Honor, I would object to that. Mr.
6 Smith is testifying. It's hearsay for the Detective to answer
7 those questions. Mr. Smith can answer those questions.

8 MR. LONG: Your Honor, actually ---

9 THE COURT: Gentlemen, you don't need to argue it. I'm
10 going to allow the question.

11 Thank you very much.

12 MR. LONG: Thank you.

13 Q. He told you he was a drug dealer?

14 A. Mr. Smith gave me a statement that he had been dealing
15 drugs for the past year.

16 Q. Did he tell you what kind of drugs he had been selling?

17 A. No, he did not, not in the statement. I mean, I know
18 what he had on him, and he confessed to those drugs, so one
19 can say he's been dealing those drugs.

20 Q. He confessed to a small amount?

21 A. That's correct, that was under his driver's seat, yes
22 sir.

23 Q. Did you interview Danny Brown?

24 A. Mr. Brown did not want to speak to me.

25 Q. Did you go into a room and ask him to be interviewed?

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1 A. No. No. He made it clear he did not want to speak to
2 me at the time. He invoked Miranda at the time at the scene,
3 and I did not ---

4 Q. So at no time at J. Reuben Long did you ever go into a
5 room with Danny Brown and ask him to make a statement?

6 A. I don't believe I talked to him at all. No.

7 Q. When you went in the room with Rodney Smith at J.
8 Reuben, did this officer go in with you?

9 A. I don't believe so. I think we were alone.

10 Q. You were by yourself?

11 A. I believe so.

12 Q. Did you ask this Officer if he had a video tape from
13 the traffic stop?

14 A. No, I did not.

15 Q. Did you take into evidence -- you are the guy who went
16 out there and took everything into evidence, right?

17 A. That's correct.

18 Q. Did you take into evidence the beer can?

19 A. I believe I remember a beer can being there, but I did
20 not take it into evidence, only because, again, I was called
21 out for the narcotic or drug part of this case. That would
22 have been an open container. That would be handled by the
23 officer. Now, I don't see it on my evidence sheet. I don't
24 recall taking it. If you will let me refer back to my
25 evidence sheet to make sure I didn't. There were several

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1 pieces of evidence taken that night.

2 Q. Okay.

3 A. I do not see anything on my chain of evidence reference
4 to the beer can.

5 Q. Okay. So, if -- well, let me ask you this way. Did
6 you know that the reason for the traffic stop that Officer
7 Williams gave was that there was a beer can?

8 A. Officer Williams advised that he had witnessed the
9 passenger in the vehicle drink. That's why he stopped him,
10 pulled him over, and subsequently arrested him.

11 Q. Arrested him for open container?

12 A. I believe that was drinking. I don't know the exact
13 charge.

14 Q. Was it not important to you at that point to take that
15 beer can into evidence?

16 A. Well, as I said, I'm assigned to Narcotics and Vice,
17 and that would be a Magistrate level charge that would be
18 handled by the officer in Magistrate's -- little court, so it
19 was not necessary for me to take that.

20 Q. Okay. You would agree with me that the contents of the
21 small bag that Rodney Smith had under his seat were -- and
22 we've got a picture of the crack cocaine, marijuana, Xanax
23 pills, and powder cocaine; do you agree with that?

24 A. I -- give me one second. I would agree to that from
25 the picture, yes sir. There were several different drugs on

1 that -- let me refer to my picture again.

2 Q. Did you send to S.L.E.D., or anybody else, this powder
3 cocaine, and this, to see if they were the same chemical
4 makeup?

5 A. The large amount of cocaine that was found between
6 Danny Brown's feet was placed in the "Best Kit" -- one
7 second -- was placed in "Best Kit" number H002901. The other
8 items of narcotics, which would be the cocaine and the pills,
9 and any other drug besides marijuana, was placed in "Best Kit"
10 002900.

11 Q. I understand your ---

12 A. "Best Kit".

13 Q. Did you ever ask anybody who is one of these chemist
14 people that y'all have over there, or anybody over at S.L.E.D.
15 in Columbia, to test this powder cocaine, and this powder
16 cocaine, to see if they had the same chemical makeup?

17 A. No sir. State law states powder cocaine is cocaine.
18 The different makeup would not be a concern of mine. I submit
19 it to the lab to make sure it is, in fact, cocaine.

20 Purity or same, no sir, does not play a part in the
21 case.

22 Q. Okay. I'm not asking you if it's a concern. I just
23 want to know if you did that?

24 A. No. I did not ask for that specific test.

25 Q. So these two different bags of cocaine have not been

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1 tested to see if they are the same thing?

2 A. The only thing that I would say they've been tested
3 for, to see if they are, in fact, cocaine.

4 Q. Okay. Now, the black duffle bag, did you send that to
5 someone to fingerprint it, and see who had been touching it?

6 A. I don't believe the black duffle bag was fingerprinted,
7 no sir.

8 Q. Why didn't you have somebody to fingerprint that duffle
9 bag?

10 A. In truth, that's not something that is normally done,
11 especially on a porous material like that, because it's not a
12 reality that you would find usable fingerprints on that.
13 Again, in this case, the Officer states that, when he arrested
14 Danny Brown it was between his feet, okay. It had cocaine in
15 it. We took it out. I don't believe if we did have that
16 fingerprinted that any fingerprints at all of a usable quality
17 would be found on that, and that's my experience.

18 Q. So you just assumed there wouldn't be any fingerprints,
19 so you decided not to have it tested?

20 A. We don't normally fingerprint a bag, or something like
21 that, that fingerprints are not going to come out on, no.

22 Q. You fingerprinted this Fritos bag.

23 A. Yes. Fritos bag is a smooth surface that maybe prints
24 could be on. When you have a nylon or cloth substance, you
25 know, substance, fingerprints aren't going to show on those,

1 sir.

2 Q. Were Danny Brown's fingerprints found on the Fritos
3 bag?

4 A. I don't believe so. I don't believe any fingerprints
5 of usable quality were found on any of the bags, it's my
6 understanding.

7 Q. What about the little bag that the powder was in? You
8 would agree with me that this is not the bag that this powder
9 was found in?

10 A. I believe -- that's not the bag I submitted. I believe
11 that is a bag that evidence put it in after they took it out
12 of the original packaging.

13 Q. The original packaging was another clear plastic bag,
14 and you sent that for fingerprinting too, didn't you?

15 A. I believe so.

16 Q. Were Danny Brown's fingerprints found on that bag?

17 A. Not that I'm aware of.

18 Q. On the side of the road, when you got there, Danny
19 Brown was in the back of one car, and Rodney Smith, I assume,
20 was in the back of a different car, handcuffed; is that right?

21 A. That's correct.

22 Q. And did you go -- after you found all these things in
23 this car, the stuff underneath Rodney's seat and everything,
24 did you go back and talk to Rodney about what you had found?

25 A. I believe I may have told him I found the rest of the

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1 drugs under the seat -- I found some drugs under the seat. I
2 don't believe I questioned him. I believe I let him know I
3 had found some more, and that he would be charged with that as
4 well as his driving under suspension, or driving without a
5 license, whatever the charge was. I don't believe I
6 questioned him until we went back to the Detention Center.

7 Q. Okay. When you told him that the drugs were found
8 under the seat, was there any change in his demeanor at that
9 point?

10 A. Not that I can recall.

11 Q. And you know that, when you were talking to him, he had
12 not been placed under arrest for the possession of this bag,
13 right?

14 A. No. At that time I didn't believe anybody was placed
15 under arrest because of that. I know that Mr. Brown was
16 placed under arrest for the open container, or drinking in
17 public, and I know Mr. Smith was placed under arrest for
18 driving without a license.

19 Q. Was Rodney Smith ever charged with possession of this?

20 A. Let me refer to my warrants. I believe he was, but let
21 me refer to my warrants.

22 Yes, he was.

23 Q. So Rodney Smith has been charged, or at least had been
24 charged, with trafficking in cocaine; is that right?

25 A. That's correct.

1 Q. And when you went back to J. Reuben you decided to go
2 into a room and talk to Rodney Smith, but not go into a room
3 and talk to Danny Brown. Now why is that?

4 A. Because at the scene, if memory serves me correct,
5 Danny Brown was not of a demeanor to speak to us -- speak to
6 me about the situation. Mr. Smith -- and again, from being in
7 investigations for a while -- seemed that he would be willing
8 to maybe communicate with me and give me a statement. Mr.
9 Brown, pretty much, was unequivocally that he was going to
10 seek an attorney, and that he didn't want to speak to police.

11 Q. Well, neither one had talked to you so far, right? You
12 went out there at the site, you went back and -- in car, you
13 talked to both of them, and ---

14 A. Not talking -- not talking, and giving off what I later
15 called qualifiers, that you don't want to speak to me, are two
16 different things.

17 Q. When you went back there and you talked to Rodney
18 Smith, what did you tell him that you could do for him?

19 A. I don't remember telling him I could do anything for
20 him, because I can't do anything for him.

21 Q. You didn't tell him, right now things look really bad
22 on you and you need to cooperate with me?

23 A. I don't remember the exact statements that I talked
24 about. I know I would have explained to him that he had -- is
25 looking at several different charges, including the drugs

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1 under the seat, and that it was his option to speak to me at
2 that time, and speak to me about the truth, and that if he did
3 want to talk to me and cooperate, that that would be noted in
4 my investigation report, that he did cooperate and admit to
5 his part in what was going on, which is what we do when we do
6 an interview.

7 Q. Right. So after you told him that, if he talked to
8 you, and told you some things that were beneficial to your
9 case, then you would do what you could for him down the line.

10 A. Well, I told him to say the truth. Now if the truth is
11 beneficial to my case, well then I guess that would be
12 beneficial to my case, but I told him to speak to me the
13 truth.

14 Q. Well, how do you know if he ---

15 A. I specifically, on an interview, make sure I tell
16 people not to embellish any truth to try to get help for it.
17 That's what I do.

18 Q. Well, you don't expect anybody that -- actually that
19 you have arrested for trafficking in drugs to just tell you
20 the truth all the time anyway, right? You don't expect that?

21 A. You never know when you talk to somebody, they may.

22 Q. Okay. Do you know Rodney Smith was telling you the
23 truth?

24 A. A hundred percent, unequivocally, no. Do I believe he
25 was, yes.

1 Q. Why? Have you ever met him before?

2 A. No.

3 Q. You testified that you never took Danny Brown into a
4 room and talked to him about this case. You don't remember
5 going in there and talking to him about trying to seize some
6 money from him or something?

7 A. I -- I don't recall. I may have. I don't recall
8 talking with Mr. Brown. I know his demeanor was not of a
9 cooperating nature that I can recall.

10 Q. He wasn't uncooperative, was he?

11 A. Standoffish, if memory serves.

12 Q. Standoffish. You just arrested him and charged him
13 with trafficking in cocaine; you've got him locked up at J.
14 Reuben Long, and you are saying he was standoffish?

15 A. Well, in fact, he had cocaine. I arrested him by the
16 law, so I don't think that should make him standoffish.

17 MR. LONG: Okay. That's all I have. Thank you.

18 THE COURT: Redirect.

19 MR. HIXSON: Thank you, Your Honor.

20 REDIRECT-EXAMINATION BY MR. HIXSON:

21 Q. Let me show you a couple of packages that I think
22 defense counsel brought up.

23 MR. HIXSON: These have not been marked as an exhibit,
24 Your Honor.

25 Q. Detective, I believe defense counsel talked --

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1 mentioned about why you didn't fingerprint the duffle bag.

2 Based on your investigative experience, can you give us some
3 indication of the difficulty of taking fingerprints off a
4 cloth surface, or a surface such as that?

5 MR. LONG: Your Honor, I would inquire, and object to
6 the question. I don't know if he has ever been trained to do
7 fingerprinting. I don't know if he's a fingerprint analyst.
8 I don't know anything about that.

9 THE COURT: Sustained at this point in time.

10 You may rephrase your question.

11 MR. HIXSON: Also there's separate packaging. It's not
12 marked as an exhibit either.

13 Q. Did you request these items be submitted for
14 fingerprint analysis?

15 A. I believe I did, verbally, with the evidence
16 technicians -- custodians.

17 Q. Did you receive a report indicating -- let me present
18 you with what's been marked as State' 6. Do you recognize
19 that item?

20 A. That is the Fritos bag that was seized that night.

21 Q. And when you first saw the Fritos bag, was it in that
22 condition?

23 A. It did not have the fingerprint dust on it, no.

24 Q. That's this material you see?

25 A. Yes sir.

1 Q. Now, generally speaking, you received training, as it
2 relates to general investigative techniques, I assume. You
3 went to the South Carolina Police Academy?

4 A. That's correct.

5 Q. Are you aware during that -- were you taught, during
6 the course of that, that there were differences in the
7 surfaces that fingerprints can be removed from?

8 A. Yes sir. I actually attended that at the base academy.
9 I am also an Investigator I. They teach a portion on
10 fingerprinting. In 1998 I also went to a week long, or two
11 week long school on how to read fingerprints, and the surfaces
12 and all that can be taken ---

13 Q. Now, is there a difference between no fingerprints and
14 unusable fingerprints?

15 A. Yes.

16 Q. Could you please just generally describe just ---

17 MR. LONG: Your Honor, I would object to that.

18 Q. ---Based on your basic training and experience, and
19 your ---

20 THE COURT: All right. I'm going to allow the answer
21 over the objection of the Defendant at this time.

22 Q. Just generally. I'm not asking for your opinion or
23 anything like that.

24 A. Yes. No fingerprints would have no residue, no showing
25 up, either using the dust or using perfuming techniques to

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1 bring fingerprint, or the oils on the finger to arise.
2 Partial or unusable fingerprints -- well, you will see detail,
3 maybe a circle of the finger, or a part of a swirl, or part of
4 a loop, or anything on there, but it will be unusable to make
5 an I.D..

6 Q. I think you indicated you recognize that item?

7 A. Yes. The bag, yes sir.

8 MR. HIXSON: Your Honor, at this time the State would
9 move State's 6 into evidence.

10 THE COURT: Any objection?

11 MR. LONG: No sir.

12 THE COURT: In evidence without objection.

13 (FRITOS BAG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 6.)

15 Q. And of course when you saw it it wasn't in this
16 plastic?

17 A. Negative. No. It was just a Fritos bag.

18 Q. I'm also -- I'll show you what's been marked as State's
19 -- not in evidence yet -- but do you recognize that item?

20 A. I do.

21 Q. And what is that?

22 A. That appears to be the plastic bag that contained the
23 cocaine that was inside the Fritos bag.

24 Q. And that -- was it in that condition when you first saw
25 it?

1 A. Oh, no sir. It was just a clear plastic bag, and was
2 absence of the fingerprint dust.

3 Q. And that's what that black powder substance you see on
4 there?

5 A. Yes sir. That's what it appears to be.

6 MR. HIXSON: At this time the State would move State's
7 7 into evidence.

8 THE COURT: Any objection?

9 MR. LONG: No sir.

10 THE COURT: In evidence without objection.

11 (FRITOS BAG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 7.)

13 Q. You say there were no usable fingerprints recovered
14 from those? That's your understanding?

15 MR. LONG: Object, Your Honor. I don't know if he has
16 any indication. He wasn't the one that did the test.

17 THE COURT: I'm going to sustain the objection at this
18 time.

19 MR. HIXSON: Thank you, Your Honor.

20 THE COURT: You may rephrase the question.

21 MR. HIXSON: Thank you, Your Honor.

22 Q. You received a report as it relates to the findings of
23 analysis of that?

24 A. I actually don't have a copy of it. I was made aware
25 that there was no usable fingerprints. I believe verbally, by

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1 one of the evidence technicians.

2 Q. Okay. I think also there was some brief discussion
3 about fingerprinting the duffle bag, and things like that.
4 Did you know at the time you made the decision on forensic
5 examination of Danny Brown's statement that it was his bag?

6 A. I remember Officer Williams told me that at the scene,
7 that it was -- he stated it was his bag.

8 Q. All right. Do you usually make a practice of
9 fingerprinting items that you already know who the identity of
10 the owner is?

11 A. No. We don't normally make that a practice.

12 MR. HIXSON: I have no further questions, Your Honor.

13 THE COURT: Questions on those particular questions.

14 MR. LONG: Yes sir.

15 RECROSS-EXAMINATION BY MR. LONG:

16 Q. Officer Delpercio, if you sent the black duffle bag for
17 a fingerprint, and they found Rodney Smith's thumbprint on it,
18 would that change your opinion of the case?

19 A. No.

20 Q. Not at all?

21 A. No.

22 MR. LONG: Thank you.

23 THE COURT: Anything else?

24 MR. HIXSON: Nothing, Your Honor.

25 THE COURT: You may step down, sir.

1 Do you wish this witness to be excused?

2 MR. HIXSON: Absolutely, Your Honor.

3 MR. LONG: Yes sir.

4 THE COURT: You are excused to go back to your regular
5 duties.

6 A. Thank you, Your Honor.

7 THE COURT: Gentlemen, y'all come and talk to me for
8 just one second.

9 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

10 THE COURT: All right, ladies and gentlemen, what we
11 are going to do is recess for the evening at this point in
12 time. I have some matters that I have to handle outside your
13 presence, so no sense in you sitting in your jury room while I
14 do that.

15 Please remember when you go home this evening, not to
16 talk about this case with anyone at home or elsewhere.
17 Unintentionally people will give you their opinion. They
18 don't have an opinion about this case. I told you, you can't
19 talk about this case, so obviously nobody else can talk to you
20 about it. If somebody would persist in trying to talk to you
21 about this case after you tell them not to, please inform the
22 Court who that person is and we will take care of that person.

23 You can't conduct any investigation on your own. You
24 can't look up anything on the internet; you can't do any kind
25 of research on your own on any matter. You must decide this

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1 case solely upon the evidence that is presented in this
2 courtroom, and from no other source, so with that I'm going to
3 ask that you be back tomorrow morning, 9:30. I'll see you
4 back in your jury room, 9:30.

5 Thank you very much.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: All right, gentlemen, we are going to take
9 a short break for about five or ten minutes, then we'll come
10 in and hear the suppression motion at that time.

11 Thank you.

12 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
13 THE PRESENCE OF THE JURY.)

14 THE COURT: All right, Mr. Long, I'll be glad to hear
15 from you, sir.

16 MR. LONG: Thank you, Your Honor. Your Honor, this --
17 I am moving to suppress the evidence that was seized from a
18 black duffle bag. The basis of my motion is this. I
19 understand the facts to be as follows: Officer Williams, on
20 the dark, almost raining night, pulls up beside a vehicle,
21 looks through the driver's side window and sees what appears
22 to be a beer can in the hand of Danny Brown, the passenger of
23 the car. He pulls behind them, walks up to the driver's side
24 window, inquires about the video -- I'm sorry ---

25 THE COURT: Go ahead.

1 MR. LONG: ---Inquires about the can, finds the can,
2 walks around, asks Danny to exit the vehicle, places him under
3 arrest for open container, and then searches a black duffle
4 bag. The driver of the car was not under arrest. This is not
5 an inventory search, because the car, at this point, would
6 have still been free to go, was not ready to be towed. The
7 pat-down, and the necessary search of Danny Brown, as required
8 by his arrest, was done, and that should have ended any search
9 of Danny Brown or the contents of that vehicle without
10 consent. There is no evidence in here, in this trial, that
11 consent was requested of either of the occupants of the car to
12 remove a black duffle bag from the floorboard of that car and
13 just begin searching it. That's where the items, this bag,
14 State's Number 2, that's not in evidence -- that's where that
15 bag was recovered, and Your Honor, based on the Fourth
16 Amendment, based on the requirements of the police officer out
17 there, I firmly believe that that evidence should be excluded
18 from the trial in this case.

19 THE COURT: All right, sir.

20 All right, Mr. Hixson, be glad to hear from you, sir.

21 MR. HIXSON: Your Honor, I don't think that we -- the
22 initial facts, the basis for the stop, are controverted. The
23 Defendant -- excuse me -- the Officer in this case stopped the
24 Defendant based on his observation of a misdemeanor being
25 committed in his presence. Prior to placing the Defendant

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1 under arrest he inquired as to the personal belongings, and
2 indicated -- affirmatively indicated, expressly indicated that
3 those, in fact, were his personal belongings. They didn't
4 belong in that vehicle. They belonged with Mr. Brown during
5 Mr. Brown's transport from that area. Certainly he's entitled
6 to look in that area if it was a protective sweep, and for
7 officer's safety, in addition to the fact that he expressly
8 said that the search inventory to being placed under arrest --
9 Mr. Brown expressly said that's his item -- and he is allowed
10 to do that as a search incident to an arrest, and the
11 protective sweep would be after that fact if
12 (unintelligible) -- doesn't think he was allowed to go in to
13 begin with.

14 Even if the Defendant wasn't placed under arrest we
15 think there is a protective sweep issue when he is not sure;
16 he's there by himself and he's not sure what Rodney Smith's
17 situation is, to be -- for officer's safety, to make sure
18 there is no weapon or anything else that could harm the
19 officer in the stop, Your Honor, so we would respectfully ask
20 that that motion be denied.

21 THE COURT: All right. Well, let's look at the facts
22 here, as testified. The Officer testified that, when he gets
23 to the passenger side of the vehicle, said he observed the
24 bag. Gets to the passenger side of the Defendant, gets the
25 Defendant out of the vehicle, arrests him, handcuffs him, puts

1 him in his car. Now, he testified to two different things
2 today. One, that he then got the bag and put it on the
3 sidewalk, and then he also said, when he was arresting the
4 Defendant he got the bag and put it on the sidewalk. There
5 was no doubt that the bag was on the sidewalk, and he hadn't
6 looked at it at all when he put the Defendant in the patrol
7 car. The Defendant was handcuffed and in the patrol car,
8 couldn't get out, and the bag is on the sidewalk. He
9 testified this time -- and he clearly -- and I'll say this for
10 a fact. He clearly did not testify to this at his previous
11 testimony under oath. In this time, the fact that I'm talking
12 about right now -- he said this time that it was an unknown
13 bag; there might be a safety issue; there might be a weapon;
14 it might pose a threat. The Officer never, at any point in
15 time, mentioned anything like this in his previous testimony,
16 under oath, when the Court declared a mistrial before. He
17 never said anything about that.

18 In his prior testimony, under oath, all he said was, he
19 secured the bag, put it on the sidewalk, put the Defendant
20 under arrest in his car, and then he went back and opened up
21 the bag, didn't give any ---

22 MR. HIXSON: Did ---

23 THE COURT: No sir. No sir. That is clearly what he
24 said, and there is no doubt about that's what he said before.
25 He never, ever said anything about that in his prior

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1 testimony, because I made note of it when I heard this matter
2 before, because I saw this issue coming up.

3 He now, in this testimony before the Court, has raised
4 the issue about bag safety issue, weapon poses a threat. Even
5 with that you've got a bag that's on the sidewalk; he goes
6 over, unzips the bag, rummages through it, sees the Frito bag
7 that is open but crumpled shut, opens up the Frito bag and
8 sees what he believes to be drugs. All during this point in
9 time the driver of vehicle is not under arrest. The driver of
10 the vehicle is on the other side of the car.

11 I have looked at -- and I'm going to give you some cases
12 to look at over night, gentlemen, and we will revisit this
13 issue in the morning. I want y'all to look at -- and these
14 are all United States Supreme Court Decisions -- Florida
15 versus Wells, found at 495 U.S. 1, 110 Supreme Court 16-32,
16 109 Lers Edition 2nd 1 -- it's a 1990 Decision of the United
17 States Supreme Court -- United States versus Chadwick, 433
18 U.S. 1, 97 Supreme Court 24-76, and that one is a 1977
19 Decision of the U.S. Supreme Court. Then you've got
20 California versus Acevedo. I may not be pronouncing it
21 correctly, but it's spelled A.c.e.v.e.d.o., found at 500 U.S.
22 565, 111 Supreme Court 1982, and it's a 1991 Decision of the
23 U.S. Supreme Court.

24 Gentlemen, y'all need to read those Decisions. We will
25 revisit this issue in the morning.

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1 MR. LONG: Thank you, Your Honor.

2 THE COURT: Mr. Hixson, Mr. Long, I want to talk to
3 y'all in my chambers.

4 Thank you very much.

5 MR. LONG: I do have one matter, Your Honor, before ---

6 THE COURT: Yes sir.

7 MR. LONG: We visited my client being out on bond
8 before ---

9 THE COURT: Yes sir.

10 MR. LONG: ---Come to a close of the testimony again
11 today. I have stayed in contact, and so has he, with the
12 bonds lady. She is till willing to stay on his bond, and we
13 are hoping, Your Honor, since Danny has always done what was
14 required of him -- he's been here, not this last week, we mis-
15 tried a case, came back this week. He helps -- looks after
16 his elderly mother here, Ms. Brown, and I'm hoping that he can
17 go home tonight and be fresh tomorrow and help me defend this
18 case tomorrow and remain out on bond.

19 THE COURT: All right. Mr. Brown, please stand, sir.
20 You remain under the bond as previously issued. You
21 understand that?

22 A. Yes sir.

23 THE COURT: The condition of those bond -- bond, is
24 that if you do not come back for trial this trial will
25 continue in your absence. You understand that?

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1 A. Yes sir.

2 THE COURT: You further understand a bench warrant will
3 be issued for your arrest?

4 A. Yes sir.

5 THE COURT: Further, I'm giving you a direct order that
6 you shall appear tomorrow morning by 9 A.M. in this courtroom.
7 Do you understand that?

8 A. Yes sir.

9 THE COURT: If you do not obey that direct order you
10 are subject to being held in contempt of court, and that will
11 subject you to a year in the Department of Corrections,
12 notwithstanding what happened in this proceeding. You
13 understand that?

14 A. Yes sir.

15 THE COURT: Under those terms and conditions I'll allow
16 him to remain out on bond.

17 Thank you very much.

18 MR. LONG: Thank you, Your Honor.

19 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, SEPTEMBER
20 13, 2006, OUTSIDE THE PRESENCE OF THE JURY.)

21 THE COURT: All right. Mr. Long, you had made a
22 suppression motion, and I had asked y'all to look at some
23 cases, and y'all have brought some other material to me to
24 look at, so what I'm going to do at this point in time is, I'm
25 going to take the matter under advisement, and I will rule on

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1 it when the State and the defense have rested their case.

2 Is the State ready to proceed?

3 MR. HIXSON: Yes, I am, Your Honor.

4 THE COURT: All right. Is the defense ready?

5 MR. LONG: Yes sir.

6 THE COURT: Have the jury come in, please.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen. We are ready to continue on with the trial of this
11 case.

12 Is the State ready to continue?

13 MR. HIXSON: I am, Your Honor.

14 THE COURT: Call your next witness, sir.

15 MR. HIXSON: Thank you, Your Honor.

16 The State calls Rodney Smith.

17 May we approach briefly, Your Honor?

18 THE COURT: Absolutely.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 (THE WITNESS, RODNEY SMITH, IS SWORN AT THIS TIME.)

21 THE COURT: All right, ladies and gentlemen, I'm sorry.
22 You need to go back to your jury room for a minute, and I'll
23 call you back out in just a second.

24 Thank you very much.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

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1 JURY.)

2 THE COURT: Madame Clerk, call Ms. Barbara Pratt and
3 tell her to come over here now, please Ma'am.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: Is the State ready to proceed?

7 MR. HIXSON: Yes, we are, Your Honor.

8 THE COURT: Defense?

9 MR. LONG: Yes sir.

10 THE COURT: Ask the jury to come in, please.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY.)

13 THE COURT: All right, Solicitor. You may proceed,
14 sir.

15 MR. HIXSON: Thank you very much, Your Honor.

16 RODNEY SMITH, being first duly
17 sworn, testifies as follows:

18 DIRECT-EXAMINATION BY MR. HIXSON:

19 Q. Where do you live, sir?

20 A. Myrtle Beach.

21 Q. Myrtle Beach. And how long have you lived there?

22 A. Twenty years.

23 Q. Twenty years. And what do you do for a living?

24 A. Well, I'm disabled right now.

25 Q. All right. I can see you have a medical condition of

1 some kind. Are you doing all right?

2 A. Yes, so so, sir.

3 Q. Were you living in Myrtle Beach around October 6, of
4 2005?

5 A. Yes.

6 Q. Okay. Do you remember that day?

7 A. Yes.

8 Q. Okay. Could you please tell the jury about that day,
9 specifically -- let me try to rephrase that -- did you see
10 Danny Brown on that day?

11 A. Yes, I saw him.

12 Q. Okay. Could you please tell the jury about that day.

13 MR. LONG: Your Honor, I'm sorry.

14 THE COURT: Yes sir.

15 MR. LONG: May we approach?

16 THE COURT: Absolutely.

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

18 THE COURT: Continue on, please. Thank you.

19 MR. HIXSON: I apologize.

20 Q. Do you remember seeing Danny Brown on October 6, of
21 2005?

22 A. Yes.

23 Q. Could you please tell the jury about that day.

24 A. It been in the afternoon. I had stopped to the Hess
25 station on 9th Avenue south to get some gas, and he was there,

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1 and he approached me for a ride, and which we were going to
2 transact some business together, and he said I have to give
3 him a ride home in order to transact the business. I'm going
4 to buy some drugs from him. So on our way home -- he went --
5 he went and he brought a duffle bag into my car, and we left.
6 We got about six blocks down the road and we got stopped by a
7 County Police, and he noticed that Danny was drinking a beer,
8 and he stopped us and he -- they took the duffle bag out the
9 car and they had took me out and checked my license. My
10 license was suspended. So they told me to go sit back down,
11 and they been checking the duffle bag. We -- I didn't know
12 what was in it yet, until -- then they took both of us to
13 jail, and I found out he had a large sum of cocaine in the
14 bag.

15 Q. Let me -- that's basically what happened, overview?

16 A. Yes sir.

17 Q. Let's go back and talk about a little details.

18 A. Okay.

19 Q. You said you were at the Hess station?

20 A. Yes sir.

21 Q. Is that right across from Schlowsky's Deli, right near
22 there ---

23 A. Yes.

24 Q. ---And the Circle K. What did you say that Danny Brown
25 was doing there?

- 1 A. He was just standing there talking to the attendant in
2 the little booth.
- 3 Q. Did you know Danny Brown before?
- 4 A. Yes, I knew him before.
- 5 Q. And how did you know him in the past, in what capacity?
6 Are y'all buddies?
- 7 A. No. We have -- no, we are associates of each other.
8 We had -- deal with each other before.
- 9 Q. And what do you mean by associates, and dealing with
10 each other?
- 11 A. I mean, I didn't buy drugs from him before.
- 12 Q. Okay. So did you approach Danny Brown in the Hess
13 station?
- 14 A. No, he approached me.
- 15 Q. Okay. And what did he say to you at that time?
- 16 A. He said he was straight.
- 17 Q. And what -- what does that mean?
- 18 A. That mean that he had something, if I need any.
- 19 Q. Had something, meaning Diet Coke, or what did he mean?
- 20 A. He had cocaine.
- 21 Q. And what did you say?
- 22 A. I said yes, I could use something.
- 23 Q. And did you ask him for a specific amount or anything?
- 24 A. Yes, a eight ball.
- 25 Q. Okay. I don't -- what does an eight -- what does that

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1 mean?

2 A. That's three and a half grams.

3 Q. Three and a half grams?

4 A. Uh huh (indicating positive)

5 Q. And then tell me what happened. Tell the jury what

6 happened.

7 A. Well, that meant that I got in -- we got in the car --

8 well, he got his stuff out somebody else automobile.

9 Q. Okay. When you say his stuff ---

10 A. His duffle bag.

11 Q. Okay.

12 A. His duffle bag.

13 Q. Okay. Let me show you what's already been put into

14 evidence, and that's State's 1. That's in evidence. Do you

15 recognize that picture?

16 A. I recognize the duffle bag. I didn't see what was in

17 it.

18 Q. Okay.

19 A. It was closed up.

20 Q. But that looks like the duffle bag he had?

21 A. Uh huh (indicating positive)

22 Q. I think you were -- well, you said that. You went back

23 to the car. Did you see that car?

24 A. Not really. I been way on the other side, and I

25 couldn't see it, because the building had blocked the car,

1 and it was raining at the time.

2 Q. Did you see who Mr. Brown -- was Mr. Brown with anybody
3 else in that car?

4 A. I'm not sure. Someone else had to been driving that
5 automobile, but I didn't see who it was.

6 Q. And why do you say that?

7 A. Because -- cause he went to the passenger's side, I
8 believe. He had to. If he would -- he had to went and get it
9 out that vehicle, and someone else had to have been driving
10 it.

11 Q. All right. You saw him walk across the parking lot to
12 your car?

13 A. Yes.

14 Q. And that's when I think you said he had a duffle bag?

15 A. Yes.

16 Q. Now, he gets into your Plymouth, I think; is that
17 right?

18 A. Yes.

19 Q. And then please tell us -- you already did. Just try
20 to be in a little bit more detail. I'm sorry to belabor the
21 point. Did you guys have any conversation in the car while
22 you were driving?

23 A. Not really. Just idle talk about going -- we really
24 didn't say nothing too much to each other. I didn't even
25 notice that he had a beer, because the weather was so bad. I

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1 had my eye on the road.

2 Q. Okay. Now, why didn't you guys just take care of your
3 business in the parking lot of the Hess station?

4 A. I don't -- I don't know that. I didn't -- that didn't
5 come up. I didn't know he had nothing. I thought I had to
6 take him home in order to get it.

7 Q. Now, at some point in time during the course -- you
8 were arrested; is that right?

9 A. Yes.

10 Q. And they found -- were you there when they searched
11 your car ---

12 A. Yes.

13 Q. ---When the police department searched your car.

14 Let me show you what's been marked as State's 3. That's
15 in evidence. Do you recognize that?

16 A. Yes.

17 Q. And what is that?

18 A. That was the stuff I had under my seat.

19 Q. Is that your black pouch?

20 A. Yes.

21 Q. And those are your drugs in there?

22 A. Yes.

23 Q. Now, when you referred to an eight ball, what are those
24 items in the picture referred to? Is that an eye ball?

25 A. Yeah, that would be -- that's less than an eight ball,

1 but it would be like that.

2 Q. And is that for your use, or were you going to resell
3 that?

4 A. That been for my use.

5 Q. So did you know that there were -- what appeared to be
6 crack cocaine in Danny Brown's duffle bag?

7 A. No.

8 Q. And once again, why not?

9 A. I didn't know.

10 Q. And why didn't you know?

11 A. Because he just brought the bag in the car, and he
12 didn't tell me nothing, so -- and, you know, he usually go to
13 the gym. I figured he been on his way back from the gym.

14 Q. Okay. At some point in time now you gave a -- did you
15 give a statement to law enforcement?

16 A. Yes.

17 Q. Did you give a statement to the police when you were
18 arrested?

19 A. Yes.

20 Q. And at that time did you take responsibility for the
21 drugs under the driver's seat?

22 A. Yes.

23 Q. Now you are currently charged with all your offenses;
24 is that right?

25 A. Yes.

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1 Q. In fact, it -- do you know what -- all the offenses you
2 are charged with?

3 A. Not really. I know I was charged with the stuff in his
4 duffle bag too.

5 Q. Are you all right?

6 A. Yes, I'm okay.

7 Q. Do you know all the charges -- are you aware of all the
8 charges you are charged with?

9 A. No.

10 Q. Are you charged with the offenses in your pouch as
11 well?

12 A. Yes.

13 Q. And all those charges are still pending?

14 A. Yes.

15 Q. Now, at some point in time did you -- you were
16 represented by an attorney; is that right?

17 A. Right.

18 Q. And is your attorney present in the courtroom today?

19 A. Yes.

20 Q. And who is that?

21 A. Barbara Pratt.

22 Q. Now you are getting up here telling this jury
23 everything that happened. Did the State promise you anything
24 for your testimony?

25 A. No.

1 Q. Did you enter into any kind of discussion, or
2 agreement, with the State in regards to your testimony?

3 A. No. I just was going to try to clarify what happened.

4 Q. Well, did you sign some kind of proffer agreement about
5 your testimony?

6 A. I wrote a statement -- I signed a statement. That was
7 all.

8 Q. Okay.

9 MR. HIXSON: Beg the Court's indulgence, Your Honor.

10 THE COURT: Yes sir.

11 MR. HIXSON: Approach the witness with that?

12 THE COURT: Yes sir.

13 Q. Does that refresh your recollection?

14 A. Yes.

15 Q. Okay. Now, can I ask you a question if that refreshes
16 your recollection. Did you enter into any type of agreement
17 with the State in regards to your testimony?

18 A. Well, the State -- the State said there ain't nothing
19 they -- you know, they could really do for me, but to testify.

20 Q. Okay. Was your attorney with you during the course of
21 those discussions?

22 A. Yes.

23 Q. Has anybody threatened you in any way for your
24 testimony?

25 A. No.

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1 Q. And no promises have been made to you?

2 A. (NODS HEAD NEGATIVE)

3 MR. HIXSON: I have no further questions for this
4 witness at this time, Your Honor.

5 COURT REPORTER: I'm sorry. I didn't get his last
6 answer.

7 Q. All right. Could you please, for the court reporter?

8 A. No.

9 THE COURT: All right. Mr. Long.

10 MR. LONG: One moment, please, Your Honor.

11 THE COURT: Yes sir.

12 MR. LONG: Thank you, Your Honor.

13 THE COURT: Yes sir.

14 CROSS-EXAMINATION BY MR. LONG:

15 Q. Mr. Smith, I'm Russell Long. How are you doing?

16 A. All right, sir.

17 Q. We have never met before, but I think you understand I
18 represent Danny.

19 A. Yes.

20 Q. I'm going to ask you some questions about the incident
21 first, and then I'm going to ask you some questions about
22 these agreements that you signed.

23 You say -- is it true that you say that you pulled up to
24 a Hess station in Myrtle Beach, and the weather was real bad?

25 A. Yes sir.

1 Q. How bad -- what was ---
2 A. It had been raining.
3 Q. Was it dark outside?
4 A. It was just starting to get dark.
5 Q. What time of day was it?
6 A. It had to have been about 6:30, seven o'clock, I
7 believe.
8 Q. Okay. And it was October, so the time had changed; is
9 that right?
10 A. Yes sir.
11 Q. And you say you just happened to find Danny Brown. He
12 was there in ---
13 A. Yes.
14 Q. ---As a passenger in another vehicle, right?
15 A. Right.
16 Q. And Danny -- you would agree with me that Danny asked
17 for a ride home?
18 A. Yes.
19 Q. And he got in the car for you to give him a ride home,
20 and y'all started -- headed southbound down business 17; is
21 that right?
22 A. Right.
23 Q. And did you have your windows up or down?
24 A. It was up.
25 Q. Your windows were up?

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- 1 A. Yes.
- 2 Q. Are you sure?
- 3 A. Yes. The one -- it been raining.
- 4 Q. It was raining. So your window was up. Was Danny's
- 5 window up?
- 6 A. Yes.
- 7 Q. Okay. And did you have your lights on?
- 8 A. Yes.
- 9 Q. Did you have to have your lights on?
- 10 A. Yes.
- 11 Q. And your car -- you had an older model car so they
- 12 don't come on automatic; you have to turn them on, right?
- 13 A. You have to turn them on.
- 14 Q. Did you have your lights on when you were going to the
- 15 Hess station?
- 16 A. Yes.
- 17 Q. Okay. So you head down the highway, lights on, windows
- 18 up; it's raining, and riding down the road with Danny Brown,
- 19 and you say he got in your car and he put a black duffle bag
- 20 on the floorboard, right?
- 21 A. Yes.
- 22 Q. Now, it's true, isn't it, your car doesn't have a
- 23 center console like all of our -- almost every car nowadays
- 24 has a big center console. Your car is an older car. It's
- 25 just a big floorboard, right?

1 A. Yes.

2 Q. And he put that duffle bag in the middle, right between
3 you and him, right?

4 A. No. He put that duffle bag down between his legs.

5 Q. Down between his legs. And how big a car is it? What
6 kind of car is it?

7 A. It been a '76 Plymouth Fury.

8 Q. A classic. So he put the duffle bag down on the
9 floorboard between his legs. Y'all started down the road.
10 Your -- the pouch of drugs that you had up underneath your
11 seat, did you put those up under there at that time, or had
12 they been there for a while?

13 A. I put them up under.

14 Q. You put them up under there?

15 A. Uh huh (indicating positive)

16 Q. Is that where you usually keep them?

17 A. Yes.

18 Q. Is that the pouch you usually carry them in?

19 A. Yes.

20 Q. How long you been selling drugs?

21 A. Probably a couple of years.

22 Q. Is this the first time you got caught?

23 COURT REPORTER: Excuse me. Your answer, aloud please.

24 A. Yes.

25 Q. So, you are driving down the highway. Did you see a

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1 police car behind you?

2 A. We passed -- I think we passed by the police car. He
3 was on the opposite side.

4 Q. All right. Wait a minute now. You passed by a police
5 car, and he was on the opposite side. What does that mean?
6 Does that mean he ---

7 A. He had to swing back.

8 Q. I'm sorry.

9 A. I think he had to swing back around behind us.

10 Q. Okay. So you think the police car was going in the
11 other direction?

12 A. Yes.

13 Q. And you think he did a u-turn and got behind you?

14 A. Yes.

15 Q. Were you in the -- you are going to Highway 17, there's
16 two lanes of traffic. There is what I call the center lane,
17 which is close to the median, and there's a right-hand lane
18 over here by the curb. Which lane were you driving in?

19 A. I think the outer lane.

20 Q. Well, do you know?

21 A. The answer been the outer lane.

22 Q. The right-hand lane?

23 A. Right-hand lane.

24 Q. All right. So, the police car did a u-turn and got
25 behind you, right?

- 1 A. I think so.
- 2 Q. Well, do you think -- I kind of need you to know, sir.
- 3 A. I'm not ---
- 4 Q. If you don't know, tell me you don't know.
- 5 A. I don't know exactly, sir.
- 6 Q. Okay. So you are not sure but ---
- 7 A. I'm not sure.
- 8 Q. ---But did you see a police car?
- 9 A. Yes.
- 10 Q. Okay. And did you see a police car eventually get
- 11 behind you?
- 12 A. Yes.
- 13 Q. Did that police car pull up beside you? I'm doing my
- 14 hands like this, like he was going in the same direction. Did
- 15 he come up beside you?
- 16 A. I'm not sure.
- 17 Q. Okay.
- 18 A. I don't think he came up beside me.
- 19 Q. You don't think he came up beside you?
- 20 A. Uh uh (NODS NEGATIVE)
- 21 Q. So the police car came up behind you, and he put his
- 22 blue lights on right away; is that right?
- 23 A. Yes sir. Well, we just had drive six blocks ---
- 24 Q. Okay.
- 25 A. ---From the Hess station.

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- 1 Q. Six blocks from the Hess station?
- 2 A. Uh huh (indicating positive)
- 3 Q. He got behind you, and he put his blue lights on, and
- 4 you stopped pretty quick, right?
- 5 A. Yes sir.
- 6 Q. You didn't turn off then into a parking lot or
- 7 anything?
- 8 A. No.
- 9 Q. Why did you stop in the highway?
- 10 A. I pulled on the side.
- 11 Q. You pulled to the side?
- 12 A. On the side of the road.
- 13 Q. Well, there's a curb there, right?
- 14 A. Yes, but he been -- that's where he been behind me.
- 15 Q. I'm sorry.
- 16 A. That's where I pulled at.
- 17 Q. You went up on the curb?
- 18 A. No. I hadn't went on the curb. I pulled right by the
- 19 curb.
- 20 Q. You just stopped in the middle of the highway?
- 21 A. Yes.
- 22 Q. You stopped in the middle of the highway?
- 23 A. Yes.
- 24 Q. My question was why? Why didn't you pull off?
- 25 A. I don't know why.

1 Q. All right. And when the police officer came -- is this
2 the police officer right here, Officer Williams?

3 A. Yes.

4 Q. Do you recognize him. When he came up to the car did
5 you come to your window or to Danny's window?

6 A. I think he came to my window.

7 Q. All right, and then he -- did you roll the window down
8 for him?

9 A. Yes.

10 Q. Has yours got -- you gotta roll it like this, or is it
11 electric?

12 A. Uh huh (indicating positive)

13 Q. Did you roll it?

14 A. (NODS HEAD AFFIRMATIVE)

15 Q. Okay. And what did he say to you?

16 A. He said -- he said, was that a beer -- was that's a
17 beer you -- Danny lift up.

18 Q. I'm sorry.

19 A. Was that a beer he's drinking.

20 Q. He said, was that he a beer he was drinking. Was he
21 asking you that question?

22 A. No, asking Danny.

23 Q. All right. Did he ask Danny, to Danny, is that a beer
24 you are drinking?

25 A. Yes.

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- 1 Q. That's what he said. And then what did Danny say?
- 2 A. I don't -- Danny -- I'm not exactly -- Danny then
- 3 tucked the beer can away.
- 4 Q. Say that again.
- 5 A. He had already tucked the beer can away.
- 6 Q. Who had took the beer can away?
- 7 A. Danny. He already tucked the beer can away.
- 8 Q. Tucked the beer can away?
- 9 A. Yes.
- 10 Q. Okay.
- 11 A. And then he went to see -- went to his door, opened his
- 12 door, and he found the beer can.
- 13 Q. Okay. Wait a minute now. Officer Williams walked
- 14 around the car and opened Danny's door ---
- 15 COURT REPORTER: Excuse me. Your answer, aloud. What
- 16 was your answer?
- 17 Q. Did he walk around and open Danny's door?
- 18 A. Yes. Yes.
- 19 Q. Was Danny's window still up?
- 20 A. Yes.
- 21 Q. Did he reach into that car and grab that beer can?
- 22 A. I think he asked Danny to step out ---
- 23 Q. Okay.
- 24 A. ---And then he found the beer can.
- 25 Q. Danny found the beer can. Where was the beer can?

- 1 A. Right down -- he had 'em tucked down, right between the
2 seats, in his jacket.
- 3 Q. The beer can was tucked down between your seat and his
4 seat?
- 5 A. No. No. He had it already in his jacket.
- 6 Q. Okay. And you were pointing down to your left side.
7 Is that the side that Danny had the beer can tucked down in?
- 8 A. He had put it down in his jacket. He had a jacket, and
9 he had the beer can already in his jacket.
- 10 Q. Okay. That's good. Where Danny had tucked that beer
11 can, okay -- where that beer can was tucked, was it in what I
12 call plain view, or did -- was it hidden?
- 13 A. It was hidden.
- 14 Q. It was hidden. So the police pulled Danny out of the
15 car, and then what? Did he put the cuffs on him right away?
- 16 A. I believe if he found -- he found -- when he pulled
17 Danny out of the car he found the bag.
- 18 Q. Okay. He pulled Danny out of the car, and then he went
19 into the car, and looked around inside ---
- 20 A. Yes, and he had done found the beer ---
- 21 Q. ---Is that right?
- 22 A. He found the beer can. The beer can been in his coat.
- 23 Q. Okay. Hold on one second. I'm -- this is important.
24 Is it true that he took Danny out of the car, and then he went
25 back into the car and searched underneath the coat, and found

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- 1 the beer can; is that right?
- 2 A. Yes.
- 3 Q. That's the way it happened. And then when he found the
- 4 beer can, what did he say to Danny?
- 5 A. I think he handcuffed him then.
- 6 Q. He handcuffed him and he told him what, you are under
- 7 arrest?
- 8 A. Yes, I think he put him ---
- 9 Q. Did he tell him what he was under arrest for?
- 10 A. Yes. Open container, I think.
- 11 Q. And then what did the police officer do? Took Danny
- 12 back to his car?
- 13 A. Yes.
- 14 Q. So he took Danny back to his car, put Danny in the car.
- 15 What were you doing this whole time?
- 16 A. I was still sitting in the driver's seat.
- 17 Q. Sitting in the driver's seat. Just sitting there?
- 18 A. Yes.
- 19 Q. And then what did the police officer do next?
- 20 A. He came and got the duffle bag.
- 21 Q. He came back to the car, and went through Danny's door,
- 22 right? Was the door still open?
- 23 A. No. He was already ---
- 24 Q. He had already closed the door back?
- 25 A. Uh huh (indicating positive)

1 Q. The police officer went -- when he arrested Danny for
2 open container -- after he went in the car and found the beer
3 can you are telling me he arrested Danny, cuffed him, and shut
4 the door; is that right?

5 A. Uh huh (indicating positive)

6 Q. And took Danny and placed him in his car?

7 A. Right. No, let me rephrase that. I think he had Danny
8 on the back of the car, and that's when he went and get the
9 duffle bag.

10 Q. Okay. He handcuffed Danny and took Danny away ---

11 A. No. No.

12 Q. ---Some distance?

13 A. No. He -- I don't think he had Danny handcuffed yet.
14 He just had him standing up on the back.

15 Q. Behind the car?

16 A. Had him on the -- like the trunk of my car, just had
17 him standing there.

18 Q. Could you see? It was raining. Were you looking in
19 the rear view mirror or something?

20 A. Uh huh (indicating positive)

21 Q. Could you tell if Danny was handcuffed or not? You
22 couldn't ---

23 A. I couldn't tell.

24 Q. ---Tell, could you. But he had Danny back there?

25 A. Yes.

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- 1 Q. And then after he got Danny back there, it's true
2 that -- that -- Danny's door was closed. It's true, isn't it,
3 that he came back and opened that door again, right?
- 4 A. Right.
- 5 Q. He opened Danny's door again, and he reached in the
6 car, and he grabbed the black duffle bag, right?
- 7 A. Right.
- 8 Q. Did he ask you anything about that bag?
- 9 A. No, not really.
- 10 Q. Didn't ask you a single thing about that bag. Had he
11 asked you a single question yet?
- 12 A. He had asked me for my license.
- 13 Q. When did he do that?
- 14 A. That was when he first stopped us.
- 15 Q. When he first stopped you he asked for your license?
- 16 A. (NODS HEAD AFFIRMATIVE)
- 17 Q. So then he reached in there, he got that duffle bag,
18 and isn't it true, he pulled the duffle bag out, put it on the
19 sidewalk, unzipped it, and started looking through it, right?
- 20 A. Yes.
- 21 Q. Were you watching him do this?
- 22 A. I couldn't see him do it.
- 23 Q. You couldn't see him do it?
- 24 A. I couldn't see him do that.
- 25 Q. Why?

1 A. Because he was on that side.

2 Q. He was on the right-hand side and the door was open at
3 this point, right?

4 A. The door was -- he had done shut the door back.

5 Q. He shut the door again?

6 A. Yes. And in my glass, you know -- an old car, and the
7 windows been fogged up.

8 Q. Say it again.

9 A. The windows is fogged up ---

10 Q. The windows were fogged up.

11 A. ---On my car.

12 Q. Were the windows fogged up before he put the blue
13 lights on you?

14 A. It been -- not that foggy, because I had the defrost.

15 Q. You had the defrost on before he put the blue lights
16 on. Did you turn the defrost off when he stopped you?

17 A. I cut the whole car off.

18 Q. You cut the whole car off. I've got you. Was it hot
19 or cold outside?

20 A. Excuse me.

21 Q. Was it hot or cold outside?

22 A. It been -- it been kind of warm, because I think I had
23 the air-conditioner on.

24 Q. You had the air-conditioning and the defrost on at the
25 same time ---

RODNEY SMITH - CROSS BY LONG

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- 1 A. Well, I had them on cool, then I had put them on
2 defrost.
- 3 Q. All right. Okay. So, he pulled the bag out, searches
4 through the bag. He zipped the bag back up. Did you see him
5 do that?
- 6 A. I didn't see the bag no more.
- 7 Q. You didn't see the bag?
- 8 A. Uh uh (NODS NEGATIVE)
- 9 Q. And then what did the police officer do?
- 10 A. He called -- he came back to my side and he asked me to
11 step out of the car. I stepped out, and at that time he asked
12 me if I knew my license had been suspended. I said, yes. He
13 handcuffed me, and took me and put me in the car.
- 14 Q. In the same car that he put Danny in?
- 15 A. No. It was in another one.
- 16 Q. What car?
- 17 A. It was another cruiser.
- 18 Q. So another policeman had come by this time?
- 19 A. Yes.
- 20 Q. You would agree with me, sir, that there was a long
21 time between him looking in the black duffle bag and another
22 police car getting there?
- 23 A. No, it ain't been that long.
- 24 Q. It wasn't that long?
- 25 A. Uh uh (NODS NEGATIVE)

- 1 Q. Okay. He didn't get you out of the car until another
2 police car got there though, right?
- 3 A. Yes sir.
- 4 Q. Okay. And when the police officer -- you got in the
5 car with the policeman, isn't it true that you told that
6 policeman, I don't even know that guy? Didn't you tell him
7 that?
- 8 A. No, I don't remember saying it.
- 9 Q. You don't remember saying that?
- 10 A. Uh uh (NODS NEGATIVE)
- 11 Q. Okay. The charges that they brought against you
12 included trafficking in cocaine, right?
- 13 A. Yes.
- 14 Q. Trafficking in a hundred and twenty-two grams of
15 cocaine, correct?
- 16 A. Correct.
- 17 Q. And you are still charged with that crime, right?
- 18 A. Right.
- 19 Q. And you've got a lawyer, Ms. Barbara Pratt, a very fine
20 lady, a good lawyer, right? That's your lawyer.
- 21 THE COURT: Give him your answer, sir.
- 22 A. Yes sir.
- 23 Q. And on the day that this thing happened, the policeman,
24 Mr. Delpercio, Detective Delpercio, who is not here today --
25 but he went into the jailhouse to talk to you without a

RODNEY SMITH - CROSS BY LONG

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- 1 lawyer; is that right?
- 2 A. Right.
- 3 Q. You didn't have a lawyer at that time?
- 4 A. Right.
- 5 Q. And Officer Williams was in there with him?
- 6 A. Yes.
- 7 Q. He was in the room too. So, Williams and Delpercio
- 8 went into a room with you at J. Reuben Long, and sat down with
- 9 you, and what did they tell you?
- 10 A. That's when I found out.
- 11 Q. When you found out what?
- 12 A. That's when I found out it been a hundred and twenty-
- 13 two grams of cocaine was in that bag.
- 14 Q. And what did they tell you they could do for you?
- 15 A. They didn't really tell me they could do nothing for
- 16 me.
- 17 Q. Okay. You signed -- you wrote out a little three line
- 18 statement for them. Do you remember that?
- 19 A. Yes sir.
- 20 Q. And would you -- would you agree with me that, what you
- 21 told them was, that the drugs under the seat were yours, and
- 22 you had been dealing drugs for about a year. That's what you
- 23 said?
- 24 A. Yes sir.
- 25 Q. Is that all you told them that day?

1 A. Yes sir.

2 Q. That was it?

3 THE COURT: Was that a question, Mr. Russell ---

4 Q. Was that it?

5 THE COURT: ---Mr. Long?

6 A. Yes.

7 THE COURT: All right.

8 Q. Now, that was October the 6th, 2005; is that correct?

9 A. Right.

10 Q. When did you get a lawyer?

11 A. I got a lawyer the following week. I didn't get out --

12 I didn't get from incarcerated till that Monday. That was a

13 Thursday.

14 Q. Okay. Now, on August the 30th of 2006, you had a

15 meeting with your lawyer and who? August 30th. I'm talking

16 about a couple of weeks ago.

17 A. Okay.

18 Q. You had a meeting with your lawyer and who else?

19 A. The Solicitor ---

20 Q. Mr. Hixson?

21 A. Uh huh (indicating positive)

22 Q. Who else?

23 A. ---And Debecio.

24 Q. Delpercio?

25 A. Delpercio.

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1 Q. Okay. And they handed you what Mr. Hixson showed you,
2 which I'm going to show you again, what's called a Proffer
3 Agreement; is that right? Do you remember that?

4 A. Yes.

5 Q. Do you understand what that document means?

6 A. No.

7 Q. You don't have a clue. In fact, sir, all you know is,
8 isn't it true, that by signing this document you agreed to
9 come in and testify, and you certainly hope that you are going
10 to get something out of it; isn't that right?

11 A. Yes sir.

12 Q. And what you hope you are going to get out of it is,
13 you are going to get out of it; isn't that true?

14 A. Yes sir.

15 Q. And you agreed in this document that you would come in
16 here and testify, and you agreed that you would take a
17 polygraph test; remember saying that?

18 A. Yes.

19 Q. Have they given you a polygraph test?

20 A. No, sir.

21 Q. No. I show you the third page of that. Is that your
22 signature?

23 A. Yes sir.

24 Q. Okay. So after you signed this, you told them that you
25 ran into Danny Brown -- his daddy's name was Johnny Brown -- I

- 1 just slipped up -- you ran into Danny Brown, and y'all were
2 going to do a deal; he was going to sell you cocaine. That's
3 when you told them that, right?
- 4 A. Right.
- 5 Q. That's the first time you have ever told anybody that.
- 6 A. Right.
- 7 Q. After you signed that Agreement, right? You told them
8 that you were going to buy an eight ball cocaine, you were
9 going to pay a Hundred and Fifty Dollars for it, and the
10 deal -- and it just happened -- you just happened upon him but
11 that was going to happen; isn't that right?
- 12 A. Right.
- 13 Q. If you were going to buy cocaine from Danny Brown, how
14 come you didn't have any money in your pocket?
- 15 A. I did had money.
- 16 Q. I've seen the evidence sheet here. Are you sure you
17 had money in your pocket?
- 18 A. Yes. I had Two Hundred Fifty Dollars.
- 19 Q. Two Hundred and Fifty Dollars. Okay. And the drugs
20 that you had already in your car, according to you, were not
21 enough for you; is that right?
- 22 A. Right.
- 23 Q. And you had Xanax, marijuana, cocaine and crack
24 cocaine. Do you sell all of those drugs?
- 25 A. I'm a user too.

RODNEY SMITH - CROSS BY LONG

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- 1 Q. You are a user. What do you use?
- 2 A. I use all of them.
- 3 Q. You use them all.
- 4 A. Or I used to.
- 5 Q. I show you what's been marked as State's Exhibit Number
- 6 3. It looks like one, two, three, four little tiny ziploc
- 7 bags. You see that?
- 8 A. Yes.
- 9 Q. What is that? What are those two little tiny little
- 10 ziploc bags?
- 11 A. That's the way you sell it.
- 12 Q. That's the way you sell it?
- 13 A. Uh huh (indicating positive)
- 14 Q. What is this? What's in this bag?
- 15 A. Probably coke -- cocaine.
- 16 Q. Probably cocaine.
- 17 And then I'll show you this big -- looks like a sandwich
- 18 bag, with just a whole bunch of white stuff. What is that?
- 19 A. That's cocaine.
- 20 Q. Cocaine. And then these little brown bags, these two
- 21 little brown bags, what's that?
- 22 A. That's crack.
- 23 Q. Crack cocaine. Is that the difference between crack
- 24 and cocaine, for those of us that aren't that familiar? It's
- 25 a different color?

RODNEY SMITH - REDIRECT BY HIXSON

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1 A. Sometimes.

2 Q. Sometimes. What makes it a different -- what makes it
3 a different color?

4 A. On crack they cook it.

5 Q. They cook it?

6 A. Yes.

7 Q. Okay. Were you going to do all these drugs, or were
8 you going ---

9 A. I was going to sell some.

10 Q. Sell some and do some?

11 A. Yes sir.

12 Q. You are buying, selling and using, right?

13 A. Right.

14 MR. LONG: Thank you. You have been helpful.

15 THE COURT: Redirect, sir.

16 MR. HIXSON: Thank you, Your Honor.

17 REDIRECT-EXAMINATION BY MR. HIXSON:

18 MR. HIXSON: I would like to get this marked.

19 (3 PAGE PROFFER AGREEMENT MARKED STATE'S EXHIBIT NUMBER
20 9, FOR IDENTIFICATION ONLY.)

21 MR. HIXSON: Your Honor, I have marked this Proffer
22 Agreement as State's 9.

23 THE COURT: All right, sir.

24 Q. Mr. Smith, defense counsel made much of the Proffer

25 Agreement that you talked about signing. Do you recall that?

RODNEY SMITH - REDIRECT BY HIXSON

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1 Was this Agreement read to you by your attorney?

2 A. Yes.

3 Q. Did she discuss the contents of that with you during
4 the course of our discussions?

5 A. Yes.

6 Q. And so was she there to answer any questions that you
7 had about it?

8 A. Uh huh (indicating positive)

9 Q. Did you tell her that you understood?

10 A. Yes.

11 Q. I believe you indicated that was your signature?

12 A. Yes sir.

13 Q. Does that appear to be the same document that you
14 recall signing and us discussing, or a xerox copy of it?

15 You have to answer. The court reporter ---

16 A. Yes.

17 MR. HIXSON: At this time, Your Honor, the State would
18 like to move State's Exhibit 9 into evidence.

19 MR. LONG: No objection.

20 THE COURT: In evidence without objection.

21 (STATE'S EXHIBIT NUMBER 9 ADMITTED INTO EVIDENCE.)

22 MR. HIXSON: Your Honor, at this time the State would
23 not publish this to the jury. It's going to be sent to the
24 jury room for the jury to read.

25 THE COURT: All right. You can just give it to the

1 court reporter then, unless you need it.

2 MR. HIXSON: Can I just briefly ---

3 THE COURT: Yes sir.

4 MR. HIXSON: I guess I am publishing it if I'm going to

5 hand it around, Judge. It's a three-page document.

6 THE COURT: Do you wish to publish it or not?

7 MR. HIXSON: Yes -- yes, Your Honor, just ---

8 THE COURT: Any objection?

9 MR. LONG: No objection.

10 THE COURT: You may do so.

11 Q. Are there any promises contained in there?

12 A. No.

13 THE COURT: Please answer out loud, sir.

14 A. No sir.

15 Q. Defense counsel also indicated that you gave a

16 statement to law enforcement. I ask you that question also.

17 Do you remember just prior -- after your arrest?

18 A. Right.

19 Q. And you gave a written statement at that time?

20 A. Uh huh (indicating positive) Yes.

21 Q. And at that time did you indicate that -- took

22 responsibility for the drugs under your seat?

23 A. Yes.

24 Q. And you didn't know anything about the others?

25 A. I didn't know anything.

RODNEY SMITH - RECROSS BY LONG

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1 Q. And you entered into that statement prior to any
2 proffer of any kind; is that correct?

3 A. Right.

4 MR. HIXSON: Your Honor, I have no further questions.

5 THE COURT: Questions on those particular questions,
6 Mr. Long.

7 MR. LONG: Yes sir.

8 RECROSS-EXAMINATION BY MR. LONG:

9 Q. Mr. Smith, you said that, when your lawyer asked you if
10 you understood this Agreement, you said yes, but when I asked
11 you if you understood this Agreement today you said no. Why
12 would you do that?

13 A. Well, I guess I was just nervous, because I understand.

14 Q. You were nervous when?

15 A. Just now.

16 Q. Okay.

17 A. But they didn't -- they didn't promise me nothing.

18 Q. Who told you to say they didn't promise you nothing?

19 A. Sir, they didn't promise me nothing.

20 Q. Did somebody tell you to say they didn't promise you
21 nothing?

22 A. No. Uh uh (NODS NEGATIVE)

23 Q. Well, Mr. Hixson just asked you, are there any promises
24 in this document, and you said no.

25 A. Right.

1 Q. Are you sure there aren't promises in this document?

2 A. I'm sure. They said, you know, if I testify, then I go
3 up to trial, they may be lenient on me, what-not, but there
4 ain't no promises, nothing that he can promise me.

5 Q. Isn't it true that you don't know if there are promises
6 in here or not; they told you there aren't promises in here,
7 right?

8 A. Right.

9 Q. Let me read something to you, and you tell me if you
10 think this is a promise or not.

11 A. Okay.

12 Q. Does this -- is this sound like a promise to you?
13 Because you actually have an Agreement with these people right
14 here, okay, and I'm sure, when the day comes, you are going to
15 want to enforce it, so let me ask you if think this is a
16 promise.

17 THE COURT: Mr. Long, if you would, ask questions,
18 please sir.

19 MR. LONG: I am, Your Honor.

20 THE COURT: All right, sir.

21 Q. In return for Rodney Smith's full compliance with all
22 terms stated within this Proffer, statements provided during
23 his debriefing will not be used in the criminal prosecution
24 currently pending against him by this office. Is that a
25 promise?

RODNEY SMITH - RECROSS BY LONG

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1 A. It sounds like it.

2 Q. All right. Let me ask you another one. Tell me if
3 this sounds like a promise. In return for Rodney Smith's full
4 compliance with all terms stated within this Proffer the State
5 shall take into consideration the materiality of his truthful
6 testimony and degree of cooperation in the election of
7 charges, and a recommendation of sentencing for your client in
8 this matter. Doesn't that sound like a promise?

9 A. Yes, it sounds like it.

10 Q. All right. I've got one more, and you tell me if this
11 sounds like a promise. The State agrees to fully inform the
12 Court of Rodney Smith's degree of cooperation, and the
13 relative benefit to the State at the time of his sentencing.
14 Does that sound like a promise to you?

15 A. Sounds like it.

16 Q. Those three things are in this Agreement, and when the
17 question was asked, are there any promises in this Agreement,
18 you said no. What do you say now?

19 A. Sounds like some promises.

20 Q. Okay. Thank you.

21 THE COURT: Anything else, Solicitor?

22 MR. HIXSON: Nothing, Your Honor.

23 THE COURT: You may step down, sir.

24 Do you wish this witness to be excused?

25 MR. HIXSON: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. LONG: I better be cautious with this witness, Your
3 Honor, and ask that he remain.

4 THE COURT: All right, sir. You remain under subpoena.
5 You may not leave at this point in time. Just have a seat in
6 the courtroom.

7 At the present time, Ms. Pratt, you are excused.

8 MS. PRATT: Thank you, Your Honor.

9 THE COURT: Thank you, Ma'am.

10 All right, Solicitor, your next witness.

11 MR. HIXSON: Yes, Your Honor. At this time the State
12 would call Deidre Faulk to the witness stand.

13 DEIDRE FAULK, being first duly
14 sworn, testifies as follows:

15 DIRECT-EXAMINATION BY MR. HIXSON:

16 Q. Good morning.

17 A. Good morning.

18 Q. What do you do for a living?

19 A. I work for the Horry County Police Department.

20 Q. And when -- in what capacity?

21 A. I work in the Property and Evidence Section.

22 Q. Okay. And what are your responsibilities in the
23 Property and Evidence Section?

24 A. I'm responsible for all the evidence that the officers
25 turn in regarding any case that they make on the road.

DEIDRE FAULK - DIRECT BY HIXSON

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1 Q. And when you say responsible for that, do you log
2 evidence in? Do you take custody and control of that
3 evidence?

4 A. Yes sir. I take custody and control of all evidence.
5 They are secured in a locker. When I come in the next morning
6 we receive it; we log it, key it in the computer and place it
7 in the appropriate location for the type of evidence that they
8 turned in.

9 Q. So it's kind of like a desk job, a little bit?

10 A. Kind of, sort of.

11 Q. Is that safe to say?

12 A. Uh huh (indicating positive)

13 Q. A lot of coordination?

14 A. Yes sir.

15 Q. Let me show you what's been marked as State's Exhibit
16 2. See if you recognize that item.

17 A. Yes sir.

18 Q. Did you have an opportunity to come into contact with
19 that item at some point?

20 A. Yes sir.

21 Q. Did you log that item into evidence?

22 A. Yes, I did.

23 Q. That piece of property was in your custody and control
24 for a period of time?

25 A. Yes, it was.

1 Q. Did you tamper with it in any way?

2 A. No sir.

3 Q. Did you maintain the integrity of it?

4 A. Yes, I did.

5 Q. Did you make sure that no one else tampered with it?

6 A. Yes, I did.

7 Q. Did you place that into Horry County evidence?

8 A. Yes, I did.

9 (DRUGS IN CLEAR BAG MARKED STATE'S EXHIBIT NUMBER 2, FOR
10 IDENTIFICATION ONLY.)

11 Q. Okay. After it's in evidence, at some point in time is
12 that tested?

13 A. Yes, it is. We put it in a holding location, in a drug
14 vault, that is secure, then we transfer it to Lisa. It
15 involves a chain of custody where the officer, when they turn
16 it in I accept it, they have to sign it and date it. When I
17 go to give it to her I sign and date it again, and then she
18 signs and dates it where she receives it, in order for her to
19 test it, and then therefore she then has custody and control
20 of that evidence.

21 Q. And is it substantially in the same condition when you
22 received it to a point that you turn it over for testing?

23 A. Yes, it is.

24 MR. HIXSON: I have no further questions of this
25 witness, Your Honor.

LORI RABON - DIRECT BY HIXSON

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1 THE COURT: Cross-examination.

2 MR. LONG: I do not have any questions.

3 THE COURT: All right, sir.

4 You may step down, Ma'am.

5 Is there any reason she should not be excused?

6 MR. HIXSON: None from the State, Your Honor.

7 THE COURT: You are excused and released from your
8 subpoena, Ma'am.

9 You next witness, please.

10 LORI RABON, being first duly sworn,
11 testifies as follows:

12 DIRECT-EXAMINATION BY MR. HIXSON:

13 Q. Good morning.

14 A. Good morning.

15 Q. Lori, what do you do for a living?

16 A. I'm employed by the Horry County Police Department, in
17 the Evidence Section.

18 Q. Okay. Do you have similar responsibilities to the
19 prior witness, Deidre Faulk?

20 A. I do. I'm her supervisor.

21 Q. So you work in a kind of administrative position,
22 handling evidence back and forth, things like that?

23 A. That's correct.

24 Q. Let me show you what's been marked as State's Exhibit
25 Number 4.

1 MR. HIXSON: It's not in evidence yet.

2 Q. Do you recognize that?

3 A. Yes, I do.

4 Q. Now, at some point in time did you come in contact with
5 this Defendant, Danny Cortez Brown?

6 A. Yes, I did.

7 Q. And could you please give us the facts surrounding
8 that?

9 A. Detective Delpercio made a phone call to our Evidence
10 Section, requesting that we release some personal property
11 back to a Mr. Danny Brown, and on October 12th, 2005, a Mr.
12 Danny Brown came up as Agent Delpercio had instructed us to
13 do, to release his property, and I made a copy of his driver's
14 license and had him sign for a black duffle bag, miscellaneous
15 clothes, and one cell phone.

16 Q. Did you actually see Mr. Brown come in and pick up his
17 items?

18 A. Yes, I did.

19 Q. And did he sign for those?

20 A. Yes, he did.

21 Q. This document, is that what you witnessed Danny Brown's
22 signature on?

23 A. Yes, it is.

24 Q. And did you confirm, in any way, that that was Danny
25 Brown?

LORI RABON - DIRECT BY HIXSON

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1 A. Yes, I did. I requested a copy of his driver's
2 license, and made a copy of it.

3 Q. And you did -- you did that. Is that included in that
4 packet?

5 A. Yes, it is.

6 Q. At this time the State would move 4 -- State's Exhibit
7 4 into evidence.

8 THE COURT: Any objection?

9 MR. LONG: No objection. No sir.

10 THE COURT: State's 4 is in evidence without objection.

11 (STATE'S EXHIBIT NUMBER 4 ADMITTED INTO EVIDENCE.)

12 Q. Now is it common, generally speaking as the Evidence
13 Technician, to turn over non-relevant -- or I shouldn't say
14 that -- to -- personal items back to a Defendant?

15 A. Yes, it is. When the items are collected most of the
16 time the Detectives or the Officers are not sure at the time
17 what's going to be evidence and what's not, so it's also our
18 duty to return property safely back to the owner.

19 Q. So you do have a duty to -- does the Defendant usually
20 request those items back?

21 A. Yes, it happens occasionally.

22 Q. But you would have to get permission to do so from the
23 supervi -- the investigative officer?

24 A. We have to have permission from the investigating
25 officer or the Solicitor.

1 Q. Do you know if -- in this case, do you know if Mr.
2 Brown contacted Detective Delpercio about his personal items?

3 A. I'm unsure how the conversation initiated, but Agent
4 Delpercio called us himself and said that Mr. Brown would be
5 coming to pick the property up.

6 Q. Okay. And receive back his duffle bag and his cell
7 phone, and personal items?

8 A. That's correct.

9 MR. HIXSON: Your Honor, I have no further questions
10 for this witness at this time.

11 THE COURT: Cross-examination.

12 MR. LONG: No, Your Honor.

13 THE COURT: Do you wish this witness to be excused?

14 MR. HIXSON: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. LONG: No sir.

17 THE COURT: You are excused and released from your
18 subpoena, Ma'am.

19 Who would be your next witness?

20 MR. HIXSON: Lisa Floyd, Your Honor.

21 THE COURT: All right.

22 LISA FLOYD, being first duly sworn,
23 testifies as follows:

24 DIRECT-EXAMINATION BY MR. HIXSON:

25 Q. Good morning.

LISA FLOYD - DIRECT BY HIXSON

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1 A. Good morning.

2 Q. Lisa, what do you do for a living?

3 A. I run the Horry County Regional Lab for the Police
4 Department.

5 Q. And what -- what is that, for the people of Horry
6 County? What is that?

7 A. Officers from any agency in the Fifteenth Judicial
8 Circuit can submit anything that they think is drugs to the
9 lab, and I test it to see if it is.

10 Q. Okay. So you must have some training and experience to
11 be able to do that.

12 A. Yes.

13 Q. Could you please tell the jury about your training and
14 experience that allows you to be able to do that job?

15 A. Yes. I have a Bachelor of Science Degree in
16 Biochemistry from Clemson University, and twenty-four hours
17 toward a Master in Biochem, and I took a fourteen week
18 training course, as well, with the former S.L.E.D. agent that
19 runs the Spartanburg County Forensics Laboratory in
20 Spartanburg, South Carolina, and that included testing every
21 type of drug possible, for fourteen weeks, and some more
22 testing which you take in school, just general knowledge
23 tests.

24 And I've also been running the lab for three and a half
25 years now, and tested over twenty-five hundred, three thousand

1 substances.

2 Q. Okay.

3 MR. HIXSON: At this time the State would move this
4 witness to be proffered as an expert witness in the area of
5 narcotics tests and analyses.

6 THE COURT: Any objection?

7 MR. LONG: Has she been -- I would ask if she's been
8 qualified in a courtroom before.

9 THE COURT: All right, sir. If you wish to voir dire
10 the witness you may ask questions you would like. Go ahead.

11 BY MR. LONG:

12 Q. Have you been qualified by a court before?

13 A. Twelve times previously.

14 MR. LONG: I would agree, Your Honor.

15 THE COURT: All right, sir.

16 She's qualified to give her opinion.

17 MR. HIXSON: Thank you, Your Honor.

18 Q. May I approach with what's been marked as State's
19 Exhibit Number 2 into evidence ---

20 It's not in evidence yet.

21 Do you recognize that?

22 A. Yes, I do.

23 Q. Okay. Can you please just give a general idea of what
24 you do when you first receive a package such as that?

25 A. When I receive it it's in the blue inner envelope you

LISA FLOYD - DIRECT BY HIXSON

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1 see through the clear package outside, and the first thing I
2 do is look at the entire package and make sure that any of the
3 tamper evidence seals have not been tampered with, that there
4 is no evidence of tampering, that the red adhesive seals at
5 the top are not tampered with as well, and if everything is in
6 good order then I will open the package, remove the evidence
7 for testing, and I make a note on it with my initials, the
8 letters "OK", and the date, that it was definitely not
9 tampered with.

10 Then I write our -- or whatever agency's case number,
11 and I assign it a lab number, and at that point then I remove
12 the evidence for testing. It is weighed, analyzed, and then
13 repackaged, like you see it here, and this is how I repackage
14 it, and I seal, again, the lab number, my initials and the
15 date that it's sealed into the package.

16 Q. Did you have an opportunity to test that specific
17 substance?

18 A. Yes, I did.

19 Q. Did you get any results from that?

20 A. Yes, I did.

21 Q. And what were the results from that?

22 A. It was cocaine found, in the amount of one hundred
23 twenty-two point six five grams, which is one thousand eight
24 hundred ninety-two point four eight grains.

25 Q. Did you write a report contemporaneous with your

1 findings or your analysis?

2 A. Yes, I do. I issued a report.

3 Q. I'm going to show the witness what has been marked as
4 State's Exhibit 5.

5 It's not in evidence yet.

6 See if you recognize this item.

7 A. Yes, I do. This is a copy of my report.

8 Q. Could you look at that for a second to see if that is a
9 fair and accurate xerox copy of your report.

10 A. Yes, it is.

11 MR. HIXSON: At this time, Your Honor, the State would
12 move State's Exhibit Number 5 into evidence.

13 THE COURT: Any objection?

14 MR. LONG: Your Honor, along with my objection -- my
15 previous suppression motion, I would object to that document
16 going in at this time.

17 THE COURT: I would ask that you have the witness
18 testify as to what she did, prior to the Court's ruling on
19 your motion.

20 MR. HIXSON: All right. Let me rephrase that, Your
21 Honor, and take some latitude to try to get to that point.

22 THE COURT: All right.

23 Q. You tested those substance -- the substance in the
24 baggie?

25 A. Yes, I did.

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1 Q. And you got results from that test?

2 A. Yes.

3 Q. And could you reiterate again what the results of that

4 test were?

5 A. It was cocaine found.

6 Q. In the amount of a hundred and twenty -- what was that?

7 A. A hundred and twenty-two point six five grams.

8 Q. And that was this, correct?

9 A. That's correct.

10 THE COURT: I'm sorry. She said a hundred and ---

11 MR. HIXSON: Hundred and twenty-two point six five.

12 THE COURT: What? Grams or grains?

13 A. Gram.

14 Q. Grams?

15 A. Grams, yes sir.

16 THE COURT: All right. I did not understand the word

17 that she stated.

18 MR. HIXSON: I apologize.

19 Your Honor, then I need to -- at this time the State

20 would move State's Exhibit Number 2 into evidence.

21 THE COURT: Any objection to State's 2 coming into

22 evidence?

23 MR. LONG: Yes sir.

24 THE COURT: All right. Subject to your previous

25 motion?

1 MR. LONG: Yes, sir.

2 THE COURT: All right, sir. Regarding State's Number 2
3 and 5, it's in evidence over the objection of the defense.

4 (STATE'S EXHIBIT NUMBERS 2 AND 5 ADMITTED INTO
5 EVIDENCE.)

6 MR. HIXSON: At this time, Your Honor, may I publish
7 State's 5 to the jury?

8 THE COURT: Any objection?

9 MR. LONG: No sir.

10 THE COURT: You may do so.

11 MR. HIXSON: Your Honor, as well as State's 2.

12 THE COURT: Is there any objection?

13 MR. LONG: Along with my previous objections, but as
14 far as publishing, no sir.

15 THE COURT: All right, sir. You may publish.

16 MR. HIXSON: Your Honor, I have no further questions
17 for Ms. Floyd at this time.

18 THE COURT: All right. Cross-examination.

19 CROSS-EXAMINATION BY MR. LONG:

20 Q. Ms. Floyd, hi.

21 A. Hi.

22 Q. I'm going to show you what's been marked, and entered
23 into evidence, I believe, as State's Number 3, which is a
24 xerox photograph, copy of a xerox photograph of some drugs.
25 One of these bags here has been determined to be -- and

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1 admitted to by one of the co-defendants -- as powder cocaine.

2 Did you test that?

3 A. I would not know. It was not in that particular "Best
4 Kit".

5 Q. Okay. Part of this case, part of this arrest?

6 A. As part of Lab Number L050803, no, it was not tested.

7 Q. It was not tested?

8 A. No, it was not received.

9 Q. Tell me how the testing of cocaine works. What is it
10 that -- what is it that you use to test it?

11 A. We use a presumptive test, which is a color test, that
12 gives it -- or gives me an indication of what the drug might
13 be initially, and it's presumptively tested positive to powder
14 cocaine, which is two blue colors and a red.

15 And then at that point we do what's called a
16 confirmatory analysis, and we use a gas chromatograph with a
17 mass-selective detector, which is a really big way of saying
18 that we separate all the components using chromatography, and
19 then those components show up in the detector, which is
20 printed using a report, using software that allows me to look
21 at those different things, and in this case the fingerprint
22 was there, per se, for cocaine.

23 Q. So two tests. First you just drop something on it and
24 if it turns blue -- kind of like a pregnancy test -- if it
25 turns a blue color it's cocaine.

1 A. Sure.

2 Q. Right. I don't know why that was on my mind.

3 And the second test that you use is a gastro-
4 spectrometer; is that what you said?

5 A. It's a gas chromatograph with a mass selective
6 detector.

7 Q. Okay. And it breaks down the different components of
8 the substance; is that right?

9 A. Yes. It separates out anything that's in there.

10 Q. What are -- well, in this particular fact -- let's ask
11 you about that -- what are the particular components of that
12 substance?

13 A. Well, in this particular case cocaine was found as a
14 controlled substance, and benzocaine also showed up as a
15 cutting agent. It was present.

16 Q. Okay, now benzocaine as a cutting agent, is that a
17 commonly used cutting agent?

18 A. It's fairly common, yes.

19 Q. You find it often in your testing?

20 A. About as much as anything else, yes.

21 Q. Well, let me ask you about that. About as much as
22 anything else. What else do you find in your testing as a
23 cutting agent?

24 A. Mostly the only things that are going to show up by
25 this type of analysis are the other "caines", like procaine,

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1 or lidocaine, caffeine will show up sometimes.

2 Q. How many "caines" are there?

3 A. A lot.

4 Q. Okay. And this test will actually tell you if it's
5 benzocaine or lidocaine, or it will tell you which one of
6 those "caines" ---

7 A. It does, yes.

8 Q. ---It is. And you run across all different kinds of
9 cutting agents in your testing, correct?

10 A. Yes. And oftentimes nothing will show up.

11 Q. Okay. Oftentimes you will test something that has no
12 cutting agent?

13 A. Well, that does not mean that a cutting agent is not
14 present. It just means that this particular method I use,
15 with this instrumentation, it may not show up.

16 Q. Got ya. Does that instrument, and that method,
17 determine what percentage of substance is cocaine, and what
18 percentage of the substance is a cutting agent, one of the
19 other "caines"?

20 A. No, it does not.

21 Q. Okay. Does any of your testing give any kind of
22 quotient, any kind of figure on purity, strength, or
23 composition of the substance that you test?

24 A. Composition, yes. Purity and strength, no.

25 Q. What do you mean by composition? The same thing we

1 just talked about?

2 A. Yes.

3 Q. So, most -- would you agree with me that most of the
4 cocaine that you test comes out with one of these cutting
5 agents?

6 A. I'd say approximately half show some type of cutting
7 agent.

8 Q. Okay. And if you had tested this cocaine, State's
9 Exhibit Number 3, would you have been able to determine if one
10 of those "caines" showed up in that cocaine?

11 A. If a "caine" was present, yes, it would show up.

12 Q. Other than knowing if the same cutting agent was used
13 in that cocaine, and this cocaine, is there another way, aside
14 from that way, to determine if they are relatively akin to
15 each other, basically have the same chemical composition?

16 A. Not in my laboratory.

17 Q. Is there a way to do that in somebody's laboratory?

18 A. Yes, there is.

19 Q. S.L.E.D. can do it?

20 A. I'm not sure. D.E.A. could do it.

21 Q. D.E.A. can do it. They have a lab in South Carolina?

22 A. Not that I'm aware of, in South Carolina.

23 Q. You don't know that S.L.E.D. can or can't; you just
24 don't know?

25 A. I don't know.

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1 Q. But you -- but it is possible to test two different
2 bags of cocaine to determine if their chemical composition is
3 identical?

4 A. Yes.

5 Q. And that was not done in this case?

6 A. No. I never received the other bag.

7 Q. Okay. Now, when you received this bag -- which I don't
8 think I'm going to hand it to you again -- but when you
9 received this bag -- actually I lied to you.

10 I'm sorry, Mr. Foreman.

11 When you received this bag, this inner bag here, it's
12 got twelve twenty -- I'm sorry -- I'm going to show you
13 State's Number 2.

14 I apologize.

15 It's got 12/29/05 on the inner bag there. Is that the
16 bag you received from someone to test?

17 A. No, this bag is not the bag I received.

18 Q. What bag -- where is the bag -- is this the bag over
19 here? Let me show you what's been marked and entered as
20 State's Number 7.

21 A. If I may refer to my notes.

22 Q. Sure. I'm going to hand you State's Number 7. You
23 tell me if that's the bag.

24 A. No. Anything that I would have received would be
25 resealed in this package, and according to my notes I received

1 this cocaine in this other blue bag that you see on the other
2 side, that has the control number of M328390, which is
3 referenced in my notes, and it was sealed when it was
4 received.

5 Q. All right. Do you know, in your notes -- in your case
6 file or anything in there, can you tell me who it was that
7 took that cocaine out of this bag and put it in that bag?

8 A. I would have no record of that.

9 Q. Do you know who would have a record of that?

10 A. I would assume Evidence, but I don't know for sure.

11 Q. All right. Okay.

12 MR. LONG: Thank you.

13 THE COURT: Redirect.

14 MR. HIXSON: Briefly, Your Honor.

15 REDIRECT-EXAMINATION BY MR. HIXSON:

16 Q. Detective Delpercio, does he seal up the "Best Kit",
17 usually, for processing, the lead -- the investigator?

18 A. That would be a part of his job, yes.

19 Q. Now, isn't the chemical comp -- the chemical
20 composition in cocaine -- isn't all cocaine cocaine?

21 A. Yes, cocaine is. It would show up as cocaine, yes.

22 Q. I just -- try to clarify it from different strains, or
23 different things, cocaine is cocaine?

24 A. No. Even in the form of crack it would still show up
25 as cocaine.

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1 MR. HIXSON: I have no further questions, Your Honor.

2 THE COURT: Anything on those questions?

3 MR. LONG: No sir, Your Honor.

4 THE COURT: You may step down.

5 Do you wish this witness to be excused?

6 MR. LONG: I do, Your Honor.

7 MR. HIXSON: Yes, Your Honor.

8 THE COURT: You can be released from your subpoena to

9 go back to your regular duties, Ma'am.

10 All right. The next witness for the State.

11 MR. HIXSON: Your Honor, at this time the State of

12 South Carolina rests.

13 THE COURT: All right. Do you have some matters of

14 law, Mr. Long?

15 MR. LONG: Yes sir.

16 THE COURT: All right, ladies and gentlemen of the

17 jury, if you would go to your jury room, please. Thank you.

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

19 JURY.)

20 THE COURT: All right, Mr. Long.

21 MR. LONG: Your Honor, I understand that you have

22 admitted the drugs, and I didn't approach to talk about it,

23 but I assumed you admitted them under ---

24 THE COURT: I have not ruled on your suppression motion

25 as of yet. That is still under advisement.

1 MR. LONG: Even though they are admitted they may still

2 ---

3 THE COURT: He -- they. That's correct. That is -- I
4 want to make that clear, that I'm still -- I still have your
5 suppression motion under advisement.

6 MR. LONG: I would like to argue that suppression
7 motion now, in the light of new testimony.

8 THE COURT: All right, sir.

9 MR. LONG: But first, I want to make a directed verdict
10 for failure of the State of South Carolina to have probable
11 cause for the stop. The testimony that we just got -- we've
12 got two witnesses for this. The first witness, Officer
13 Williams, said that it was not raining, that both windows were
14 down; he pulled up beside their car; he looked through the
15 windows and he saw a beer can; he pulled in behind him and he
16 stopped; the reason for the stop was that he saw a beer can.

17 The next witness that they brought testified that the
18 weather was bad; it was real bad, the windows were up, the
19 windows were foggy, that he does not remember the police
20 officer pulling up beside them, just maybe turning around, but
21 he knows he pulled up behind them, and when he came to the
22 window the beer can was not in view, in fact, his answer to my
23 question was, it was hidden.

24 The officer then walked around the car, opened the door,
25 which he has no right to do, pulled my client out, reached

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1 back in the car, which he had no right to do, searched between
2 two seats, underneath a jacket, and found the hidden beer can.

3
4 No reason for the stop, no reason to enter that car, no
5 reason for that search. Everything else is fruit of the
6 poisonous tree.

7 THE COURT: All right, sir. Regarding that directed
8 verdict motion I would respectfully decline to grant your
9 motion for the reason that you have presented to me in your
10 argument. There is a dispute in the facts. The jury is the
11 one that judges credibility and believability. Clearly the
12 officer's testimony would support a stop for open container,
13 based upon the officer's testimony. The testimony of Mr.
14 Rodney Smith would not support a stop by the police officer,
15 but that is a conflict in the testimony, and it is not for the
16 Court, at this point in time, to resolve that conflict. What
17 I have to find is that there is sufficient evidence for the
18 matter to go forward, and I certainly find that based upon the
19 officer's testimony, Officer Williams, his testimony, as to
20 the stop and the reasons for the stop.

21 MR. LONG: Okay. Your Honor, on the suppression
22 issue ---

23 THE COURT: Yes sir.

24 MR. LONG: ---The -- again, according to Rodney Smith
25 and they -- it's their witness -- they brought him here -- he

1 testifies that Danny Brown is brought out of the car, the door
2 is closed, the duffle bag is still in the car, he takes him
3 back to the back of the car, comes back, opens the door, pulls
4 the duffle bag out and starts going through it. Now that, I
5 realize, is somewhat different than what Officer Williams
6 said. But we've got issues with what -- with the way it
7 happened, the way Officer Williams says it happened. I've got
8 real serious issues with the way Mr. Smith says it happened.
9 That duffle bag, Your Honor, was a closed container that my
10 client had a sincere right to privacy on.

11 If Officer Williams had a reasonable suspicion, or
12 probable cause, that there was something in that bag, he may
13 have been able to get past and get into searching that bag,
14 but as soon as he got control of that bag, away from everyone
15 else -- which we all agree he did that. Rodney Smith agrees
16 that he took it away, and had control of it, Officer Williams
17 agrees that he took it away and had control of it, then, at
18 that point, based on the case law language, no exigency
19 exists. Based on the United States versus Robinson, and the
20 Preston versus United States case, Your Honor, once law
21 enforcement officers have produced luggage, or other personal
22 property -- this is exactly on point -- the -- to their
23 exclusive control, and there is no longer any danger that the
24 arrestee might gain access to the property, to seize a weapon,
25 or destroy evidence, a search of that property is no longer

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1 incident to that arrest. It is, at that point, to be required
2 to gain a search warrant or consent, which we have neither in
3 this case.

4 Your Honor, the day I got this case I knew -- the day
5 that I got this case I knew that this was the issue in this
6 case. It's been the issue in this case ever since. I, based
7 on the information that we get as we defend these cases -- and
8 you know because you were a trial lawyer -- that we get
9 incident reports, and we get case summaries, but we don't know
10 exactly what is going to be testified to over here.

11 When I came over here to defend this case I didn't know
12 exactly how the officer was going to say he got access to that
13 bag, but I know now that he got access to that bag without a
14 right to do so. The Fourth Amendment of the United States of
15 America -- even -- just because he's riding in a car doesn't
16 mean that he gives up the right to the privacy of his closed
17 container, his luggage.

18 Every single one of these cases, Your Honor, the United
19 States versus Chadwick, California versus Acevedo, Florida
20 versus Wells, every single one of those cases, and all of the
21 cases cited within those, and every other case that I can
22 find, the only time that the Court ever allowed a police
23 officer to search a closed compartment, a closed container, a
24 piece of luggage, was if they had probable cause to believe
25 that there was contraband in that bag. Clearly not the case

1 here. He had no reason to look in that bag, other than to --
2 and the language in Wells -- "seek more criminal activity".
3 That was it. He was -- there was no reason to look in that
4 bag. He had control of it. It was closed. Danny Brown is
5 arrested. Done.

6 Now, Your Honor, I have been handed a large stack of
7 cases by the Solicitor. The Belton case, which is cited in
8 the Wells case, and the Belton case is good law for my client,
9 even though he has brought it to you. The different here in
10 the Belton case, Your Honor, is, there was probable cause.
11 Police officer -- a State Trooper comes up, four men in an
12 automobile, and he smells burned -- burning marijuana. We all
13 know that, when a police officer smells burning marijuana he's
14 got more than probable cause; he's got a reasonable suspicion;
15 he's got a strong suspicion that there is marijuana in that
16 car, which gives rise to a search of just about everything in
17 that car. That case, because of that great distinction, is
18 completely different. We don't have probable cause,
19 reasonable suspicion. There is no other criminal activity,
20 not even a driving violation, not even speeding, nothing, just
21 the allegation that there was an open container, that now
22 they've put two witnesses up. One says it wasn't in plain
23 view and one says it was.

24 Your Honor, the Brannon case that he handed to you is a
25 consent search. Clearly we don't have consent in this case.

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1 The Illinois versus Lafayette, this was an inventory of
2 the person, not of a closed bag. This is inventory,
3 subsequent to arrest, of an individual, his jacket he was
4 wearing, his clothes. Does not apply.

5 The case that he handed up to you, United States versus
6 Scone, is not even a search case.

7 The United States versus Porter, that's a T.E.R.I. stop.
8 This is not a T.E.R.I. stop. We know this is not a T.E.R.I.
9 stop. That is a completely separate set of circumstances in
10 there, and we know what we are dealing with here. We are
11 dealing with the search and seizure of a closed piece of
12 luggage in this particular case, that they had no other right
13 to search.

14 Your Honor, in the United States versus Han, H.a.n.
15 case, there was a confidential informant that told the police
16 that drugs were going to be in a bag. They had a reasonable
17 suspicion or probable cause to believe that drugs were in that
18 bag when they made that stop, and that's why that case is
19 different.

20 And Your Honor, the case of the United States versus
21 Willie Robinson, that's not a closed container case. That's
22 searching around a vehicle and finding something wide open.
23 That is not a closed container case.

24 United States versus Ross, again, a probable cause case.
25 they had probable cause to believe that there was contraband

1 in the car, therefore they searched the closed -- the closed
2 document.

3 And Thornton versus United States is not a closed
4 container case.

5 Your Honor, textbook unreasonable search and seizure,
6 violation of the Fourth Amendment. My client had a right to
7 privacy of whatever the contents were in that bag. The
8 inventory, or search incident to arrest, or whatever it is
9 that they tried to call it, what it is is a search for more
10 criminal evidence, which is not allowed under the law, and I
11 strongly, strongly, respectfully request, Your Honor, that you
12 suppress that evidence, and ---

13 THE COURT: All right, sir.

14 MR. LONG: ---Dismiss the case.

15 THE COURT: All right, sir.

16 All right, Solicitor, reply arguments.

17 MR. HIXSON: Thank you, Your Honor.

18 Listening to Mr. Long discuss these cases actually
19 helped me highlight what -- I had a difficult time
20 understanding why there appears to be some conflict in the
21 stop, and I think I finally understood it by listening to Mr.
22 Long.

23 The issue in this case is not probable cause. There --
24 once a defendant is placed under arrest a search incident to
25 that arrest flows naturally from. It is, per se, reasonable,

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1 according to multiple Supreme Court Decisions -- and we will
2 get into the case law in a second -- but that is the
3 difference. Once the defendant is placed under arrest it is
4 not a probable cause issue, and it's not evaluated by the
5 Supreme Court or others under a probable cause standard, that
6 it's -- it is, per se, reasonable -- as Your Honor is well
7 aware, there are several exceptions to a warrantless search
8 requirement under our Constitution. Obviously you have to
9 stop and frisk. Specifically in this case, a search incident
10 to an arrest, hot pursuit, protective sweeps, things like
11 that, are -- and the Court -- by the cases we will cite later
12 on, expressly say that, and I think perhaps that's the
13 concern.

14 Your Honor, I didn't provide these cases to you to say
15 all these cases were on point. In fact, I did them to help me
16 understand, and then, of course, to help the Court -- try to
17 communicate to the Court my understanding of these.

18 The Chadwick case, as well as these other cases, such as
19 Bertine and Wells Lafayette -- excuse me -- Bertine, Wells,
20 Lafayette to Florida, those are all inventory search cases,
21 Your Honor. Those are all based on a defendant is in custody.
22 There is a standard procedure established because the car is
23 impounded in a lot, or the defendant is in jail, and they are
24 going through his property pursuant to the inventory search,
25 and so the policies surrounding the police department open all

1 the containers, or don't open any, are relevant in that, and
2 that is the nature of those cases. Bertine sets it up, Wells
3 continues it. But those are all not exi -- those aren't
4 searches incident to a lawful arrest. Too much time has
5 transpired. It is not contemporaneous with the arrest. It is
6 inventory. The car is in an impound lot, and at some point in
7 time they go through those.

8 So the facts of this case are distinguished from the
9 Bertine, Wells and Lafayette line of cases. That's why I
10 provided all those to Your Honor.

11 Also, the discussion about Chadwick and Ross, the
12 problem, Your Honor, appears to be that the Court decided
13 Chadwick and they -- they said, we've got probable cause based
14 on a statement that an individual is driving down I-85 and an
15 informant says he may have some drugs in the car. They
16 stopped that car based on the container in the car, not based
17 on a reasonable search incident to arrest. They stopped that
18 car under the Chadwick line, and so they have probable cause
19 for the container, but they don't have it for the car.

20 And then Ross says, we've got a stop for the car, but
21 not the container, and it was an absolute mess, and so the
22 Court, in Acevedo says, enough, this is -- we can't give any
23 instruction to law enforcement to do this; we have to figure
24 some way to help people understand what Constitution asks of
25 our law enforcement personnel, so they came down with Acevedo,

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1 Your Honor. In fact, Acevedo expressly abrogates Chadwick.
2 It says, no longer. And in Acevedo -- Your Honor, I believe
3 it's on page seven of that Opinion -- they go through a long
4 discussion, and then on page seven they specifically point to
5 Belton and say, you know, we wouldn't have to do all this
6 because search incident to arrest is, per se, reasonable.
7 Belton applies here, and we just want to make sure no one gets
8 confused and thinks, somehow, Belton doesn't carry the day,
9 and that is -- I specifically want to find that cite for Your
10 Honor. I'm not sure that we all have the same copy, as we
11 should. I didn't copy Acevedo for the Court, so I'm not sure
12 what page that is on for you. I have Chadwick. I apologize,
13 Your Honor. Let me find Acevedo.

14 Specifically, Your Honor, it says, since the police, by
15 hypothesis, has probable cause to seize the property, we can
16 assume that a warrant will be routinely forthcoming in the
17 overwhelming majority of cases, and the police often will be
18 able to search containers without a warrant, despite the
19 Chadwick rule, as a search incident to a lawful arrest. In
20 New York versus Belton the Court said, quote, we hold that,
21 when a policeman has made a lawful custodial arrest, such as
22 an arrest for a beer -- saw a beer can -- that the occupant in
23 that automobile -- he may, as a contemporaneous incident of
24 that arrest, search the passenger compartment of that
25 automobile. It follows from this conclusion that the police

1 may also examine the contents of any containers found within
2 the passenger compartment, Your Honor. That's the import of
3 the Belton case, and made Your Honor -- maybe realize that
4 Belton is what's on point, and it's progeny, as you trace
5 Belton's lineage, and of course that's what I did, Your Honor,
6 to adequately represent the interest of the State, or tried
7 to. That's Your Honor's decision.

8 The other cases cited by -- that were distinguished by
9 defense counsel, Han, as well as Porter, Sloan, all stem from
10 the basic tenets of Belton, and that is, a per se reasonable
11 search, based on the arrest of the -- a defendant. Factually
12 Mr. Long is correct. One is not a car case, and it says the
13 police had probable cause to arrest the defendant, search of a
14 bag containing heroin was incident to that arrest, despite the
15 fact they took some time to do it. In other words, saying
16 that, whether the officer walked back to the back of the car,
17 or whether he looked at it right away, it is all
18 contemporaneous with the arrest of the defendant, based on
19 adequate probable cause to be arrested. So it's a reasonable,
20 per se, flowing from that.

21 United States versus Porter, that's a Court of Appeals,
22 Fourth Circuit case. That indicates that a warrantless search
23 of a carry-on bag, which was within defendant's reach, was a
24 lawful -- as an incident to a lawful arrest. That was a
25 flight coming from Miami, Your Honor. The D.E.A. had some

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1 interest in her. They took her to a room, the bag was sitting
2 over there. They talked to her. They went -- arrested her
3 and looked in her bag, and there was heroin in that bag, and
4 factually that is very similar, although there is not a car
5 involved in it, very similar to our case.

6 Finally, Your Honor, as it relates to the Belton chain
7 of cases, the Supreme Court, in United State versus Thornton -
8 - and this came out in 2004, Your Honor -- this expands
9 Belton, to show Your Honor that Belton is still good law. It
10 indicates that the Fourth Amendment allo -- once an officer
11 makes a lawful custodial arrest of automobile's occupants, the
12 Fourth Amendment allows the officer to search the vehicle's
13 passenger compartment. That's Belton. But this adds, even
14 when an officer does not make contact until the person
15 arrested has already left the vehicle.

16 In that case -- the Thornton case, Your Honor, they
17 pulled into a parking lot, the officer started to pull up
18 behind him, the occupant got out, started to walk away from
19 it, the officer arrested him. At that point in time then went
20 back in the car and got items out of the car at that time, and
21 the Supreme Court said that was, per se, reasonable as a
22 search incident to a lawful arrest, Your Honor, and it also
23 helps show that Belton continues that tradition for the Court,
24 and that's 2004.

25 Also is of importance related to exigent circumstances

1 and potential risk to the officer, as well as his safety, the
2 Thornton case of our Supreme Court says that the stress of
3 arrest is no less merely because the arrestee exited his car
4 before the officer initiated contact, nor is the arrestee less
5 likely to attempt to lunge for a weapon, or to destroy
6 evidence. He is outside of the vehicle. That's kind of the
7 thinking behind that, Your Honor.

8 Quickly, Robinson just refers to the basic tenet of a
9 search incident to an arrest, just a basic, kind of seminal
10 type case, Your Honor. Really factually doesn't have much
11 import.

12 The only thing other important in Robinson, it indicates
13 that, this case he arrested the defendant for driving without
14 a driver's license, full custody search, found some drugs on
15 him. The officer testified, I wasn't afraid of the guy; I
16 wasn't concerned or in fear for my life at all. And the
17 Supreme Court in that said that fear is not dispositive,
18 quote, he said, we found the package of the heroin admissible,
19 even though the officer did not indicate any subjective fear
20 of the defendant; he did not suspect that the defendant was
21 armed. So the -- whether he was armed or not, or this or
22 that, according to Robinson, is not dispositive of the
23 reasonableness of the search. The fact he is in custody
24 already makes it reasonable.

25 And then finally, Your Honor, briefly, looking through

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1 our -- our jurisdiction in South Carolina I found the State
2 versus Brannon. Now the -- Mr. Long is absolutely correct.
3 That is a consent case. The majority found on consent;
4 however, the concurrent Opinion in that by Judge Anderson is
5 telling, in fact, Judge Anderson indicates that he agrees with
6 the result, but he doesn't understand why the majority went
7 through all of that, because the automobile exception applies;
8 they wasted time on consent because it was search incident to
9 a lawful arrest, it's exigent circumstances, the car -- they
10 can search -- they can search. That's concurring, Your Honor,
11 obviously that's not the majority opinion, but it's rather
12 persuasive, and does a pretty good discussion of the, per se,
13 reasonableness of a search incident to a lawful arrest.

14 The facts of the case, briefly, Your Honor, as the
15 State's understanding, so that's the basis for my argument.
16 The Officer saw the Defendant with a beer can in the passenger
17 seat of the car. It is uncontroverted. Even the witness's
18 testimony -- Mr. Smith, said there was a beer in the car, so
19 we know he had to see that beer in order to stop the car. The
20 facts show that there was a beer can, and where he saw it, or
21 how the visibility was, the facts are uncontroverted, there
22 was a beer can in the car. That's, of course, the testimony
23 of this Officer.

24 He placed the Defendant under -- walked around the car,
25 received -- pulled the bag out of the car. Obviously there is

1 some conflicting facts as it relates to what point in time it
2 was. There is no conflicting facts, that is, a search -- he
3 was placed under arrest, then went in the bag after the
4 Defendant was placed under arrest. The Officer was by himself
5 on a street corner. He indicated in his testimony -- the
6 State recalls -- concern that the nervous nature of Rodney
7 Smith, that perhaps this -- the driver may drive off. He
8 asked the individual to put his keys on top of the car -- the
9 car, put it up on the hood, to prevent, perhaps, Mr. Smith
10 from driving away with the duffle bag in the -- in the
11 floorboard. The Officer testified multiple times as it
12 related to officer's safety, or things of that nature, called
13 for back-up, indicating his concern by himself on a street
14 corner at that time. In his prior testimony I recall him
15 saying something about he didn't know if there was a machine
16 gun in there, something of that nature. The State sees this
17 as a search incident to a lawful arrest.

18 He couldn't -- the interesting part, Your Honor,
19 briefly, is under Ross and the other cases. Under defense
20 counsel's theory the drugs would be admissible if he didn't
21 touch them, left them in the car, towed the car and got it,
22 but it's not admissible because he was concerned for himself,
23 he claimed the bag, picked it out, but it's not admissible
24 there. It's kind -- it sounds very close to inevitable
25 discovery type argument as it relates to that, but we still

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1 don't believe we get to that point, Your Honor. We believe,
2 on it's face, it's a search incident to a lawful arrest, Your
3 Honor, and for that reason, we would ask that the motion be
4 respectfully denied, and the drugs allowed to remain in
5 evidence, Your Honor.

6 THE COURT: All right. So your argument is that a
7 search incident to arrest allows the officer to go into a
8 closed container that he has complete custody and control
9 over?

10 MR. HIXSON: That's correct. There was no expectation
11 of privacy in that container once the Defendant is under
12 arrest. It's not based on probable cause like a warrant
13 requirement, Your Honor. Probable cause has been established
14 by the existence of an arrest. That's what Belton stands for,
15 Thornton stands for. We never get to the probable cause
16 analysis because it is, per se, reasonable because it is a
17 search incident to a lawful arrest.

18 That -- it's hard to find some cases on that, Your
19 Honor, because that has been seen as rather well settled.
20 That is one of the accepted exceptions to a -- the warrant --
21 search requirements, Fourth Amendment, in essence.

22 THE COURT: Before -- Mr. Long, be glad to hear from
23 you. Before you do that, let me ask you a question. Assume
24 the Officer -- you know, he had sat that bag on the side, and
25 he took complete custody and control over it. There is no

1 question that it is the Defendant's bag, I mean, that's the
2 evidence; it's the Defendant's bag. He takes custody and
3 control over it, puts it in the trunk of his police car, takes
4 it to the jail. When the Defendant is booked, and the items
5 then are of the Defendant, aren't they then, at the jail,
6 inventoried? Would not the drugs have been found at the jail
7 at that point in time? Was it not inevitable that the drugs
8 would be found?

9 MR. LONG: It may be inevitable that they would be
10 found, but it doesn't make it proper. If -- if -- if they had
11 to -- if they had taken that closed duffle bag to a Judge ---

12 THE COURT: He didn't have to take it to a Judge. All
13 he had to do was take it to the jail ---

14 MR. LONG: Well, but if they had ---

15 THE COURT: ---Because it's the Defendant's bag. All
16 he had to do was take -- put the -- take the bag, put it in
17 the trunk, take the bag and the Defendant to jail. The bag is
18 looked at, inventoried at the time the Defendant is booked.
19 That's all he had to do.

20 MR. LONG: All of these -- that would have happened the
21 same way in all these cases, Your Honor, but ends doesn't
22 justify the means. They've got -- in the Brannon case that he
23 says that Judge Anderson says that the automobile exception
24 applies, that's not what Judge Anderson said. In the last
25 sentence of the Brannon case, in his concurring, but slightly

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1 dissenting Opinion, he says, law enforcement officers had
2 probable cause to believe that Brannon and Mayberry were
3 transporting drugs from the tips they got from a confidential
4 informant, accordingly, the warrantless search of the vehicle
5 was proper.

6 Judge, the Belton case is a 1981 case. The Wells case,
7 and the California versus Acevedo cases are '90 and '91.
8 Those -- that's newer law. In Acevedo -- clearly, in Acevedo,
9 they -- it's held that -- and it cites Sanders, that the
10 heightened privacy expectation and personal luggage -- and
11 that case concluded that the presence of luggage in an
12 automobile did not diminish the owner's expectation of privacy
13 of his personal items.

14 Now, whether they've got a right to take that bag -- and
15 because he said it was his -- and take it along with them to
16 the jail, and have someone else search it, is -- that actually
17 -- Your Honor, the point is moot. The point here is, this
18 Officer did what the Constitution says he can't do, and he
19 just went into a closed bag and searched it. He did not
20 search it for an inventory, because if these cases hold -- and
21 especially in the Wells case, I believe it was, that there was
22 evidence in here, that they tried to claim it was an inventory
23 search, but it actually wasn't any inventory done. He didn't
24 go in to inventory that bag. He opened it up to see if there
25 was anything in it. He found what he wanted to found and he

1 zipped it back up. That's an unlawful search.

2 And again, if they went to a Judge with that closed bag
3 and said, okay, Judge, here's what we've got; we've got Danny
4 Brown with an open container of alcohol, and we want a warrant
5 to search that bag -- I'm not a judge, but I see -- fail to
6 see the reason, probable cause to give a warrant to search
7 that bag in that instance, and that is an even stronger
8 standard at that point. Your Honor ---

9 THE COURT: What do you say about the Solicitor's
10 argument about a search incident to arrest?

11 MR. LONG: These cases here, these exact cases, hold
12 that a search incident to arrest does not apply to closed
13 containers, period.

14 The Belton case indicated that they went into a closed
15 container, a zipper pocket in a jacket, but Belton is
16 different. They had reasonable suspicion, they had burned
17 marijuana, and that's 1981. These two new cases, not at all.
18 That is not -- search incident to arrest, Your Honor,
19 indicates the body -- the items that are on that person -- and
20 by the facts of this case he was taken, put into custody,
21 either placed in the car or put behind the car, case over. Go
22 deal with the driver. That's it. That is not a search
23 incident to arrest.

24 And Your Honor, I ---

25 THE COURT: All right.

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1 MR. LONG: ---I feel stronger about this than any
2 suppression motion I've ever made.

3 THE COURT: I -- well, I understand that. Obviously
4 you do, and the State ---

5 MR. HIXSON: May I very briefly address one point, Your
6 Honor, briefly?

7 THE COURT: ---Yes sir. All right.

8 MR. HIXSON: Specifically, the quote that -- referring
9 to Acevedo, Acevedo has taken care of the issues that we have
10 here. That's the import of that case. Specifically, I wanted
11 to address this to the Court, because I think it addresses one
12 of Your Honor's questions to Mr. Long. I had already
13 indicated the holding of Belton that said it falls from this
14 conclusion that the police may also examine the contents of
15 any containers found within the passenger compartment after a
16 lawful custodial arrest.

17 In the language in Sanders -- that's what Acevedo wanted
18 to do, was to get rid of this confusion. It says, finally,
19 the search of a paper bag -- which, in this case, was a paper
20 bag in the car, they had found it -- defense counsel claimed
21 that -- just like Your Honor did, that you have to take the
22 paper bag and go get a warrant. You can search the car, under
23 Carroll, but you can't open up that paper bag; they've got to
24 take that paper bag to the warrant -- get a warrant. And the
25 Court, in Acevedo says, finally, the search of a paper bag

1 intrudes far less on an individual's privacy than does incur
2 in sanction long ago in Carroll. In Carroll they cut up the
3 upholstery of a car to search -- hunt for drugs. The Court
4 says that, "Destroying the interior of an automobile is not
5 unreasonable; we cannot conclude that looking inside a closed
6 container is. In light of the mental protections we hold that
7 the Fourth Amendment does not compel separate treatment for an
8 automobile search, but extends only to a container within the
9 vehicle."

10 And they state Chadwick and Sanders have confused Courts
11 and law enforcement, and repeatedly affected law enforcement,
12 that's why Acevedo said, this is too confusing; if you have
13 search incident to arrest, that's a container, that's his, you
14 can take care of it all at one time, Your Honor. That's the
15 import of Acevedo, Your Honor.

16 THE COURT: All right. Thank you.

17 We will take a break.

18 Thank you very much.

19 MR. LONG: Thank you, Your Honor.

20 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
21 THE PRESENCE OF THE JURY.)

22 THE COURT: All right, Mr. Long, regarding your
23 suppression motion that you made earlier, and I took under
24 advisement, and that you have now renewed, and made further
25 arguments at the end of the State's case, so it's clear for

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1 the record, the facts that I see in this particular matter are
2 one, that there was a lawful custodial arrest made by the
3 Officer of the Defendant. After that, or in that arrest, it's
4 clear that he secured the Defendant, first with handcuffs, and
5 then by placing him in the back of his patrol car before he
6 searched the black bag. The black bag was in the floorboard,
7 in the area controlled by the Defendant, the person arrested.
8 The Officer did, this time, in this particular proceeding,
9 testified to some facts about the rationale and reason for
10 going into the bag, as far as officer's safety, posing a
11 threat, those types of things. It's clear that, when the
12 Officer came back to the bag, it was on the sidewalk, on the
13 passenger's side of the vehicle. The driver of the vehicle
14 was on the other side of the vehicle, opposite the Officer and
15 the bag. The Officer unzipped the bag, looked through it,
16 opened a Frito bag, found some, what appeared to be illegal
17 narcotics, contraband, resealed that, and zipped the bag back
18 up, and thereafter called the narcotics officer.

19 The Officer initially, upon stopping the vehicle and
20 seeing the bag, which he said he did, at the very beginning,
21 could have -- assuming he had probable cause for the stop --
22 and he did -- there is an open container -- there is no
23 question about that he had probable cause to stop the car --
24 searched that item for -- under exigent circumstances. Also,
25 at the time he had secured the Defendant in the back of the

1 car, in handcuffs, and the driver of the vehicle was not in
2 the vehicle at the time, but on the opposite side of the
3 vehicle, he could have picked up the bag and put it in his --
4 trunk of his patrol car, secured it, and it could have been
5 inventoried at the same time the Defendant was transported to
6 the detention center and booked and arrested. Both of those
7 would have been fine under the prevailing law. He did neither
8 of those. This is not an inventory search.

9 With all that, and despite my misgivings as to the
10 actions of the Officer in this particular case, I am looking
11 at the U.S. Supreme Court case of the State of New York versus
12 Roger Belton. This case has been the subject of great
13 discussion by Appellate Courts in the Federal system and the
14 State system. As an example, the State of Ohio. Soon as
15 Belton was announced, had a Decision whereby their Supreme
16 Court declined to follow Belton. Under their Constitution and
17 other matters they found fault with Belton, as set forth in a
18 case, and there have been plenty of commentators that have
19 criticized Belton. The State of Ohio, approximately ten years
20 after that Decision, found that they had committed an error in
21 not following Belton, and saying that Belton established a
22 bright line tests. Numerous other states in the United States
23 have also found that Belton establishes a simple bright line
24 test.

25 In Belton the U.S. Supreme Court says, "In order to

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1 establish the workable rule, this category of case requires we
2 read..." -- and Chimel was a previous U.S. Supreme Court
3 Decision -- definition of the limits of the area that may be
4 searched in light of that ruling, indicated that they hold
5 that, "When a policeman has made a lawful custodial arrest of
6 the occupant of an automobile..." -- that is, as is clear here
7 -- there is no question that there was a lawful arrest of the
8 Defendant in this matter for the open container -- "...he may,
9 as a contemporaneous incident of that arrest, search the
10 passenger compartment of that automobile. It follows, from
11 this conclusion..." that the policy may -- that the police --
12 I'm sorry -- "...the police may also examine the contents of
13 any containers found within the passenger compartment, for if
14 the passenger compartment is within the reach of the arrestee,
15 so also will containers in it be within his reach. Such a
16 container may, of course, be searched, whether it is open or
17 closed, since the justification for the search is not that the
18 arrestee has no privacy interest in the container, but that
19 the lawful custodial arrest justifies the infringement of any
20 privacy interest the arrestee may have. It is true, of
21 course, that these containers will sometimes be such that they
22 could hold neither a weapon, nor evidence of the criminal
23 conduct for which the suspect was arrested. The authority to
24 search the person incident to lawful custodial arrest, while
25 based upon the need to disarm and/or to discover evidence,

1 does not depend on what a Court may later decide was the
2 probability in a particular arrest situation, that weapons or
3 evidence would, in fact, be found upon the person of the
4 suspect. A custodial arrest of a suspect, based upon a
5 probable cause, is a reasonable intrusion under the Fourth
6 Amendment. That intrusion being lawful, a search incident to
7 the arrest requires no additional justification."

8 "In Belton..." -- and they were talking about the lower
9 Court Decision -- "...it seems to have been the theory of the
10 Court of Appeal..." -- the lower court -- "...That the search
11 and seizure in the present case could not have been incident
12 to the respondent's arrest because Trooper Nicott, by the very
13 act of searching the respondent's jacket, and seizing the
14 contents of his pocket, had gained exclusive control of him,
15 but under this fallacious theory, no search or seizure
16 incident to a lawful custodial arrest would ever be valid by
17 seizing an article, even on the arrestee's person, or an
18 officer may be said to have reduced that article to his
19 exclusive control." In Belton the person was arrested,
20 and detained, and not near the items where the officer went in
21 the car. After he arrested him, and the person was in a
22 different area, he went in the car. He then searched a coat
23 that was in the area where he found the arrestee. He went
24 inside and unzipped the coat, and went into a pocket and found
25 contraband that was not the reason he arrested the defendant

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1 for. Those facts are clearly the same as here.

2 The Supreme Court went on to say, "It is not questioned
3 that the respondent was the subject of a lawful custodial
4 arrest." That's the same as here. "The search of the
5 respondent's jacket followed immediately upon that arrest, so
6 that..." -- in that case that defendant was also already under
7 arrest and removed from the area. "The jacket was located
8 inside the passenger compartment of the car in which the
9 respondent had been a passenger just before he was arrested.
10 The jacket was thus within the area which we have concluded
11 was..." -- and it's in quotes -- "...within the arrestee's
12 immediate control, within the meaning of the *Chimel* case. The
13 search of the jacket, therefore, was a search incident to a
14 lawful custodial arrest, and it did not violate the Fourth and
15 Fourteenth Amendments."

16 As I said, though I have concerns about the Officer's
17 conduct in this particular case, it is clear that the U.S.
18 Supreme Court set forth a bright line test. The Officer's
19 conduct falls within that bright line test. The motion to
20 suppress is denied.

21 Is the defense ready to proceed?

22 MR. LONG: Yes sir.

23 THE COURT: All right, sir. Is the State ready to
24 proceed?

25 MR. HIXSON: Yes, Your Honor.

1 THE COURT: Is the Defendant -- do you have other
2 witnesses besides the Defendant in this particular matter?

3 MR. LONG: We are going to -- Your Honor, we are going
4 to have two witnesses. We are going to have his fiance,
5 Monica Brisbon, and we are going to -- and she's going to
6 testify first, and then the Defendant is going to testify.

7 Stand up, Danny, he's going to talk to you about your
8 record.

9 THE COURT: All right, sir. Now, I'll be glad to do it
10 after she testifies, if you feel that you would want to have
11 additional conversations with him. I'll be glad to cover his
12 Constitutional Rights about testifying at that point in time,
13 but if you feel prepared, and your client feels prepared, I'll
14 be glad to do it now.

15 MR. LONG: I would rather do it now. I think the jury
16 is probably a little tired of us taking breaks and things, and
17 we can ply forward with this.

18 THE COURT: All right, sir. Thank you very much.

19 All right, Madame Clerk, if you would place the
20 Defendant under oath, please Ma'am.

21 (AT THIS TIME THE DEFENDANT WAS SWORN.)

22 THE COURT: All right, Mr. Brown, I am going to review
23 with you certain of your Constitutional Rights at this point
24 in time. If there is anything at any point in time you don't
25 understand, I want you to stop me, and I want us to go over

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1 that at that point in time; do you understand me?

2 A. Yes sir.

3 THE COURT: All right, sir. We have reached the stage
4 of the trial where you can present your defense. Now, you
5 have the right to claim the protection given to you by the
6 Fifth Amendment to the Constitution of the United States of
7 America, and that states, in part, that no person shall be
8 compelled, in any criminal case, to be a witness against
9 themselves. That means you cannot be forced to be a witness
10 in this case. You certainly can choose to be a witness, and
11 volunteer to be a witness, but nobody can make you, nobody can
12 force you to be a witness in this particular case; you
13 understand that?

14 A. Yes sir.

15 THE COURT: It will be your choice as to whether or not
16 you testify in this particular matter. It is your personal
17 right, and no one can waive it or exercise it except you; do
18 you understand that?

19 A. Yes sir.

20 THE COURT: Now, if you decide to testify you are going
21 to be subject to the same rules as all the other witnesses
22 that have testified in this case, that is, you will be
23 directly examined by your attorney; you will be cross-examined
24 by the State as to any areas the Court deems relevant to this
25 particular matter; you understand that?

1 A. Yes sir.

2 THE COURT: Now, as to the issue of any prior
3 convictions, does the State intend to ask this Defendant any
4 questions about prior convictions?

5 MR. HIXSON: Yes, Your Honor, the State does.

6 THE COURT: And what would that be, sir?

7 MR. HIXSON: Specifically a drug conviction around
8 1992, in the Federal system, a conspiracy to distribute
9 cocaine, possession with intent to distribute cocaine. He was
10 charged with distribution of cocaine subsequent. I believe
11 his actual sentence was based on a conspiracy to distribute.

12 THE COURT: All right. Just a second.

13 MR. HIXSON: Certainly, Your Honor, as part of our
14 discovery, we noticed the fact that the State has prior
15 noticed the Defendant of our intention to use convictions over
16 ten years old. I'm checking his supervision date of release,
17 to see whether -- what time period that results.

18 THE COURT: All right, sir.

19 MR. HIXSON: It appears it's a 1999 conditional
20 release, then he was violated on a conditional release and
21 went back -- I don't know if there is a tolling of during the
22 period of time, but certainly 1999.

23 THE COURT: So he got out in 1999?

24 MR. HIXSON: It says that he was violated on a
25 conditional release from the Federal system in 1998, went back

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1 in, to the Federal Prison camp in Goldsboro in 1999. The last
2 indication is right around -- is 1999.

3 THE COURT: All right, sir.

4 What is the defense's position?

5 MR. LONG: Your Honor, the conviction being in '92 for
6 conspiracy, our position being that it's fourteen years old, I
7 would hope that Your Honor -- there has been nothing since
8 then -- that Your Honor would allow my client to testify
9 without having to be questioned on his prior record.

10 THE COURT: All right. Rule 609(B), under time limit,
11 says, "Evidence of a conviction under this Rule is not
12 admissible if a period of more than ten years has elapsed
13 since the date of the conviction, or of the release of the
14 witness from the confinement imposed for that conviction,
15 whichever is the later date."

16 Now, -- and I won't go on to the rest of it, because
17 that talks about the prejudicial value. The later date here
18 appears to be at least 1999. Would you disagree with that?
19 That's when he got released from confinement.

20 MR. LONG: Yes sir.

21 THE COURT: All right, sir. So I would rule that the
22 time limit provision of 609 does not apply. Now, going back
23 to the general rule, it can be admitted if the crime was
24 punishable for imprisonment in excess of one year, or it's a
25 crime of dishonesty or moral turpitude, and I also have to

1 make a determination that the probative value of admitting
2 this evidence outweighs it's prejudicial effect to the
3 accused.

4 Now, the actual crime for which he was convicted was
5 what, Solicitor?

6 MR. HIXSON: Your Honor, I will make this a part of the
7 Court's record at the appropriate -- if you think it's
8 necessary for appellate purposes. I'll read it to Your Honor.
9 Conspiracy, possession with intent to distribute cocaine
10 base -- it's all abbreviations. His sentence was adult
11 sentence of sixty months, and it was supervised release
12 thereafter, starting in 1996, so I believe it's over -- more
13 than a year.

14 THE COURT: All right. Okay, now I'm confused.

15 MR. HIXSON: Okay. Apologize.

16 THE COURT: You said he got a six -- sentence of sixty
17 months. That would be five years ---

18 MR. HIXSON: That's correct.

19 THE COURT: ---Right. And it was the -- it 1992 when
20 he went to court, or it's a 1992 offense? When did he go to
21 court, and when did the five years start?

22 MR. HIXSON: 5/14/ of 1993.

23 THE COURT: Okay.

24 MR. HIXSON: It appears the sentence was imposed at
25 that time.

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1 THE COURT: In '93. So the five years ---

2 MR. HIXSON: Was an active sentence, and it says five
3 years of supervisor release thereafter.

4 THE COURT: All right. So he got violated on his
5 supervised release, and went back to prison ---

6 MR. HIXSON: That is correct.

7 THE COURT: ---But he had served his initial
8 confinement of the five years, and that would have expired in
9 1998?

10 MR. HIXSON: That's my understanding.

11 THE COURT: All right. Okay. All right. So, '93 --
12 I'm sorry -- yes, '93. Right. So that still wouldn't be
13 within the ten years. Okay. I just wanted to make sure.

14 All right. I do find that the probative value of the
15 State being able to ask the question regarding the conviction
16 outweighs any prejudicial effect of the accused, but I will
17 confine the question to the State asking him if he was
18 convicted of the offense of conspiracy. I will not allow you
19 to go beyond -- to set forth what the conspiracy was alleged
20 to have been, because then I think we would be going
21 dangerously close to the area where the jury might take that
22 in consideration as to whether or not to find the Defendant
23 guilty of this particular offense by what he's been convicted
24 of in the past -- the past, so you can ask him was he
25 convicted of conspiracy, but not go beyond that; you

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1 understand that, Solicitor?

2 MR. HIXSON: Thank you, Your Honor.

3 THE COURT: All right, sir. So, ---

4 MR. LONG: Thank you, Your Honor.

5 THE COURT: ---Going back to you, Mr. Brown, you
6 understand now that the State, if you testify, will be able to
7 cross-examine you about that prior conviction. It's limited
8 to the fact that you were convicted of the crime of
9 conspiracy. Do you understand that?

10 A. Yes sir.

11 THE COURT: All right, sir. Now, if you decide to
12 testify that's got to be your decision. It's got to be made
13 based upon the knowledge of what we have talked about. It's
14 got to be freely made by you in making your decision to
15 testify or not to testify.

16 I'll tell you, if you decided not to testify I would
17 instruct the jury -- and I have an instruction that I would
18 give to them -- that they can't talk about the fact that you
19 didn't testify in the jury room; it can't come up at all; it's
20 not a part of this case; they can't use it to make any
21 decision; they can't use it in any way; it's not part of their
22 decision in any shape, manner or form in deciding whether or
23 not the State has produced sufficient evidence to convict you
24 beyond a reasonable doubt. You understand that?

25 A. Yes sir.

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1 THE COURT: All right, sir. Before I ask you whether
2 you want to testify or not, do you understand everything we
3 have talked about?

4 A. Yes sir.

5 THE COURT: Do you want to talk to your attorney any
6 more before I ask you any further questions?

7 A. May I ask one question?

8 THE COURT: Yes sir.

9 (DEFENDANT CONSULTS WITH HIS ATTORNEY.)

10 A. I'm fine.

11 THE COURT: Are you ready, sir?

12 A. Yes sir.

13 THE COURT: All right, sir. Mr. Brown, do you want to
14 testify in this case or not?

15 A. Yes sir.

16 THE COURT: All right, sir. Thank you very much.

17 A. You are welcome.

18 MR. LONG: Thank you, Your Honor.

19 THE COURT: All right. With that then, the State is
20 ready to proceed?

21 MR. HIXSON: Yes, Your Honor.

22 THE COURT: Defense ready to proceed?

23 MR. LONG: Your Honor, I'm sorry. I actually have to
24 go to the rest room.

25 THE COURT: All right. We'll take five minutes. Five

1 minutes and we will come back; we will get started; bring the
2 jury in.

3 Thank you very much.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: Before we bring the jury in I wanted to put
7 one other thing on the record regarding the denial of the
8 motion for suppression. I wanted to make it clear for the
9 record that I examined the differences between the U.S.
10 Constitution and the South Carolina Constitution that's
11 relevant -- the South Carolina Constitution being Article 1,
12 Section 10, regarding Searches and Seizures, Invasions of
13 Privacy. The South Carolina Constitution does have the
14 additional language of protecting against unreasonable
15 invasions of privacy. That language is not within the context
16 of the United States Constitution, but in looking at cases of
17 the South Carolina Supreme Court I did not find any extension
18 of privacy above and beyond that that is set forth in the U.S.
19 Constitution. The South Carolina Constitution, in this
20 regard, does not appear, in any manner, to extend any greater
21 protections than is guaranteed by the U.S. Constitution, and I
22 have found no reason in the S. C. Supreme Court Decisions to
23 believe, in any way, that the State does not follow the bright
24 line test set forth in Belton.

25 All right. With that, ask the jury to come in, please.

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1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right, ladies and gentlemen, I want to
4 apologize for any delay, or the delay in calling you back out,
5 but there were matters that I had to attend to in this case
6 outside your presence, so it necessitated you being in your
7 jury room for a while.

8 All right. The State has rested. Is the defense ready
9 to proceed?

10 MR. LONG: Yes sir, Your Honor.

11 THE COURT: Call your first witness.

12 MR. LONG: Thank you, Your Honor.

13 I call Monica Brisbon.

14 THE COURT: Come around to be sworn, Ma'am.

15 MONICA BRISBON, being first duly
16 sworn, testifies as follows:

17 DIRECT-EXAMINATION BY MR. LONG:

18 Q. Monica, how old are you?

19 A. I am twenty-seven.

20 Q. Where do you live?

21 A. In Green Sea, South Carolina.

22 Q. Lived in South Carolina all your life?

23 A. Yes.

24 Q. Lived in Horry County all your life?

25 A. Yes.

- 1 Q. What do you do for a living?
- 2 A. I am a teacher at Carolina Forest High School, teach
- 3 Business Education.
- 4 Q. What grades?
- 5 A. Nine through twelve.
- 6 Q. Okay. Do you know Danny Brown?
- 7 A. Yes, I do.
- 8 Q. How do you know him?
- 9 A. We were together for a year and a half, fiance.
- 10 Q. He's your fiance?
- 11 A. Yes.
- 12 Q. And in October of 2005, y'all were together?
- 13 A. Yes, we were.
- 14 Q. Okay. And did you live in Green Sea at that time?
- 15 A. Yes, I did.
- 16 Q. And did Danny live over here at the beach at that time?
- 17 A. Yes, he did.
- 18 Q. Now, the night before the incident that we are talking
- 19 about here -- this particular incident was October the 6th of
- 20 2005. October the 5th of 2005, did Danny stay with you out at
- 21 your place?
- 22 A. Yes, he did.
- 23 Q. At Green Sea?
- 24 A. Yes.
- 25 Q. And was there something going on with his vehicle?

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1 A. Yes. We went to Laurinburg, and it broke down, so he
2 was suppose to ride with the mechanic, Freddie, to pick the
3 vehicle up the next day, and so I was going to take him to
4 meet Freddie, so he wouldn't have to go to Myrtle Beach.

5 Q. Okay. Freddie Prince?

6 A. Freddie, yes.

7 Q. Okay. And so he spent the night with you the night of
8 the 5th, and then on the 6th you took him to meet with
9 Freddie?

10 A. Yes. That's correct.

11 Q. Where did you have to take him to meet with Freddie?

12 A. We were suppose to meet him at Hardee's in Loris, but I
13 had to go to work that day also, so Freddie was late getting
14 to Hardee's, so Danny took me to work, which is at A.V.X. in
15 Myrtle Beach, and we were driving my car, and he dropped me
16 off at work, and then he left.

17 Q. Okay. So you teach school at Carolina Forest year.
18 You didn't teach school last year?

19 A. No, I didn't.

20 Q. You worked at A.V.X. last year?

21 A. That's correct.

22 Q. What did you do for A.V.X.?

23 A. I was the Customer Service Account Manager.

24 Q. Okay. So -- and you say that -- now back up again and
'25 tell me again. You took Danny -- instead of you taking Danny,

1 what happened?

2 A. Instead of me taking Danny -- what do you mean?

3 Q. What did you say? I'm sorry. How did you end -- you
4 had to go to work so ---

5 A. Yes. I had to go to work. He took me to work. He was
6 driving my car. He took me to work, and then he dropped me
7 off and left, and then he dropped my car back off at my job at
8 A.V.X., in the parking lot, and then Freddie picked him up
9 from my job at A.V.X.. He left my car there and rode with
10 Freddie, and then they went to pick up his car in Laurinburg,
11 where it had broken down.

12 Q. Now all of that is October 6th?

13 A. Yes.

14 Q. So, Danny went with Freddie in the tow truck to go to
15 Laurinburg and get the car?

16 A. Yes, that's correct.

17 Q. And your car was in the parking lot at A.V.X.?

18 A. That is correct.

19 Q. When you got -- what time did you get off work that
20 day?

21 A. It was probably about six fifteen. My hours are from -
22 - were from nine to six, but you know, closing down and
23 everything, it was around 6:15, no later than 6:30.

24 Q. Six o'clock, six fifteen. When you got off work at
25 A.V.X. you got in your car. Was Danny's bag in your car?

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- 1 A. Yes, it was.
- 2 Q. Okay. And had that bag been in your house the night
3 before?
- 4 A. Yes, it was.
- 5 Q. We are talking the black duffle bag.
- 6 A. Had it been in my house?
- 7 Q. Yes.
- 8 A. Yes. He packed the bag, and the bag was there. It was
9 his bag.
- 10 Q. Okay. Why did he have a bag, to come and stay over at
11 your house?
- 12 A. Yes.
- 13 Q. What was in the bag?
- 14 A. I don't know. I never looked in the bag.
- 15 Q. Okay. So when you went back and got in your car after
16 work, at A.V.X., the duffle bag was in your car?
- 17 A. Yes.
- 18 Q. And then where did you go when you got off work?
- 19 A. I went to Freddie's shop, which is the man who took him
20 to Laurinburg to pick up his car. I went there to pick Danny
21 up, because he had called me and let me know that they were
22 back. And when I got there Danny said that Freddie wanted him
23 to take -- help take the car off, but I'm also the Youth Choir
24 Director at my church, and I had choir practice that night, so
25 I couldn't wait on Danny, so I left him there with Freddie.

1 Q. So you went to pick Danny up and because he had to help
2 Freddie get the car off, and you had to be somewhere, choir
3 practice, Danny stayed there with Freddie to help him get the
4 car off the truck?

5 A. That's correct.

6 Q. And then Danny -- did he come get the bag out of the
7 car?

8 A. Yes. He got his bag and his belongings, and I left.

9 Q. Okay. So you left, and you left Danny at Freddie's
10 place, and what time do you think that -- about that would be?

11 A. I got off about six fifteen, six thirty. That could
12 have been six forty-five, close to seven, maybe.

13 Q. Okay. And then after that you don't know much about
14 this thing?

15 A. No, I don't.

16 Q. Okay. And then you found out that Danny actually had
17 been arrested?

18 A.. Yes.

19 Q. You -- do you know that the black duffle bag was in
20 your car all day long on the day of the 6th?

21 MR. HIXSON: I just object, Your Honor. He's leading
22 the witness.

23 MR. LONG: I'll rephrase it, Your Honor.

24 THE COURT: Rephrase it.

25 Q. How long was the black duffle bag in your car?

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1 A. As far as I know it was in there from the time he
2 dropped me off until the time I got off work.

3 Q. And he was gone to Laurinburg?

4 A. Yes.

5 Q. All right.

6 MR. LONG: Answer any questions Mr. Hixson might have.

7 THE COURT: Cross-examination.

8 MR. HIXSON: Thanks. Thank you, Judge.

9 CROSS-EXAMINATION BY MR. HIXSON:

10 Q. So you are a teacher?

11 A. Yes, I am.

12 Q. Is that a handful?

13 A. Yes, it is. I love the kids though.

14 Q. So you've got a bunch of high schoolers, it sounds
15 like.

16 A. Yes, I do.

17 Q. Nine through twelve.

18 A. Yes.

19 Q. You been doing that for a while?

20 A. No. This is my first year teaching.

21 Q. And it was at the A.V.X. prior to that?

22 A. Yes.

23 Q. You said something about that you were dating Mr.
24 Brown.

25 A. Yes.

- 1 Q. When did you start dating him?
- 2 A. It was May -- well, Memorial weekend, last year.
- 3 Q. Okay. And about how long -- how did you come to meet
- 4 him?
- 5 A. We were at a cookout, and -- I forgot the name of the
- 6 place, but it was on the boulevard. We were at a cookout.
- 7 Q. Okay.
- 8 A. And my friend, my best friend, introduced me.
- 9 Q. Had you known him before?
- 10 A. No.
- 11 Q. Did you grow up in the area? I didn't know if you ---
- 12 A. Well, I'm from Green Sea, and he's from Myrtle Beach.
- 13 I mean, that doesn't seem far. I drive to Myrtle Beach every
- 14 day, but I don't know hardly anyone from Myrtle Beach.
- 15 Q. That drive back and forth gets old, I guess, after a
- 16 while.
- 17 A. Yes.
- 18 Q. You said something about -- well, how long did you date
- 19 him? When you first met him, how long did you date him?
- 20 A. For a year and a half.
- 21 Q. And at some point in time y'all broke up, didn't you?
- 22 A. Yes.
- 23 Q. That drive from Green Sea -- let me ask ---
- 24 A. What -- I'm sorry.
- 25 Q. I'm sorry. The drive from Green Sea to Myrtle Beach,

MONICA BRISBON - CROSS BY HIXSON

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- 1 when y'all need to visit -- when you visit ---
- 2 A. Yes.
- 3 Q. ---About how long do you think that is?
- 4 A. From Green Sea to his house, or from Green Sea to --
- 5 it's about -- I'll say fifty minutes.
- 6 Q. About fifty minutes?
- 7 A. Yes.
- 8 Q. Would you go down to see Danny, or do you -- or would
- 9 Danny come to see you more? Which -- did you drive more, or
- 10 did he drive?
- 11 A. Well, because I worked at A.V.X., and that is in Myrtle
- 12 Beach, mostly we had lunch and then I would see him at his
- 13 house, and you know, he would come down there sometimes.
- 14 Q. Okay. So when you guys are apart I guess you guys are
- 15 like fifty miles apart, and that's a pretty -- would you -- is
- 16 that safe to say? It's hard to see each other a lot of times
- 17 when you have to drive fifty miles to see each other?
- 18 A. It was complicated sometimes, yes.
- 19 Q. Nothing too personal -- I don't want to know any of
- 20 that -- but did you date any -- are you dating anybody prior
- 21 to Danny? Did you have any boyfriends prior to Danny ---
- 22 A. Yes.
- 23 Q. ---That you broke up with?
- 24 A. In my life -- in my entire life, or are you just ---
- 25 Q. Yes. Not to take it too personally. I'll just --

1 don't worry about the question. That's all right.

2 A. Okay.

3 Q. I just come -- interested to know why you broke up with
4 other boyfriends before that. That's why I was interested in
5 that -- why I was interested in that.

6 A. Why did I break up with other ---

7 MR. LONG: Your Honor, I would object to the relevance.

8 THE COURT: Sustained.

9 Q. Well, at some point in time, isn't it true that you
10 started wondering what Danny did for a living?

11 A. No. I didn't wonder.

12 Q. Did you ever tell anybody that you were concerned about
13 what Danny was involved in?

14 A. I didn't -- no, I never made that statement.

15 Q. Well, at some point in time isn't it true that you told
16 somebody that you were going to have to break this off because
17 you don't really know what he's involved in?

18 A. Somebody, like who? I didn't tell anybody that.

19 Q. You never -- you never told anybody that?

20 A. No.

21 Q. But it's true you are not dating now?

22 A. Yes. We -- we are.

23 Q. You are dating now?

24 A. Yes.

25 Q. Okay. Because you said, in your direct statement, that

MONICA BRISBON - CROSS BY HIXSON

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1 we were dating for a year and a half, and you never said
2 anything about getting things going back again. I -- isn't it
3 true that you are not -- you are -- when did you get engaged,
4 during the pendency of this trial?

5 A. No. We -- maybe four or five months after we were
6 dating, and I didn't -- when I said were, I meant we are. I
7 mean, I didn't ---

8 Q. So now you are saying ---

9 A. We were dating.

10 Q. ---That you never broke up with him at all?

11 A. No.

12 Q. Okay. But you just told the jury that you dated for a
13 year and a half and you broke up; is that right?

14 A. We dated for a year and a half and we broke up?

15 Q. Yes. You said on direct that you dated for about a
16 year and a half. Isn't it true that I just asked you that
17 question?

18 A. Well, I mean, if I said that it could have been your
19 working, but I didn't -- I don't recall saying that.

20 Q. Would -- it's true on direct-examination you used past
21 tense in reference to your relationship with Danny Brown;
22 isn't that true?

23 A. That could have been a grammatical error in my ---

24 Q. That's fine.

25 A. ---Wording.

1 Q. Everybody gets a little nervous sometimes. I
2 understand that.

3 Now, on the night of the 5th, sounds like there was a
4 lot of shuffling of cars going around, on the night of the
5 5th. Do you remember that clearly?

6 A. Yes.

7 Q. And did you see all that shuffling of cars going on
8 when you were working at A.V.X.?

9 A. Shuf -- what do you mean by shuffling of cars?

10 Q. That -- isn't it true that you said that Danny Brown
11 drove you to work?

12 A. Uh huh (indicating positive) That's correct.

13 Q. And then Danny Brown left from work, went to -- left in
14 Mr. Prince's tow truck, to Laurinburg. Isn't it true that you
15 said all those progression of -- exchanges of vehicles?

16 A. Yes. He drove me to work, and he left, but then he
17 brought my car back to A.V.X., and then he and Freddie went to
18 pick up his car.

19 Q. Okay. And were you at work at that time?

20 A. I was.

21 Q. So you weren't with him during that period of time?

22 A. No, I wasn't. I was working.

23 Q. So how do you know all that happened? Is that because
24 Danny Brown told you that's what happened?

25 A. Yes, he did tell me that.

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1 Q. So you don't have any personal knowledge of any of
2 that?

3 A. I mean, I saw the car when I got to Freddie's, so I
4 assume they went to pick it up, and I know it was in
5 Laurinburg, because I was in the car when it broke down.

6 Q. Right. In essence, Danny Brown told you what you
7 testified to just earlier, about the exchange of cars, because
8 you didn't see it; you were at work, right?

9 A. No. I didn't see him bring my car to A.V.X., but he
10 had my car, so I'm assuming he did bring it to A.V.X., and
11 left it in the parking lot, and Freddie picked him up.

12 Q. But you don't have any personal knowledge of the
13 exchanges, and the bag, and all this thing. That's what Danny
14 told you?

15 A. I'm not understanding what you are saying.

16 Q. I'm sorry. You were at work. You seem like a
17 wonderful person, and I'm sure you were at work at A.V.X..

18 A. Yes.

19 Q. You were not with Danny Brown when he was getting the
20 car from Mr. Prince?

21 A. No, I couldn't have. I was at work in my office.

22 Q. You were not with them when they went to Laurinburg?

23 A. No, I was not.

24 Q. You were not with him when he returned the car back to
25 you?

1 A. No.

2 Q. So the only way -- isn't it true, the only way you know
3 all of that is because your fiance, in court today, Mr. Brown,
4 told you that's what happened?

5 A. Yes.

6 Q. And you are saying that your original break-up -- you
7 are testifying that you didn't break up with him because of
8 your concerns over his source of income?

9 A. No, I didn't say that.

10 Q. I think defense counsel indicated -- isn't it true that
11 you don't know anything about what happened with Mr. Smith and
12 the '76 Plymouth on Highway 17 Business?

13 A. No. After I dropped Danny off, and he helped Freddie,
14 I left, and I went back to Green Sea.

15 Q. And you don't know what's in that black bag?

16 A. No.

17 MR. HIXSON: Thank you. I have no further questions.

18 THE COURT: Redirect.

19 MR. LONG: Just very brief, to clarify.

20 REDIRECT-EXAMINATION BY MR. LONG:

21 Q. Monica, when -- when Danny took you to work the morning
22 of the 6th, is it your understanding that Danny brought the
23 car right back to work that morning ---

24 A. Yes.

25 Q. ---And left your car in the parking lot ---

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1 A. That's correct.

2 Q. ---Is that right. Did you go to lunch that day in your
3 car?

4 A. Yes.

5 Q. And so when you left A.V.X. to go out to the parking
6 lot, your car was in the parking lot?

7 A. That's correct.

8 Q. And your -- it was your understanding that Danny was
9 gone to Laurinburg with Freddie?

10 A. Yes.

11 MR. LONG: All right. That's all I have. Thank you.

12 THE COURT: Anything on those questions, Solicitor?

13 MR. HIXSON: Nothing, Your Honor.

14 THE COURT: You may step down.

15 MR. LONG: Danny Brown, Your Honor.

16 THE COURT: All right. Come around to be sworn, sir.

17 DANNY CORTEZ BROWN, being first
18 duly sworn, testifies as follows:

19 DIRECT-EXAMINATION BY MR. LONG:

20 Q. How old are you, Danny?

21 A. I'm thirty-eight.

22 Q. From Myrtle Beach?

23 A. Yes sir.

24 Q. Graduated from Myrtle Beach High?

25 A. Graduated from Myrtle Beach High.

1 Q. Went to college?

2 A. Went to Lees McCrea Junior College, playing football
3 there.

4 Q. Did you graduate from college?

5 A. Yes sir.

6 Q. What do you do for a living?

7 A. I work for Johnson Coastal Consulting, consulting
8 company. I deal with the professional athletes that come
9 through the business. I know some athletes that I went to
10 college with that played in the pros, and I know some as of
11 now.

12 Q. Back up just a little bit. Go ahead. I'm sorry.

13 A. I work for Johnson Coastal Consulting. I consult with
14 the professional athletes that they have coming in town.

15 Q. You can stop, Danny. We heard you. I just didn't want
16 you spitting. It kind of -- when you do "p"s it makes a loud
17 noise, and everybody kind of cringes.

18 What is it that Johnson Consulting does?

19 A. It's a real estate company. They do land development,
20 and real estate deals, and my basically job is to consult with
21 the athletes, due to the fact that I'm a athlete myself, and
22 has played with professional athletes that I went to school
23 with, and that still play professional ball now.

24 Q. Who is the owner of the company?

25 A. Mark Johnson.

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- 1 Q. Do y'all actually have athletes, professional athletes
2 that come to Myrtle Beach and buy property?
- 3 A. All the time, yes.
- 4 Q. Would you have examples of that?
- 5 A. I have Charles Shackelford, Raymond Felton, Butchie
6 Wallace, just to name a few names -- that I have dealt with.
- 7 Q. Okay. And how long have you done that?
- 8 A. I've been doing that around three years now. I haven't
9 done it recently because of some problems with my family, my
10 mother.
- 11 Q. All right. Your mother was here in court with you
12 yesterday; she is not today; is that right?
- 13 A. Correct. Correct.
- 14 Q. What kind of problems have you been having with her?
- 15 A. She recently had a stroke, and she has dialysis three
16 times per week.
- 17 Q. Is that where she is today?
- 18 A. Correct.
- 19 Q. And you help take care of your mama?
- 20 A. Yes.
- 21 Q. Your father is deceased?
- 22 A. My father is deceased.
- 23 Q. And she lives over in Myrtle Beach?
- 24 A. She has a Myrtle Beach address.
- 25 Q. Does she still live in the home you all grew up in?

- 1 A. Yes.
- 2 Q. And that's over on what street?
- 3 A. That's on -- at [REDACTED] Dunbar Street.
- 4 Q. Okay. And your family used to own a funeral home over
- 5 there, right?
- 6 A. Correct.
- 7 Q. Now, October 5th, right before this incident that we
- 8 are going to talk about -- talk a lot about. October 5th,
- 9 that night, where did you sleep?
- 10 A. I went to Green Sea, South Carolina, to stay with
- 11 Monica Brisbon.
- 12 Q. All right. And how are you related to Monica?
- 13 A. She's my girlfriend. She was my girlfriend then, and
- 14 she's my fiance as of now.
- 15 Q. Do you plan on marrying her?
- 16 A. Yes.
- 17 Q. When -- don't want to get you in trouble. When are you
- 18 going to marry her?
- 19 A. Soon.
- 20 Q. She lives out there, and you went to stay with her?
- 21 A. Yes.
- 22 Q. And did you take that black duffle bag with you?
- 23 A. Yes.
- 24 Q. What was in it?
- 25 MR. HIXSON: Your Honor, this is his witness. I

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1 believe he is leading the witness quite a bit at the present
2 time.

3 THE COURT: All right, sir. Don't lead your witness,
4 please sir. Thank you. Go ahead. Continue on.

5 Q. Did you take a change of clothes?

6 A. Yes, I did.

7 Q. What did you take it in?

8 A. I took it in the black duffle bag.

9 Q. What -- exactly what was in there?

10 A. Change of clothes, toothpaste, toothbrush, some
11 cosmetics maybe, personal hygiene stuff.

12 Q. Okay. And then you spent the night there and -- what
13 happened to this vehicle? What happened to your car?

14 A. Well, a week prior we went to Laurinburg, North
15 Carolina, to a friend of mine. He had a black and white party
16 that me and Monica attended, and my car broke down there.

17 Q. Okay. And then -- so how did y'all get home from out
18 there?

19 A. My friend brought us back.

20 Q. And how about Freddie Prince? Who is he?

21 A. He's a mechanic who owns a mechanic shop on Third
22 Avenue. On October the 6th -- you want me to tell you my
23 reason for ---

24 Q. Yes. Go ahead.

25 A. Well, I went to stay in Green Sea on the 5th, due to

1 the fact, you know, she is my girlfriend, and we were going to
2 go that way the next day anyway to pick up my car, so I
3 figured I would just go there and stay with her that night,
4 have them pick me up the next morning, and continue going to
5 Laurinburg to pick up my car.

6 Q. Have Freddie pick you up?

7 A. Right.

8 Q. All right. Go ahead.

9 A. But that morning we couldn't get in touch -- I couldn't
10 get in touch with him, so therefore I had to come back to
11 Myrtle Beach, because I would have been stuck there, in Loris,
12 and Monica had to get to work, so therefore we continued to go
13 back to Myrtle Beach.

14 Q. So you rode with Monica, in Monica's car, back to
15 Myrtle Beach?

16 A. I drove her back to Myrtle Beach to her job, and
17 dropped her off.

18 Q. What did you do with your duffle bag while you were
19 driving back to Myrtle Beach?

20 A. My bag was in the back seat of the car.

21 Q. Okay. And when you drove back, you dropped off at
22 A.V.X., where did you go?

23 A. I was headed home, and then I got a phone call.

24 Q. Okay. And -- you got a phone call from Freddie?

25 A. I got a phone call from Freddie, saying that he could

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1 take me.

2 Q. All right. Then what did you do?

3 A. I knew that I probably wouldn't have been back by the
4 time Monica got off, so therefore I turned around and went
5 back to drop her car off, called her and told her that I will
6 be going to Laurinburg, and I'll be dropping her car off and
7 leaving her keys under her seat.

8 Q. Okay. And did you take her car back to A.V.X. and
9 leave the keys under the seat?

10 A. Yes, I did.

11 Q. And what about the black duffle bag? What did you do
12 with it?

13 A. It was still in the back seat of the car.

14 Q. When you left that black duffle car in the back seat of
15 her car at A.V.X., were there drugs in it?

16 A. No.

17 Q. Okay. And then you went to Laurinburg?

18 A. Right, went to Laurinburg.

19 Q. And -- so what happened in Laurinburg?

20 A. I went to Laurinburg, we put my car on a -- I don't
21 know how to explain -- a roller, or a roll-back, or whatever
22 you pronounce it.

23 Q. A trolley.

24 A. Yes. That the drive with -- up upon, put it on that
25 and then came back to Myrtle Beach.

1 Q. All right. And then when you got back to Myrtle
2 Beach -- so Freddie was driving you with his truck?

3 A. Right.

4 Q. When you got back to Myrtle Beach where did y'all go?

5 A. We went to Third Avenue, which is where his mechanic
6 shop is at.

7 Q. Okay. And what was going on there?

8 A. Nothing but us dropping the car off so that he can
9 start working on it.

10 Q. Okay. And then what happened?

11 A. He had some -- some other issues that he had to handle,
12 and my car was till on the car lift, and he needed me to help
13 him get it off, so I just waited around for him so I can help
14 him take my car off of the lift.

15 Q. Okay. And what about -- what happened when Monica got
16 off work?

17 A. Well, she got off from work and I was going to have her
18 to give me a ride home, but it was taking Freddie and I so
19 long that I just let her go, cause she had some other things
20 that she had to do.

21 Q. So she -- when she came to the -- Freddie's shop and
22 then left, that left you with no ride, right?

23 A. Yes. No ride. I mean, I had a ride, but she was going
24 to be my initial ride.

25 Q. Okay. And when you finally got the car off the truck

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1 what did you do?

2 A. We got the car off the truck and then I got in the
3 truck with Freddie and he was going to take me home, Freddie
4 and another guy that works with him, and his daughter,
5 Freddie's daughter, and we were going home. He was going to
6 take me home.

7 Q. And then -- so did he start to take you home?

8 A. Yes.

9 Q. And then what happened?

10 A. We headed down Third Avenue toward U.S. 17 Business.
11 Once you come to U.S. 17 Business and Third Avenue it's a
12 redlight there, so we had to come to the stop, take the right
13 to get back on U.S. Business 17 and started heading south, and
14 then he went to the Hess gas station to put some gas into his
15 truck.

16 Q. Okay. And then what happened? Who did you see when
17 you got to the gas station?

18 A. Well, when I got to the gas station I saw Rodney Smith
19 at an adjacent gas pump.

20 Q. How did you know Rodney Smith?

21 A. He's from the Booker T. Washington area, which is the
22 neighborhood that I live in. He's been -- I knew him all my
23 life basically.

24 Q. The neighborhood you live in, or the neighborhood you
25 were raised in?

1 A. The neighborhood that I was raised in ---
2 Q. So you know him ---
3 A. ---And live in, as of now.
4 Q. Okay. And then -- so what did you say to him?
5 A. I asked him which way was he going, and he told me that
6 he was going south, so I asked him would he mind giving me a
7 ride home.
8 Q. And why did you ask him for a ride?
9 A. Because Freddie had another guy in the car that he had
10 to take home, and it was a long day -- it was raining all of
11 that day -- and I was just tired, and I was just ready to get
12 home as soon as I could.
13 Q. Okay. So then when Rodney said yes he could give you a
14 ride, what did you do?
15 A. I went to Freddie's -- Freddie's truck, gave him some
16 money for gas, and then got my bag out and went and got in
17 Rodney's car.
18 Q. Okay. Did you have a beer?
19 A. Yes, I had a beer.
20 Q. Where did you get the beer?
21 A. I got it from Freddie's shop.
22 Q. Okay. You were drinking beer at Freddie's shop?
23 A. Yes.
24 Q. And after you gave Freddie the money for gas, you still
25 had you beer in your hand, and you grabbed your bag; is that

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1 right?

2 A. I got the beer and my bag out of his car.

3 Q. Okay. And when you got in Rodney's car, what did you

4 do with the bag?

5 A. I got in and I sat it on the floor.

6 Q. Down in the floorboard?

7 A. Yes.

8 Q. Front seat floorboard?

9 A. Front seat floorboard.

10 Q. Where?

11 A. Right between him and I.

12 Q. And would you say it was between your legs as been said

13 in here earlier, or was it more toward the middle?

14 A. It was not between my legs.

15 Q. So -- but it was certainly beside you?

16 A. Yes. It was beside me.

17 Q. All right. And then you started heading down Highway

18 17, and what happened?

19 A. Heading down Highway 17, just heading south -- I don't

20 know how far it was, but I was drinking the beer -- I did

21 drink the beer -- and as -- coming down from drinking the beer

22 I looked over, through the driver's side door, and I saw a

23 police officer pull up beside me.

24 Q. And then what?

25 A. I kind of like, damn -- excuse my French, but I was

1 like, damn, he saw us -- saw me drinking the beer; I know he's
2 going to pull us over.

3 Q. Did you say that out loud?

4 A. Yes.

5 Q. And then he pulled in right behind y'all and put the
6 blue lights on?

7 A. Yes. He got behind us and pulled us over.

8 Q. And did -- what did the police officer do?

9 A. Came to the driver's side door, asked Rodney to roll
10 his window down, which he did, and asked me did I have a beer.

11 Q. What did you say?

12 A. I kind of nonchalantly said, what beer.

13 Q. Where was the beer can at that point?

14 A. Between my legs.

15 Q. Okay. And then eventually picked the beer can up and
16 showed it to him?

17 A. Yes.

18 Q. Then what did he do?

19 A. He came around to my side of the car, opened the door
20 and took me out of the car.

21 Q. And then what did he do with you?

22 A. He took me to the back of Rodney's trunk.

23 Q. Before he took you to the back of Rodney's trunk, did
24 he leave the door open, or did he close the door?

25 A. The door was closed.

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- 1 Q. He closed the door?
- 2 A. Yes. Took me out and closed the door behind me.
- 3 Q. Okay. And he took you to the back of Rodney's car?
- 4 A. Correct.
- 5 Q. What did he do with you at the back of Rodney's car?
- 6 A. Patted me -- patted me down.
- 7 Q. Okay. So he patted you down. Frisked you?
- 8 A. Yes.
- 9 Q. How long did that take?
- 10 A. Maybe two minutes, maybe, two or three minutes, maybe.
- 11 Q. And after he patted you down, what did he do?
- 12 A. He proceeded to handcuff me.
- 13 Q. So he handcuffed you back behind Rodney's car?
- 14 A. Correct.
- 15 Q. And did he tell you you were under arrest?
- 16 A. I don't recall, but honestly telling you, I don't think
- 17 he did at that particular time.
- 18 Q. Okay. And then after he handcuffed you, what did he
- 19 do?
- 20 A. He took me from the back of his car to his patrol car,
- 21 and put me in the back of that car.
- 22 Q. From the back of Rodney's car, back to the back seat of
- 23 the patrol car?
- 24 A. Yes.
- 25 Q. Did he open the door for you and put you in?

1 A. Yes.

2 Q. And then shut the door?

3 A. Yes.

4 Q. And then what did he do?

5 A. He went back to the -- Rodney's car.

6 Q. Driver's side or passenger's side?

7 A. To tell you the honest truth, I don't know which side

8 he went to at that particular time, cause I was handcuffed,

9 and the handcuffs was real tight. I was much bigger then.

10 Q. Was it light or dark out?

11 A. It was dark.

12 Q. Was it raining?

13 A. Raining, yes. It was real hard. It was raining all

14 over the State that day, I think, cause it was raining even in

15 Laurinburg.

16 Q. Okay. So after he took you out of the car and closed

17 the door, and took you back and frisked you, and handcuffed

18 you, and then put you in his car, you don't really know -- do

19 you know, or do you not know what was happened up there in

20 Rodney's car?

21 A. I don't know what was happening.

22 Q. When he took you out of your car -- out of Rodney's

23 car, and closed the door, where was the black duffle bag?

24 A. Still in the car.

25 Q. Still on the floorboard?

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- 1 A. Yes.
- 2 Q. And then -- so eventually, did the Officer come back to
3 the car and talk to you about something?
- 4 A. No, he didn't.
- 5 Q. Another officer did?
- 6 A. Yes.
- 7 Q. And they ended up telling you that they had found drugs
8 in the car?
- 9 A. Correct.
- 10 Q. And did they ask you questions about that?
- 11 A. Yes, they did.
- 12 Q. Did they ask you questions on the scene about it?
- 13 A. Yes.
- 14 Q. What type of questions did they ask you?
- 15 A. By the other arresting officer?
- 16 Q. Yes.
- 17 A. Asked me was that my stuff in the bag, and I didn't
18 know what we was talking about. I said no.
- 19 Q. You told him -- did you say no, or did you say, I don't
20 know what you are talking about?
- 21 A. I said, I don't know what you are talking about. I
22 said, I don't have -- I don't have nothing in my bag.
- 23 Q. Okay. And then they took you to J. Reuben Long?
- 24 A. Yes. I went to J. Reuben Long then.
- 25 Q. Were you interviewed, or at least attempted to be

1 interviewed out there by a police officer?

2 A. J. Reuben Long, yes.

3 Q. Who?

4 A. Delpercio and Officer Williams.

5 Q. Delpercio and Officer Williams?

6 A. Correct.

7 Q. They were both in the room when they interviewed you?

8 A. Both in the room.

9 Q. And did they ask you -- what did they ask you?

10 A. They asked me how long did I know -- do I know Rodney

11 Smith, and I said yes.

12 Q. What did they say about that? Why did they ask that

13 question? Did they tell you?

14 A. They asked me did I know him, and I said yes, and then

15 they made a response as if though -- he didn't know me, so

16 therefore they were not going to ask me any more questions,

17 because they will feel as though they are trying to trick me.

18 Q. Okay. And then did they end up asking you any

19 questions?

20 A. No more questions.

21 Q. Okay. Those drugs -- I'm going to show you what's been

22 marked, and is now in evidence as State's Number 2. Does that

23 belong to you?

24 A. I never seen that till I got here, and it doesn't

25 belong to me.

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- 1 Q. Was that in your duffle bag ---
- 2 A. No.
- 3 Q. Did you know that was in your duffle bag?
- 4 A. No.
- 5 Q. Did you tell Rodney Smith that he -- that you could
- 6 sell him some cocaine?
- 7 A. No, I did not.
- 8 Q. The Solicitor is going to have an opportunity to ask
- 9 you some questions, and he's going to ask you about a criminal
- 10 record. You do have a criminal record; is that correct?
- 11 A. Yes, fourteen years ago.
- 12 Q. Fourteen years ago. Did you have a trial, or did you
- 13 plead guilty?
- 14 A. I pled guilty to a conspiracy.
- 15 Q. Conspiracy.
- 16 A. Yes.
- 17 Q. Fourteen years ago?
- 18 A. Yes.
- 19 Q. Are you telling the truth, Danny?
- 20 A. All -- absolutely, I am.
- 21 Q. Are you a drug dealer?
- 22 A. No.
- 23 MR. LONG: Answer any questions Mr. Hixson may have.
- 24 THE COURT: Cross-examination.
- 25 MR. HIXSON: Thank you, Your Honor.

1 CROSS-EXAMINATION BY MR. HIXSON:

2 Q. So you used to be a football player, or an athlete? I
3 heard you say athlete. That's ---

4 A. Yes. I played football.

5 Q. Football. Play for Conway -- in this area ---

6 A. I played in Myrtle Beach.

7 Q. ---Myrtle Beach?

8 A. I played at Myrtle Beach High, yes.

9 MR. HIXSON: I just have to get myself acquainted also.

10 Q. Now, we talked a little bit about -- I think your
11 defense counsel said something about -- what kind of an active
12 sentence did you serve on that conspiracy charge?

13 A. How many years did I serve?

14 Q. Yes.

15 A. I served sixty months.

16 Q. Okay. Did you have any supervised release after that?

17 A. Yes.

18 Q. Now I notice -- of course you had an opportunity to
19 talk to Ms. Brisbon back there. I heard you say something
20 about, she's my fiance as of now. Isn't that true you said
21 that?

22 A. Yes.

23 Q. So as of now means -- does that mean that she wasn't
24 just prior to trial?

25 A. No. I meant she wasn't during the time that I got

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- 1 arrested.
- 2 Q. Okay. Well, when did you guys break up?
- 3 A. Ain't never broke up.
- 4 Q. Never broke up?
- 5 A. No.
- 6 Q. So when she said that she did, was she lying then?
- 7 A. No, she wasn't.
- 8 Q. You also said something about the contents of the black
- 9 bag. You said -- isn't it true you said that you had
- 10 cosmetics, toiletries, you know, things like that; isn't that
- 11 correct?
- 12 A. Yes.
- 13 Q. Personal items?
- 14 A. Did I have personal items in the bag?
- 15 Q. Yes. Isn't that what you said -- cell phone?
- 16 A. Yes. Toothpaste -- so yes. No, the cell phone was not
- 17 in the bag.
- 18 Q. It wasn't in the bag?
- 19 A. No. It was on my person. They put it in the bag, the
- 20 officers did.
- 21 Q. Okay. Okay. And I'm sure it's a kind of a -- is it a
- 22 shocking event to be arrested like that?
- 23 A. Was it shocking ---
- 24 Q. Yes.
- 25 A. ---To be arrested like ---

1 Q. Yes, you are riding ---

2 A. I was caught with an open container. It wasn't
3 shocking for what I was doing. I was drinking the open
4 container. That was not shocking.

5 Q. Well, isn't it true that you knew when you were
6 arrested you were arrested for open container?

7 A. Yes sir.

8 Q. Okay. And you said -- testified that Officer Williams
9 took you into the back of the car.

10 A. Yes.

11 Q. You testified -- I believe you testified -- isn't it
12 true -- that you didn't see Officer Williams going through
13 your bag?

14 A. I didn't see him going through the bag?

15 Q. Uh huh (indicating positive)

16 A. No, I didn't.

17 Q. Okay. So you didn't see Officer Williams when he
18 opened up the Fritos bag and looked in and saw powder cocaine
19 in that bag?

20 A. No, I didn't.

21 Q. Didn't see that?

22 A. No.

23 Q. Then when the other Officer asked you that, why did you
24 say, that stuff in the bag is not mine? You didn't even know
25 there was drugs in it.

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- 1 A. Because he came and asked me -- because he came and
2 asked me was it my stuff.
- 3 Q. Right. And you said no?
- 4 A. Right.
- 5 Q. But it's just personal items. It's just personal items
6 in the bag.
- 7 A. He didn't ask me about no personal items. He asked me
8 about some cocaine.
- 9 Q. So, let me rephrase. Isn't it true that you packed you
10 bag with the overnight stuff?
- 11 A. Right.
- 12 Q. With underwear, with cosmetics, with toiletries, with
13 whatever you would need to go over to spend the night at Green
14 Sea on the night before. Isn't that what you testified?
- 15 A. That's -- yes, correct.
- 16 Q. Is there anything in there that you wouldn't want to
17 tell a police officer that isn't yours?
- 18 A. Is anything -- correct that.
- 19 Q. Would you want to tell the police office -- lie to the
20 police officer and say, that's not my underwear?
- 21 A. No. If it was my underwear I would tell them it's my
22 underwear.
- 23 Q. But you didn't see the Officer find the cocaine in the
24 bag.
- 25 A. No, I didn't.

1 Q. And according to your testimony right here, you didn't
2 know it was in the bag.

3 A. I didn't.

4 Q. So when the Officer asked you if that's your stuff in
5 the bag you go, no, that's not mine.

6 A. I said no, that is not mine -- that the cocaine was not
7 mine.

8 Q. But you hadn't seen the Officer discover it yet.

9 A. The Officer -- other Officer asked me ---

10 MR. LONG: I object. He's confusing him, in that the
11 question -- he's already ---

12 THE COURT: Mr. Long, it's cross-examination. I'm
13 going to allow the question. He may answer it. If he doesn't
14 understand the question he can tell the Solicitor he doesn't
15 understand it, and you certainly have the right to redirect.

16 Continue on.

17 MR. HIXSON: I'm not trying to confuse you. You may
18 think I am, but I'm not. Let me be as clear as I can be.

19 Q. Isn't it true your testimony was that you packed that
20 duffle bag?

21 A. Correct.

22 Q. Isn't it true your testimony was that you put personal
23 items in that duffle bag?

24 A. Correct.

25 Q. Isn't it true your testimony is that you did not put

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1 drugs, and don't know anything about any drugs in the bag?

2 A. Correct.

3 Q. Isn't it true you just testified that you weren't
4 concerned, or worried about an arrest because it was just an
5 open beer?

6 A. I wasn't concerned about just an open container, no, I
7 wasn't.

8 Q. All right. So there is no reason for you to face any
9 kind of concern at that time, other than a misdemeanor offense
10 for open beer -- container of beer?

11 A. I mean, it was still a concern.

12 Q. I'm not -- okay. You testified that you did not see
13 Officer Williams search your bag.

14 A. Correct.

15 Q. You testified you had no idea that there was anything
16 improper in that bag. You didn't know there was anything
17 improper?

18 A. Correct. Right.

19 Q. But when asked if the stuff in the bag was yours -- not
20 if the powder cocaine was yours, not if illegal narcotics was
21 yours -- the stuff in your bag, you denied it?

22 A. No.

23 Q. You just testified you did.

24 A. I did not ---

25 MR. LONG: Your Honor, again I object. There was never

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1 any question about the stuff in the bag.

2 THE COURT: All right, Mr. Long -- Mr. Long. Thank
3 you.

4 Solicitor, allow the witness to fully answer his
5 question. Do not interrupt him.

6 Thank you, Your Honor.

7 MR. HIXSON: Thank you, Your Honor.

8 THE COURT: The witness -- you may fully answer the
9 question if you -- or respond if you choose to do so.

10 Continue on.

11 A. The Officer did not ask me about any personal items.
12 He asked me about the drugs that was in the bag.

13 Q. Okay.

14 MR. HIXSON: Well, that's fine. That's fine. That's
15 fine.

16 Q. Also, there was some testimony relating to where you
17 live. You were raised in Booker T. Washington community, I
18 think was your testimony.

19 A. Correct.

20 Q. That your mom is there.

21 A. Right.

22 Q. That -- I think -- isn't it true you said yes, my mom
23 lives there; I live there?

24 A. Right.

25 Q. I believe your driver's license ---

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- 1 A. It's [REDACTED] Dunbar Street ---
- 2 Q. ---Which is in evidence ---
- 3 A. It's [REDACTED] Dunbar Street.
- 4 Q. Yes. So that -- Dunbar Street, isn't that kind of
- 5 off -- behind the Convention Center?
- 6 A. It's between 21st Avenue and 10th Avenue.
- 7 A. North?
- 8 A. Yes.
- 9 Q. Okay. The Hess station, isn't that 7th Avenue -- naah,
- 10 7th -- 9th Avenue South -- 13th Avenue South. I apologize. I
- 11 believe -- around the teens of the south avenues?
- 12 A. Yes sir.
- 13 Q. Isn't that right?
- 14 A. Yes sir.
- 15 Q. Didn't you testify that you told -- asked Rodney Smith
- 16 to take you home?
- 17 A. Yes, I did.
- 18 Q. But when you got in the car, isn't it true that you
- 19 went south?
- 20 A. I was living south then.
- 21 Q. You were living south then?
- 22 A. Yes.
- 23 Q. Okay. But your driver's license, at the time, says
- 24 Dunbar Street?
- 25 A. Right.

1 Q. Okay. Isn't it true you said, I'm going home, but you
2 went the other direction?

3 A. I wasn't living there then. I was living in Cape
4 Landing, which is in -- behind the back gate of the Air Force
5 Base, so I was headed home. That's -- that was my residence
6 at that particular time.

7 Q. Okay. But you just testified that you lived with your
8 mom on Dunbar Street.

9 A. I live with her now. As of now I do live with her. I
10 don't live there anymore, which is ---

11 Q. You've got your driver's license at Dunbar Street?

12 A. Yes.

13 Q. So, you indicated -- I think you answered directly that
14 you don't sell drugs.

15 A. No, I don't.

16 Q. During the course of your real estate transactions,
17 dealing with those athletes and stuff like that, to try to get
18 them involved in it, you don't deal anything with those
19 professional athletes or any of those folks you are dealing
20 with?

21 A. No.

22 Q. You don't supply Rodney Smith?

23 A. No, I don't.

24 Q. Do you know what, I'm straight, means?

25 A. No, I don't know what I'm straight means.

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1 Q. You don't know what that means?

2 A. No. I don't use that term.

3 MR. HIXSON: Beg the Court's indulgence, Your Honor.

4 THE COURT: Yes sir.

5 Q. At some point in time you mentioned also, when we

6 talked about your fiance, things like that, like -- Mr. Long

7 was trying to be endearing and asked you when you were going

8 to marry that young lady back there. At some point in time

9 are you going to buy her an engagement ring?

10 A. She has it on as of now.

11 Q. Okay. Is that your mom's?

12 A. Is what my mom's?

13 Q. Is that your mom's? I didn't -- I just didn't know if

14 that was your mom's engagement ring. It's a hand-me-down.

15 MR. LONG: Your Honor, again, I would object to the

16 relevancy ---

17 THE COURT: Sustained.

18 MR. LONG: ---Whose ring ---

19 THE COURT: Sustained.

20 Further questions, Solicitor?

21 MR. HIXSON: Nothing from the State, Your Honor.

22 Thank you.

23 THE COURT: Redirect.

24 MR. LONG: No. sir.

25 Come on down, Danny. Thank you.

JURY OUT/MOTIONS/COURT'S RULING

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1 THE COURT: Come on down, sir.

2 MR. LONG: Your Honor, that's the defense's case.

3 THE COURT: All right, sir. There be any reply
4 testimony from the State?

5 MR. HIXSON: Nothing from the State, Your Honor.

6 THE COURT: All right.

7 Ladies and gentlemen, we have concluded the evidentiary
8 portion of the trial. I'm going to ask that you go back to
9 your jury room for a few moments. I have some matters to
10 discuss with the attorneys, then we will call you back in and
11 we will go into the closing arguments and charge of the law.

12 Go back to your jury room for a few moments, please.
13 Thank you.

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right, Mr. Long, motions.

17 MR. LONG: Your Honor, I would renew my motion for a
18 directed verdict, based on the lack of probable cause for the
19 stop, and on the unlawful search and seizure.

20 THE COURT: All right, sir. I respectfully decline to
21 grant your motions for a directed verdict as you have
22 previously stated them to the Court, and are now bringing them
23 back to the Court's attention, and I reaffirm them on the
24 previous grounds that I have previously set forth in the
25 record.

JURY OUT/MOTIONS/COURT'S RULING

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1 Anything else from the State -- I mean -- I'm sorry --
2 from the defense?

3 MR. LONG: No sir.

4 THE COURT: All right. Counsel, regarding the charge
5 on the law, let's just kind of go over that briefly. I have
6 given to you previously, first a copy of the verdict form. Is
7 there any additions, corrections, deletions from the State's
8 perspective?

9 MR. HIXSON: No, Your Honor.

10 THE COURT: From the defense's perspective?

11 MR. LONG: No sir.

12 THE COURT: All right. As to the charge on the law,
13 gentlemen, obviously we will talk about the things that we
14 normally talk about as far as credibility, believability,
15 expert witnesses, charge about prior record of a witness can
16 be impeached regarding the showing of a crime, the prior
17 record of the defendant, same purpose, but I will include, as
18 I always do, that it's limited for that purpose; it's not --
19 cannot be considered by them as any evidence of the crime
20 charged, and can't be used in any way in that fashion. Talk
21 to them about direct and circumstantial evidence, presumption
22 of innocence, reasonable doubt, trafficking in -- trafficking.
23 There will be included the charge that -- about that the --
24 part of it is that he knowing -- could be a case of being
25 knowingly in actual or constructive possession, and proof of

JURY OUT/MOTIONS/COURT'S RULING

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1 constructive possession requires a showing that the accused
2 had knowledge of, dominion or control of either the drugs or
3 the area upon which the drugs were found, mere presence where
4 the drugs were found does not constitute constructive
5 possession, constructive possession can be proved by
6 circumstantial evidence. I will include the additional
7 charge, or explanation of mere presence, to state that the
8 burden is on the State of South Carolina to prove every
9 element of the crime charged, and if you find, after reviewing
10 all the evidence, the State has proved that the Defendant was
11 only present at the scene of a crime, and that they have not
12 proved, beyond a reasonable doubt, any other participation in
13 the crime, then you must find the Defendant not guilty.

14 That is what I intend to charge to the jury. Anything
15 else that the State requests to be charged?

16 MR. HIXSON: No, Your Honor.

17 THE COURT: Anything else that the defense requests to
18 be charged?

19 MR. LONG: No sir. Maybe mere presence.

20 THE COURT: Well, that's what I was just talking about.

21 MR. LONG: I missed that. No, I don't have any ---

22 THE COURT: That's what I was just talking about.

23 MR. LONG: ---Any additional requests, no sir.

24 THE COURT: All right, sir. Besides just stating it as
25 I normally do, that mere presence in the area where drugs are

JURY IN/COURT TO JURY
DEFENSE'S SUMMATION (LONG)

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1 found does not constitute constructive possession. I'm going
2 to go on and give it a little bit broader, or more expansive
3 definition in this particular matter. I'll do that, and I'll
4 just say the reasons, one, certainly I think it's proper, and
5 needs to be done, and number two, there are three jurors on
6 this particular case that were in a previous case -- it's
7 either two or three -- I can't remember, but anyway, there's
8 at least two, and maybe three -- jurors that -- on this case
9 that were in the previous case for trafficking, and I charged
10 that in the previous case for trafficking, and to delete it in
11 this particular case may give those jurors some unintended
12 consequence, so I am going to definitely include it in this,
13 since I charged it in the other one, so there is no question
14 in their mind about that.

15 All right. So, why don't we take a short break, five
16 minutes, and we'll come back in and do the closing arguments.

17 Thank you very much.

18 MR. HIXSON: Thank you, Your Honor.

19 MR. LONG: Thank you.

20 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
21 PRESENCE OF THE JURY.)

22 THE COURT: All right, ladies and gentlemen, we are
23 ready to proceed with the closing arguments in this particular
24 matter. As I told you, the evidentiary portion of the trial
25 has concluded, and we are going to have the closing statements

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1 by the attorneys. I remind you that those closing statements
2 are not evidence, cannot be considered by you as evidence in
3 the case. That has already occurred during the course of this
4 trial.

5 These closing statements are important. They are each
6 side's summation. They are each side's presentation to you of
7 what they believe the evidence has shown to you during the
8 course of the trial, remembering, of course, that you are,
9 ultimately, the judges of the facts in this particular matter,
10 but they each will present to you what they believe are the
11 important factors that they want you to consider in your
12 deliberations, and in reaching your unanimous conclusion in
13 this particular matter, and after that I will give you the law
14 that applies to this particular case, and then we will submit
15 it to you for your deliberations and your decision.

16 All right. If you -- does the State waive opening?

17 MR. HIXSON: Yes, Your Honor.

18 THE COURT: All right. Mr. Long.

19 MR. LONG: Thank you, Your Honor.

20 Mr. Foreman, ladies and gentlemen, I really do, from the
21 bottom of my heart, and on behalf of Danny, want to tell you
22 that we appreciate the time you have put in on this case. I
23 know that you probably feel like -- probably frustrated,
24 because you have been sent in and out of here several times.
25 I can tell you, that's kind of how it goes. When there is a

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DEFENSE'S SUMMATION (LONG)

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1 highly contested matter, and one side is wanting to make sure
2 that they represent their client properly -- Mr. Hixson has
3 certainly represented his client, the State of South Carolina,
4 properly, and I hope that I did Danny justice by standing in
5 front of you yesterday and today, and having an opportunity to
6 present his side of this story to you. Really do appreciate
7 the fact that all thirteen of you paid the close attention to
8 it that you did. I watched you. You probably think we turned
9 the air-conditioner down just to keep you awake. It's been
10 cold in here. I'm cold with a jacket on, so I know you are
11 cold. But we really do appreciate the time that you have
12 given it so far, and the time that you are going to give it
13 when we have finished talking and the Judge gives you the law.

14 I told you when we started out that I wanted you to
15 abide by two principals, and I'm going to ask you again. His
16 Honor is going to tell you what the law is, and he's going to
17 tell you that it is a law that you abide by these two
18 principals. I just wanted to mention them real quick, then we
19 are going to talk about the case itself.

20 I told you that Danny Brown was not guilty. I told you
21 that he's not guilty until the State of South Carolina, with
22 all their power, all their resources, and all their
23 capability, bring you enough evidence to carry their burden,
24 and they bring you that evidence, and at the close of that
25 evidence you don't have doubts about it; you don't have

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DEFENSE'S SUMMATION (LONG)

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1 reasonable doubt. You are reasonable people, but that's what
2 you have, are going to be reasonable doubts.

3 This case, I've told you when we started, was about
4 possession; it's about knowing possession; it was about
5 knowledge; it was about intent. That's exactly what we found
6 out.

7 When I get a case usually it's a human being telling me
8 the story, and as the months go by you get a couple of pieces
9 of paper in the mail, and you try to learn about the case by
10 reading those pieces of paper that are provided to you by the
11 State. That's pretty much what we did in this case.

12 When I stood in front of you yesterday though, I didn't
13 know exactly what this case was all about, because I hadn't
14 heard the witnesses. I had not ever talked to Rodney Smith in
15 my life. I just met Officer Williams yesterday. I just heard
16 them both speak for the first time, and they happened to come
17 up here and get under oath for that conversation. Now I know
18 more about this case. I kind of learned about this case at
19 the same time you did. What I learned about this case is not
20 what they failed to prove -- and I'll talk about that in a
21 minute -- because I probably knew some of the things they were
22 going to tell. But I learned what they did prove in this
23 case. I want to run over that with you. They did prove --
24 because they basically had two witnesses, two fact witnesses.
25 All the other witnesses in this case were people who touched

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DEFENSE'S SUMMATION (LONG)

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1 this, and they handed it to that person, and put it in the
2 evidence locker, and somebody who tested something. So, I'm
3 not discounting their testimony. But there are two fact
4 witnesses in this case. You are going to decide if somebody
5 possessed that cocaine. You've got the listen to two fact
6 witnesses as presented by the State, two State's witnesses.
7 First, Officer Williams, Daryl Williams, second, Rodney Smith.

8 The Judge is going to tell you you can believe part,
9 all, or none of each of their testimony; you can look at their
10 demeanor, and their character, and determine whether to
11 believe them or not. That's up to you. That's why we chose
12 you. But, what we did find out in the case was, Danny Brown
13 asked for a ride -- everybody agrees with that -- Danny Brown
14 put his duffle bag in the car -- everybody agrees with that --
15 Rodney Smith is a drug dealer -- everybody agrees with that --
16 Danny Brown is drinking a beer, and got arrested with that.
17 We agree. He was locked up, walked back, frisked, handcuffed,
18 walked to a car, placed him in, and when that police officer
19 made it back to that car there was cocaine in that bag.
20 That's what we know. That's what we learned. That's what I
21 know per the testimony that I heard from the combination of
22 those two witnesses. You kind of got it combined because, in
23 fact, a lot of the things were opposite from each other. It
24 was not raining until after the arrest; it was raining all
25 day; the weather was bad; the windows were up; the windows

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DEFENSE'S SUMMATION (LONG)

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1 were down; it was daylight; it was dark. I don't really know
2 what all that means. I know that they -- that there are
3 differences. I don't really know if it really matters, except
4 -- except one witness seemed to be very careful about the way
5 he answered the questions, and I'm talking Officer Williams.
6 I think he's a great guy, and he's a good Officer, and they
7 have a hard job to do, and I work with them every day. I've
8 been doing it for fifteen years, and in my opinion school
9 teachers and police officers don't get paid enough. They do
10 hard work, but they do make mistakes. I make mistakes all the
11 time. Sometimes they are bigger than others. Sometimes I can
12 brush it under the rug; sometimes it's big and red; I can't do
13 anything about it.

14 In this case, the mistake that was made landed Danny
15 Brown in jail. The mistake that was made was that that bag
16 got left in that car while Danny was bag there getting cuffed
17 and stuffed. There was a big effort, if you will remember the
18 way the testimony came, to fix, immediately, the way that
19 Danny stepped out of the car, the angle that the Officer had
20 to look into the car. He maintained eye contact with the bag
21 the whole time. It makes no sense to me, folks. One police
22 officer, two people in the middle of the highway, not in a
23 parking lot, in the rain, in the dark, arresting one, that he
24 would not have his attention, first, on the one, and second,
25 on the other, not a bag. There was a great effort to fix the

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DEFENSE'S SUMMATION (LONG)

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1 way that arrest went down, but I'm telling you right now, from
2 day one to today when Rodney Smith told you, we know how that
3 arrest happened. Rodney Smith told you that the police
4 officer came around, opened the door, pulled him out, arrested
5 him, closed the door; the bag was in the car. Rodney Smith
6 told you the truth about that. He didn't tell you the truth
7 about everything, and I'm going to talk to you about that in a
8 minute. But that bag is in that car. Both sides, and
9 witnesses have agreed to that. Both sides. Dominion and
10 control, which is an element of possession, which is what we
11 are talking about, trafficking in a large -- trafficking is
12 possession of a large amount. Dominion and control of that
13 bag was in Rodney Smith's range. It was right there. He had
14 a bag of cocaine too big, the evidence was, too big to put in
15 his pouch, especially with all the other drugs he had in
16 there. It wouldn't fit. That bag with cocaine, in the Fritos
17 bag, was not in that little pouch. It was aside from it.
18 That bag of cocaine made it into that duffle bag. How do I
19 know? How do I know, and how do I hope you see? Rodney Smith
20 lied about that. It is in the statement that he provided the
21 police when he got arrested, compared to the statement that he
22 gave the police when they promised him he was going to get a
23 lot of help for this charge, which is also difference than
24 what he told us here.

25 You see, October the 6th he says, the drugs underneath

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DEFENSE'S SUMMATION (LONG)

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1 the seat are mine; I've been dealing drugs for about a year.
2 Nowhere on this sheet of paper, and nowhere in the
3 conversation with Tom Delpercio, Detective Delpercio, did he
4 say, Danny Brown told me he was going to sell me some drugs;
5 he told me to give him a ride; told me he was going to buy an
6 eight ball; told me he wanted a Hundred and Fifty Dollars;
7 told me to give him a ride down the street; he gave me drugs;
8 I told him straight -- asked him if he was straight. Never
9 heard that in my life, until today.

10 Now, if that was true, and he was willing to confess on
11 October the 6th, why didn't he say it then? I know why he
12 didn't say then, because he didn't have this promise. They
13 promised him if he would help get Danny Brown by cooperating -
14 - is the word in this Agreement -- and that's what he did. He
15 cooperated. Came up here, and he cooperated to the tune of a
16 whole new story. Drug dealer has shifted the lying. He knows
17 the little drugs weren't going to get him in trouble. He
18 knows what he had. He knows he was in big trouble if he
19 didn't get this off him and onto somebody else.

20 Rodney Smith was quite frank with me about whether or
21 not he had been promised anything, but did you see what I had
22 to do to get him to be frank about it? Because when he was up
23 there the Solicitor said, have you been promised anything.
24 No. Let me show you this Proffer Agreement. Are there any
25 promises in that? No. Then I read him some lines from that

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DEFENSE'S SUMMATION (LONG)

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1 Agreement, and low and behold he says, guess what, I was
2 promised something. Rodney Smith was prepared to say what he
3 had to say to put the light on this man, who has no connection
4 to his drugs whatsoever, except, while he was in the custody
5 of the Horry County Police they were put in his bag. That's
6 it. No fingerprints. No connection at all. Did they
7 fingerprint the duffle bag? No. They called and told him to
8 come get it. It's not even here. It's not State's Number 8,
9 or whatever. They said come get it. Did they find Danny
10 Brown's fingerprints on this? No. Did they find Danny
11 Brown's fingerprints on the Fritos bag? No. No.

12 The Officer said he was cool and calm. I'm going to
13 tell you, when a police -- if a police officer pulls up on
14 somebody who is holding this much cocaine, cool and calm is
15 going to be hard to pull off, real hard, okay. He was too
16 cool. Danny Brown can't be that cool. That's an acting job
17 that Danny Brown couldn't pull off. There is no way. You
18 know who wasn't cool, the drug deal, Rodney Smith -- was so
19 nervous, and so agitated, and so weird acting, that this
20 officer talked about it several times, and Danny was so cool,
21 so -- that made him suspicious. That's opposite. To me, I'm
22 suspicious about the nervous guy. That's what I want to know.
23 Why is he so nervous? Danny's got a beer. He knows he's
24 wrong, and he tried to hide it, buy hey, he got me. Locked
25 him up for open container. He was drinking a beer. He knows

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DEFENSE'S SUMMATION (LONG)

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1 it's against the law. Would he be that nervous about an open
2 container, or would he be nervous about this? There's a big -
3 - there is a huge, hundred and twenty-two grams difference in
4 what Rodney Smith would agree belonged to him, and what Rodney
5 Smith says didn't, and Rodney Smith knows the difference.
6 He's in that business. He knows ---

7 Folks, the burden of proof in the State of South
8 Carolina is to prove to you, beyond a reasonable doubt, that
9 if anybody, that if anybody commits a crime it's always on
10 them. They can bring to you things like video tapes. The car
11 had a camera, and it had a tape. There's an excuse for why
12 the tape wasn't made, but if it's raining or not, there would
13 have been a video tape of what was going on up there in that
14 Plymouth while this Officer had his back to it.

15 The State of South Carolina has the burden of bringing
16 that kind of evidence and that did not. The State of South
17 Carolina has the burden to prove to you who touched that
18 duffle bag. They didn't even try to fingerprint it. Tom
19 Delpercio didn't send it to the fingerprint guy, and the
20 fingerprint guy, or girl, didn't say, I'm sorry we can't --
21 this is the kind of material we can't get a fingerprint off
22 of, the expert. Tom Delpercio just said, no, no, you know,
23 didn't think that was important, possession of drugs in the
24 bag, but if there's fingerprints on it it's not important.

25 Danny Brown didn't have an option to decide what they

JURY IN/COURT TO JURY
DEFENSE'S SUMMATION (LONG)

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1 gathered as far as evidence goes. Danny couldn't put a tape
2 in the machine. Danny couldn't send it over to the girl, the
3 lady, or man to test it. They had the burden to do that.
4 They had two different sets of cocaine in their lab and they
5 could have tested them both, to see if they both had the same
6 cutting agent, the little bag that Rodney Smith said belonged
7 to him, and the big bag that belonged to him, that he said
8 didn't belong to him, could be the same substance. Wouldn't
9 that makes a difference? They had possession of them.
10 They've got their numbers and things all them. They didn't
11 even test the items. They didn't even test the cocaine that
12 was in the little bag, that was under Rodney Smith's seat.
13 Burden of proof to prove you that kind of evidence.

14 They interviewed Rodney Smith, but they didn't use a
15 tape recorder. I've tried cases over here for a long time.
16 Tom Delpercio said he never uses a tape recorder to interview
17 people. That's surprising to me. The things that they could
18 have brought to you they failed to do so, and things that they
19 should have brought to you they failed to do so. The things
20 that are important for this man, for the rest of his life,
21 that they should have done, they did not do. They either
22 chose not to do, or they accidentally did not do; they failed
23 to do. I don't know. Was it intentionally, or just
24 oversight? I don't know. But they did not do any of those
25 things. They did none of them.

JURY IN/COURT TO JURY
DEFENSE'S SUMMATION (LONG)

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1 Rodney Smith was going to buy drugs with no money in his
2 pocket. Does that make sense? Rodney Smith is going to do
3 whatever it takes to stop from going to prison for a long
4 time. Rodney Smith is going to tell you whatever it is that
5 they want you to hear, because Rodney Smith don't want to go -
6 - obviously he's not doing well either, physically. I know he
7 don't want to go. He did his best. I don't know if he did
8 enough for them. Based on their Agreement I don't know what
9 he's going to get from them, but I know what he should get
10 from them, which is nothing, because he came over here and
11 told you things that you can't believe.

12 Now, folks, I told -- I tell juries all the time, this is
13 not about seeking out a technicality. I'm not trying to find
14 a crack in a dam that a little bit of water can come through.
15 I just want you to be reasonable. I just want you to use your
16 common sense, and I want you to take a look at what they did
17 show you, and what they've failed to show you, and the ability
18 to show you some things that they failed to show you, the
19 ability to show you, and tell you some things in a proper way,
20 so that you could make the proper determination.

21 Do I have doubts as to whether Danny Brown knew what was
22 in that bag when he was in the back of that police car with
23 handcuffs? Absolutely. You have to ask yourself, do you? Do
24 you have doubts as to whether or not Danny was going to sell
25 Rodney Smith drugs, when Rodney didn't say a word about that

STATE'S SUMMATION (HIXSON)

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1 when they arrested him, until he got a lawyer and they started
2 promising him things? Do you have a doubt as to whether or
3 not the same cocaine that Rodney has already admitted to,
4 timidly composed, same cutting agent? And do you have doubt
5 about the manner in which this case was given to you, because
6 you sit there waiting to get it. You are waiting to be fed;
7 give it to me; tell me what you've got; we are here to work.
8 If you've got enough evidence, show it all to me. Well, they
9 had it -- two days they had the chance. They gave you
10 everything they could. Every single thing that they have,
11 that they think, they hope will prove to you that Danny Brown
12 broke the law, you've got it. Nothing has been hidden from
13 you whatsoever. You've got every bit of it. They have failed
14 to meet their burden. And burden, as I told you, is a big
15 word. It's a tough thing. It is a burden to get out of the
16 bed some days, but that burden ain't nothing like the burden
17 that they've got in this case, to take you all the way down
18 the scale and prove to you, beyond those doubts that we just
19 talked about. They did not meet that burden. The State of
20 South Carolina was on trial. I told you that.

21 Danny Brown is not guilty.

22 THE COURT: Solicitor.

23 MR. HIXSON: Thank you, Your Honor.

24 THE COURT: Yes sir.

25 MR. HIXSON: I couldn't have said it better myself, a

1 drug dealer trying to shift the blame. That's exactly what
2 Mr. Long just said.

3 I was thinking about what I wanted to say to you when I
4 stood up here. Sometimes you kind of fly off the seat of your
5 pants and think about it, and boom, like a gift, the drug
6 dealer trying to shift the blame. What I was going to say up
7 here -- say to you initially was about clarity, and about
8 common sense. I don't know if you ever had one of these --
9 one of those little snow globes that you shake up a little
10 bit, if you let that thing sit everybody in the whole wide
11 world can look at that little snow globe and see that scene
12 perfectly inside there. There is nothing to obstruct it.
13 There's not trained professionals talking about this or that.
14 You look at it and go, I see that perfectly clear. But when
15 you pick something up over the course of time and you start
16 shaking it, and you start throwing things at it, it obscures
17 that perfectly clear vision that you saw just prior to that.
18 Over the course of my talk with you I'm hoping to let that
19 snow globe sit right there, and let all those particles settle
20 back down, settle all back down, so we can once again talk
21 about clarity, and talk about common sense.

22 Now the defense, among other things, would love to have
23 you believe that Rodney Smith, a man with a hole in his
24 throat, that's a pretty heavy set fellow, that has a difficult
25 time getting around, is in driver's of his car, and somehow --

STATE'S SUMMATION (HIXSON)

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1 not the athlete, not the physically capable person -- somehow
2 he's able to get across that car and put that bag of cocaine
3 in that bag while no one is looking, and get back there. I
4 mean, Mr. Smith had a difficult time talking, because of his
5 respiratory problems, let alone making that effort to get that
6 bag in that car. That's up for you to decide if you feel like
7 that is a credible sort. I submit to you, I don't know that
8 Mr. Smith would be able to get across the car, given his
9 physical condition, but that's a factual issue. There is no
10 evidence that that happened. Officer said -- he didn't say he
11 watched the bag the whole time. The Officer indicated that he
12 -- I asked him, did you make any visual surveillance over the
13 bag, and he said, I can't say that I did, I can't say that I
14 did, but I know I never saw Rodney Smith try to go get in that
15 bag that had drugs in there, take it from wherever it was, and
16 try to go -- you know, let's just let those particles settle
17 down a little bit on that.

18 We've heard a lot about these fingerprints, fingerprints
19 of the bags, things. There is no question that the evidence -
20 - pieces of -- the Court Reporter has these items, and you
21 will have an opportunity to see all these items, read these
22 things for details. I will never again say, this should be a
23 pretty quick trial, so excuse me for saying that in the
24 beginning. But you will have an opportunity to see the
25 attempts of the police department to fingerprint these bags,

1 attempts to see who had these, or who didn't have these.
2 Rodney Smith's fingerprints aren't on these bags either.
3 There is no value to the fingerprint effort. The point is,
4 you've got to try to find out, and if it is, great, but if
5 it's not unfortunately here, it's not. His fingerprints
6 aren't on them. Rodney Smith's fingerprints aren't on them.
7 I shouldn't say that. They may be. You just couldn't read
8 them. There is a big difference in no fingerprints versus we
9 are really -- you can't read them and match them up to
10 anybody's.

11 There was also a big issue out of -- Mr. Long was
12 talking about the typical compositions of the two drugs may
13 show whether they came from the same source, or something like
14 that. We heard testimony that you can't figure that. Maybe
15 you can find what the binder is, of lidocaine, benzocaine, the
16 "caines", or something like that. Would it surprise you if it
17 did match, because he's supplying Rodney Smith's. Most likely
18 it would match. He is supplying Rodney Smith. He's got a
19 hundred and twenty-two grams. Rodney wanted an eight ball,
20 roughly three point six grams. That's where he's getting the
21 drugs, by Rodney Smith's own testimony. It wouldn't be a
22 surprise if it matched. As a matter of fact, I would kind of
23 be surprised if it wasn't. Rodney must be buying from
24 somebody else in addition to the supplier. That's a drug deal
25 trying to shift blame, according to Mr. Long.

STATE'S SUMMATION (HIXSON)

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1 You heard testimony from Mr. Brown. Mr. Brown, before
2 he moved -- if there was anything wrong with that bag, when he
3 had toiletries, and he had Fritos -- he didn't testify to the
4 Fritos -- he did testify to the items in the bag -- before he
5 even found out there was something in it he goes, that's not -
6 - I don't -- I ain't nothing in there. You know, I -- if I
7 would pack a suitcase and go to stay at somebody's house I'm
8 going to tell you that's my drawers in there, because I have
9 nothing to hide. But the first thing he says, nope. That's
10 consciousness of guilt, that he absolutely knew, as a result
11 of that reaction, that he had illegal narcotics in that -- in
12 that bag. That's why he reacted that way.

13 There was much ado about Mr. Smith's statement. Mr.
14 Smith testified -- Rodney testified he didn't know there were
15 any drugs in the bag, and you know what he did. He admitted,
16 the drugs under my seat are mine. He admitted to it. He
17 didn't know there were any other drugs in the car, and when
18 he found out he's facing the trafficking charge, and we
19 tried -- charged him for trafficking, to try to sort this out.
20 He gave a statement after that fact going, I admitted to the
21 drugs that are mine, but oh man, I thought we had to go back
22 to the man's house to get the eight ball; I didn't know that
23 he could have done it right there; I didn't know that; could
24 have done it in the Hess station parking lot; the drugs were
25 there; I didn't know that; that's why I'm driving the man

OBJECTION BY MR. LONG/COURT'S RULING
STATE'S SUMMATION CONTINUED

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1 home. We know he's not going home, because Dunbar Street --
2 if you are familiar with Myrtle Beach -- I can't remember
3 where everybody is from during jury selection. I didn't --
4 had a chance to look ---

5 MR. LONG: Your Honor, I hate to object in a closing
6 argument, but my client indicated he lived at Cape Landing at
7 the time of the arrest, and he's gonna ---

8 THE COURT: All right. Let's not have the argument.
9 Solicitor, just -- let's move along, please.

10 Thank you.

11 MR. HIXSON: Generally, the car was heading south.
12 There is evidence in the record relating to the receipt back
13 of the property of the driver's license, the address on the
14 driver's license, of Mr. Brown's residence.

15 The drug report is pretty straight-forward. One of the
16 things that we have to prove, it's over one hundred grams of
17 powder cocaine to two hundred grams of powder cocaine. It's a
18 hundred and twenty-two, over a hundred grams. That's one of
19 the things that we have to prove as an element of the crime.

20 Now, there's also much conversations about the Proffer
21 Agreement. You are going to get you in some -- read it, read
22 it all, every little bit of it. It talks about what my
23 obligations, as an Officer of the State of South Carolina,
24 that I'm not going to hoo-doo him, and you will get a chance
25 to read -- and there are promises in here, if that's the term

OBJECTION BY MR. LONG/COURT'S RULING
STATE'S SUMMATION CONTINUED

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1 of art that you want to use. That's -- I guess the bank
2 agrees to pay your check -- if you write the check to the bank
3 I guess the bank made you a promise. That's just a
4 contractual kind of slight of hand. I think you will find Mr.
5 Smith was saying, did you promise to dismiss my charges; did
6 you promise to do this for me. There's no promises of that
7 nature. It's all in here. There is nothing to hide about
8 that. You will have an opportunity to read it and see.
9 Subject himself to polygraph examination, testify truthfully,
10 if he fails to do anything at any one particular time yank
11 that proffer back and you are facing the full effect of the
12 law, and that's all in here. There's really nothing to that.
13 I just wanted to address that so we can, once again, kind of
14 let that -- let that snow globe kind of settle down a little
15 bit, just let it settle back down so you see that clear
16 picture.

17 Danny Brown didn't think he was going to get caught that
18 day. That's the only reason he had that drugs that was in his
19 bag, not because of a twisted Hollywood plot, but a man
20 slipping it in there at the last minute. Sometimes things are
21 just that simple. Sometimes an officer is in the right place
22 at the right time, happens to see a man with a beer. He pulls
23 him over, and guess what? He's got a hundred and twenty-two
24 point six five grams in his duffle bag. It's just that
25 simple.

1 I thank you so much for the time and everything you have
2 listened. When you go back to the jury room you will have an
3 opportunity to look at all these kind of items, things like
4 that, but there is something else that will come into the room
5 with you, and she will sit quietly in the back corner, and her
6 name is Justice, and she's talking to you right now, but we've
7 been talking so much and moving around, you've been waiting in
8 there, wondering what's going on, we've been talking, we've
9 been taking up evidentiary rulings, and y'all have been out of
10 the loop about all that. That's just the way the system
11 works. And a lot of times people don't want to be preached
12 to, so you've got a lot going on in your head, but as you sit
13 down for a second you start thinking about it, and all that
14 picture starts quieting down, and you start hearing it in the
15 corner. It may not be too loud at first, but by the time you
16 look at this, and you realize, there is no other explanation
17 for this, unless you want to believe a bazaar story of
18 planting drugs in a duffle bag, with denial and all. It is
19 what it is. It's just that simple. And that voice is going
20 to start getting louder, and eventually you will hear it loud
21 and clear, it's guilt; Danny Brown is guilty of trafficking
22 powder cocaine.

23 Thank you very much.

24 THE COURT: All right, ladies and gentlemen, it's my
25 responsibility now to give you the law that applies to this

CHARGE BY THE COURT

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1 particular case. I told you at the beginning that you were
2 the judges of the facts of this particular case, and I would
3 not tell you, nor intimate, or indicate in any way any opinion
4 about the facts that I might have, because that's your job and
5 your responsibility, and in that I told you I would make
6 certain rulings upon certain matters that were brought to my
7 attention by the attorneys, and sometimes I would do that in
8 your presence and sometimes I would not. Please remember
9 that, when I made those rulings in your presence I was telling
10 the lawyers how the case will proceed, not making any comment
11 on the facts regarding this particular job because, once
12 again, that's your job. That's your responsibility, to find
13 the facts as you so find them to be in this particular matter,
14 based upon the law that I give to you now. You must take the
15 law as I give it to you. If you had any preconceived ideas of
16 what you think the law is, or what it should be, you are going
17 to disregard that. You are going to take the law, as I give
18 it to you, and apply it to the facts as you so find them to be
19 in this particular matter.

20 Now, one of your jobs in this particular case is to
21 judge credibility, that is, believability of witnesses that
22 have testified before you in this particular matter. Now, in
23 judging credibility and believability you could believe one
24 witness against several, several against one. You can believe
25 a portion of what a witness says and disregard the remaining

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1 portion of it. If you've got a good and sound reason for
2 doing so you could disregard in it's entirety the testimony of
3 a particular witness. Now, how do you do this? How do you
4 judge credibility, believability? You look at whether the
5 witness has exhibited to you any kind of interest, bias,
6 prejudice, motive that they might have in giving you the
7 testimony that they gave you from the witness stand. You
8 consider their demeanor. How did they appear when they gave
9 you the testimony that they gave you from the witness stand?
10 The opportunity for knowledge. How did they come about that
11 information that they gave to you from the witness stand? If
12 you think about it regarding credibility and believability,
13 that's something, ladies and gentlemen, that y'all do every
14 single day of your life. When somebody tells you something
15 you are automatically judging whether or not you believe them
16 or not, and how are you doing that? You are using your good
17 common sense and your good judgment that you use in conducting
18 your own affairs. That's what we are asking you to do, ask --
19 take your good judgment, your good common sense, apply it to
20 the facts and evidence you heard, and find that evidence which
21 convinces you of it's truth.

22 You don't have any friends to reward. You don't have
23 any enemies to punish. Your verdict can't be the result of
24 any kind of passion, prejudice or sympathy. It is an
25 analyzation of the evidence, finding the evidence that

CHARGE BY THE COURT

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1 convinces you of it's truth.

2 In this particular matter I qualified a witness to give
3 their opinion. When the Court qualifies someone to give their
4 opinion it's sometimes called an expert witness, based upon
5 their experience, training, education, some other way. That
6 does not give that witness any special status. We just, by
7 law, have qualified that person to give an opinion, something
8 that we normally do not allow people to do. So, with that,
9 what that means is, you judge any witness the Court qualified
10 to give their opinion just like you do all the other witnesses
11 in the case. You judge their credibility, their believability
12 on the issues they have testified to, just like you do
13 everybody else that testified in this matter.

14 The South Carolina Rules of Evidence provide that the
15 testimony of a witness may be discredited, or impeached by
16 showing the witness has been convicted of a crime for which he
17 could have been imprisoned for more than one year for a crime
18 that involves dishonesty. As for this evidence it's only
19 offered on the issue of credibility or believability, and no
20 other purpose.

21 Now, regarding the -- any evidence presented of a prior
22 conviction of the Defendant of another crime, this evidence
23 was admitted for a limited purpose, and you cannot consider
24 that evidence for any purpose except the purpose for which it
25 was admitted, and that was credibility, believability. If you

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1 conclude it's true, it's for the purpose of evaluating the
2 credibility and believability of the witness. You cannot, you
3 just not consider the prior record, if any, of the Defendant,
4 as any evidence of his guilt of the crime for which he is now
5 being charged. You give this evidence the weight you believe
6 it deserves. It has no value in this case, other than on the
7 issue of credibility and believability. It's not evidence of
8 anything else.

9 Two types of evidence that are presented in this case,
10 and virtually every case that is tried, direct and
11 circumstantial evidence. Direct evidence. Direct evidence is
12 the testimony of a person who asserts or claims to have actual
13 knowledge of a fact. Circumstantial evidence, proof of a
14 chain of facts and circumstances indicating the existence of a
15 fact. The law doesn't have, or make a distinction between the
16 two. A greater degree of proof or certainty is not required
17 of one over the other. You weigh and judge all the evidence
18 the same. You look at all the evidence the same, to see what
19 evidence convinces you of it's truth.

20 I told you at the very beginning, to the indictment, the
21 charging document that brought this matter to court, the
22 Defendant pled not guilty. When that happened the burden of
23 proof went upon the State of South Carolina. It was on the
24 State of South Carolina when the trial started; it is on the
25 State of South Carolina now. It is always on the State of

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1 South Carolina. The Defendant has nothing to show to you.
2 The Defendant has nothing to prove to you. The Defendant has
3 no burden. The burden is on the State of South Carolina to
4 prove the Defendant guilty beyond a reasonable doubt. The
5 State must produce to you evidence which convinces you, beyond
6 a reasonable doubt, of the guilt of the Defendant, as I
7 stated, beyond a reasonable doubt.

8 The Defendant is presumed innocent. No matter what the
9 seriousness, or what the crime charged is, the Defendant is
10 always presumed innocent. That presumption didn't end at the
11 start of the trial. It hasn't ended now. It only ends when
12 you, collectively, are convinced the State has shown to you
13 evidence which convinces you of the guilt of that defendant,
14 beyond a reasonable doubt, if that's your view of the
15 evidence.

16 The presumption of innocence, that's likened to a robe
17 of righteousness. It's placed upon the shoulders of the
18 Defendant, and it stays on the shoulders of the Defendant
19 until the State strips that robe from the shoulders of the
20 Defendant by evidence which convinces you of the guilt of the
21 Defendant beyond a reasonable doubt. This isn't just a legal
22 theory. It's not just some kind of phrase. It's a
23 substantial right to which this Defendant, to which every
24 defendant, to which every American is entitled. In a criminal
25 case the State must prove the guilt of the defendant beyond a

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1 reasonable doubt.

2 What is a reasonable doubt? Reasonable doubt is the
3 kind of doubt that would cause an ordinary, reasonable person
4 to hesitate to act. Proof beyond a reasonable doubt is proof
5 that leaves you firmly convinced of the Defendant's guilt.
6 Now, there's very few things we can know with absolute
7 certainty. That's not the standard here. The law doesn't
8 require that of the State, but what is required is that, based
9 upon your view, and your consideration of the evidence, once
10 you have looked at all of it, you are firmly convinced of the
11 Defendant's guilt, you must find the Defendant guilty. On the
12 other hand, based upon your view, your consideration of all
13 the evidence, you are not firmly convinced of the Defendant's
14 guilt, you must give the Defendant the benefit of the doubt
15 and find him not guilty.

16 The Defendant, in this particular case, is charged with
17 trafficking in cocaine. The State has to prove certain things
18 to you beyond a reasonable doubt. The State has to prove that
19 the Defendant knowingly sold, manufactured, cultivated,
20 delivered, purchased, or brought into this State, or provided
21 financial assistance, or otherwise aided, abetted, attempted
22 or conspired to sell, manufacture, cultivate, deliver,
23 purchase, or bring into this State, or was knowingly in actual
24 or constructive possession, or knowingly attempted to become
25 in actual or constructive possession of the cocaine. Proof of

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1 constructive possession of the drug requires a showing that
2 the accused had knowledge of, and dominion or control of
3 either the drugs, or the area upon which the drugs were found.
4 Mere presence in the area where the drugs are found does not
5 constitute constructive possession. Constructive possession
6 may be proven by circumstantial evidence. The State also has
7 to prove to you, beyond a reasonable doubt, that the amount of
8 cocaine, or any mixture containing the cocaine, was one
9 hundred grams or more, but less than two hundred grams.

10 Mere presence at the scene of a crime is not sufficient
11 to prove someone guilty of that crime. The burden is on the
12 State of South Carolina to prove every element of the crime
13 charged. If you find, after reviewing all of the evidence,
14 that the State has proved that the Defendant was only present
15 at the scene of a crime, and that they have not proved, beyond
16 a reasonable doubt, any other participation in the crime, then
17 you must find the Defendant not guilty. The law is that proof
18 of someone at the scene of the crime is not sufficient to find
19 someone guilty of that crime. The other elements have to be
20 proved to you by the State, beyond a reasonable doubt.

21 That, ladies and gentlemen, is the law that applies to
22 this case, to the facts as you so find them to be in this
23 particular matter.

24 Now, I have prepared a verdict form, and it's straight-
25 forward. It has the caption of the case, then it has

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1 trafficking power cocaine, more than one hundred grams, less
2 than two hundred grams, and it says, on the charge of
3 trafficking powder cocaine, more than one hundred grams, less
4 than two hundred grams, we, the jury, by unanimous consent,
5 find the Defendant -- you've got two choices, and I put one
6 before the other because I've got to put one before the
7 other -- don't assign any significance to that -- not guilty,
8 or guilty. Two choices. Unanimous consent.

9 Mr. Foreman, after your jury has deliberated, and
10 reached a unanimous verdict in this particular matter, you
11 will take this verdict form; you will check the appropriate
12 block, and you will sign your name, indicating that the jury
13 has reached a unanimous verdict in this particular matter, and
14 it is the verdict that you have set forth on the verdict form.

15 Now, ladies and gentlemen, I've said unanimous I don't
16 know how many times. It means exactly as you think it means.
17 Everybody agrees. Whatever the verdict is, everybody agrees
18 to it. It's a twelve zero vote. It's not eleven one, ten
19 two, whatever combination there might be. Whatever the
20 verdict is, everybody agrees to that verdict. So, Mr.
21 Foreman, when you check that block you are telling me
22 everybody agrees to it.

23 All right. What we are going to do is, Mr. Foreman, I'm
24 going to ask that you take your jury to the jury room.

25 The alternate in this matter, Mr. Parrott, if you would

**JURY OUT/ADDITIONS, DELETIONS, EXCEPTIONS
JURY DELIBERATING/JURY OUT/ON RECORD**

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1 stay with us, please sir.

2 Mr. Foreman, do not -- and your jury, do not begin your
3 deliberations until I send in to you the verdict form and the
4 exhibits. When the bailiff brings the verdict form and the
5 exhibits in, then you may begin your deliberations, but if you
6 would, take the jury to the jury room.

7 Thank you.

8 (THE JURY RETIRED TO THE JURY ROOM AT 4:32 P.M.. THE
9 FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

10 THE COURT: All right. Is there any reason at this
11 time, from the State, that the alternate, Mr. Parrott, should
12 not be excused?

13 MR. HIXSON: None that I'm aware of, Your Honor.

14 THE COURT: From the defense?

15 MR. LONG: No sir.

16 THE COURT: All right, Mr. Parrott, I'm able to excuse
17 you from this particular case only.

18 (MR. PARROTT WAS EXCUSED FROM FURTHER PARTICIPATION IN
19 THE TRIAL OF THIS CASE.)

20 THE COURT: All right. Any additions, deletions,
21 exceptions to the charge from the State?

22 MR. HIXSON: No, Your Honor.

23 THE COURT: From the defense?

24 MR. LONG: No sir.

25 THE COURT: All right, gentlemen, before we send the

JURY OUT/ADDITIONS, DELETIONS, EXCEPTIONS
JURY DELIBERATING/JURY OUT/ON RECORD

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1 matters in to the jury, I want to tell both you, Solicitor,
2 and Mr. Long, both of you did an excellent job representing
3 your particular interests in this matter; you tried the case
4 well; you did everything that the Court would expect of you to
5 present your client's position in this matter, and I commend
6 both of you for that.

7 Thank you very much.

8 MR. LONG: Thank you very much.

9 MR. HIXSON: Thank you, Your Honor.

10 THE COURT: Check with the Court Reporter. Make sure
11 we've got all the exhibits, gentlemen.

12 (AT THIS TIME THE EXHIBITS WERE REVIEWED BY COUNSEL AND
13 THE COURT REPORTER. THE EXHIBITS WERE APPROVED BY ALL. THE
14 EXHIBITS AND THE VERDICT FORM WERE DELIVERED TO THE JURY ROOM
15 BY THE BAILIFF AND THE JURY WAS ADVISED TO BEGIN DELIBERATION.
16 THE JURY BEGAN DELIBERATION AT APPROXIMATELY 4:45 P.M.)

17 (THE FOLLOWING TAKES PLACE AT APPROXIMATELY 6 O'CLOCK
18 P.M., OUTSIDE THE PRESENCE OF THE JURY.)

19 (NOTES FROM THE JURY MARKED COURT'S EXHIBIT NUMBERS 1
20 AND 2.)

21 THE COURT: All right, Solicitor, Mr. Long, we have a
22 note from the jury regarding the police officer's testimony.
23 I responded to them in writing, as we discussed, that they had
24 heard all the evidence and testimony in the case, that I could
25 not answer their question. I told them that they could

JURY IN/COURT TO JURY/PUBLISHED PORTION OF TESTIMONY
COURT TO JURY/JURY OUT DELIBERATING

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1 request to hear any portion of any testimony they wished.
2 They sent a note back that they wanted to hear a portion of
3 the Police Officer's testimony, and it has something to do
4 about the door. What I am doing is, I have had the Court
5 Reporter find the direct-examination of the Police Officer,
6 starting basically where he saw the vehicle, or initiated the
7 stop, so prior to the arrest, or getting the Defendant out of
8 the car. So -- and I will tell them, either way, that they
9 can hear as much or as little of the testimony as they wish.
10 We will just start playing it, and then we will be guided by
11 what they want, or do not want.

12 All right. Anything further from the State before we
13 get started?

14 MR. HIXSON: No, Your Honor.

15 THE COURT: From the defense?

16 MR. LONG: No sir.

17 THE COURT: All right. Ask the jury to come in.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY AT APPROXIMATELY SIX O'CLOCK P.M.)

20 THE COURT: All right, Mr. Foreman, ladies and
21 gentlemen of the jury, I have received your note, and what we
22 are doing is, I have had the Court Reporter locate the
23 testimony of the Officer, and it will start approximately
24 where -- somewhere in the area of where the Police Officer
25 initiated the stop. This will be the direct-examination of

JURY OUT/ON RECORD/COURT'S RULING

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1 the testimony, and -- of the witness, and then it would go
2 into the cross-examination of the witness, regarding the
3 issues.

4 Now, you may hear as much of that testimony as you wish.
5 We are guided by your wishes as to how much of that testimony
6 you want to hear. I would just remind you that there may be
7 questions and answers, not only on direct, but on cross-
8 examination regarding the particular issue that you have
9 raised, and I will just give -- leave that for your
10 determination.

11 All right, Madame Court Reporter, if you would, please
12 start the playback now.

13 (THE FOLLOWING TAKES PLACE AFTER THE PLAYBACK OF
14 TESTIMONY OF DARYL WILLIAMS.)

15 THE COURT: Have you heard the portion of the testimony
16 that you wish to hear, Mr. Foreman?

17 FOREMAN: Yes sir.

18 THE COURT: All right, sir. And obviously we remain at
19 your pleasure. If you want to hear any further portion of it,
20 or anything else, be glad to play it for you.

21 You can go back to your jury room and resume your
22 deliberations.

23 Thank you.

24 (THE JURY RETIRED TO CONTINUE DELIBERATION AT 6:13 P.M..
25 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

JURY OUT/ON RECORD/COURT'S RULING

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1 THE COURT: All right. Anything further from the State
2 at this point in time?

3 MR. HIXSON: No, Your Honor.

4 THE COURT: From the defense?

5 MR. LONG: Your Honor, I talked to my client about it
6 when they were coming out. They had asked to hear -- the
7 question was about opening and shutting the car door. That
8 question was never asked or answered, and now they have been
9 played a portion of a tape that I would submit is in the light
10 most favorable -- puts the light most favorable to the State
11 because it's direct-examination.

12 More questions were asked later, and more testimony
13 later about the bag, and the car door, and the opening of the
14 car door and all that, and we just played the portion of the
15 tape that the question wasn't even asked.

16 THE COURT: Well, and I appreciate that, Mr. Long, but
17 I made it clear to the jury at the very beginning that the
18 area would be covered on direct and cross-examination, that we
19 would replay the portion of testimony that they wanted to
20 hear, and they are in control of that, they have played --
21 knowing that they could hear more of it if they so chose to do
22 so, but they chose to hear that portion of it, indicated they
23 had heard enough, and therefore I find that we complied with
24 the jury's request in this matter, and presented to them what
25 they requested to hear.

JURY OUT/ON RECORD/COURT'S RULING

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1 MR. LONG: Your Honor, may I add to my objection for
2 the record ---

3 THE COURT: Yes sir.

4 MR. LONG: ---That they heard that portion because
5 that's the portion we played for them. If we had played the
6 cross-examination for them first, then they would have heard
7 that portion of the cross-examination, and may have heard all
8 they needed to hear there. I understand your ruling, and
9 appreciate it, but there's more about how Danny Brown gets out
10 of the car, and the car door, and all that stuff. I
11 understand the ruling, and ---

12 THE COURT: All right, sir.

13 MR. LONG: ---Understand that's all they really -- once
14 they heard the portion of the tape where Danny got out of the
15 car, then, of course, they were clearly going to say, okay, we
16 heard it. Well, they haven't heard it all. They heard that.

17 THE COURT: Well -- and I appreciate that, but I
18 believe I made it clear to them that there were other portions
19 that they could hear if they chose to do so. They did not
20 chose to do so, therefore, that was there choice in this
21 matter.

22 All right. Thank you very much. We will be at ease
23 till the jury needs us then.

24 Thank you.

25 (THE JURY CONTINUED TO DELIBERATE. THE FOLLOWING TAKES

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MOTIONS/SENTENCING

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1 PLACE AT 6:30 P.M., OUTSIDE THE PRESENCE OF THE JURY.)

2 THE COURT: Mr. Solicitor, Mr. Long, I understand the
3 jury has reached a verdict in this matter.

4 Is the State ready to receive it?

5 MR. HIXSON: Yes, Your Honor.

6 THE COURT: Defense?

7 MR. LONG: Yes sir.

8 THE COURT: All right. Ask the jury to come back in,
9 please.

10 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
11 JURY AT 6:30 P.M.)

12 THE COURT: All right, Mr. Foreman, ladies and
13 gentlemen of the jury. Has your jury reached a verdict in
14 this particular matter, Mr. Foreman?

15 FOREMAN: Yes, Your Honor.

16 THE COURT: All right. If you would hand the verdict
17 form to the Clerk, please sir.

18 All right, Ma'am, you may publish the verdict.

19 DEPUTY CLERK OF COURT: State of South Carolina versus
20 Danny Cortez Brown, indicted on (02-GS-26-1349), count of
21 trafficking in powder cocaine, more than a hundred grams, less
22 than two hundred, the verdict is guilty.

23 Paul Lynch, Foreperson.

24 Dated this day, September 13th, 2006.

25 Ladies and gentlemen of the jury, if this is your

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1 verdict, so signify by raising your right hand.

2 (ALL JURORS AFFIRMED THE VERDICT AS PUBLISHED BY THE
3 RAISING OF HIS OR HER RIGHT HAND.)

4 DEPUTY CLERK OF COURT: Thank you.

5 THE COURT: All right, does either the State or the
6 defense wish the jury polled?

7 Solicitor?

8 MR. HIXSON: No, Your Honor.

9 THE COURT: Mr. Long?

10 MR. LONG: Please, Your Honor.

11 THE COURT: All right, Madame Clerk, if you would poll
12 the jury, please.

13 (AT THIS TIME THE JURY WAS POLLED INDIVIDUALLY AND EACH
14 AND EVERY JUROR AFFIRMED THE VERDICT AS PUBLISHED.)

15 THE COURT: All right, the jury having been polled, and
16 affirmed their verdict, is there anything further of the jury
17 from the State?

18 MR. HIXSON: No, Your Honor.

19 THE COURT: From the defense?

20 MR. LONG: No, Your Honor.

21 THE COURT: All right, ladies and gentlemen of the
22 jury, I am able to excuse you from this particular case.

23 (AT THIS TIME THE JURY WAS EXCUSED FROM FURTHER
24 PARTICIPATION IN THIS PARTICULAR CASE.)

25 THE COURT: All right, Solicitor, do you have the

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1 verdict form?

2 MR. HIXSON: I do not have it written ---

3 THE COURT: Or not the verdict form. I'm sorry, the
4 sentencing sheet is what I'm asking. I'm sorry, sir.

5 All right, Solicitor, any comments that you would like
6 to make before the Court imposes sentence?

7 MR. LONG: Your Honor, I have a motion.

8 THE COURT: I'm sorry. You do, Mr. Long. I'm sorry.
9 Yes sir.

10 MR. LONG: Your Honor, I'm requesting that you grant us
11 a new trial. We had a jury ask a question about a car door
12 being closed, and we played a very small portion of a whole
13 lot of testimony.

14 We had three fact witnesses in this case. Two of those
15 fact witnesses testified that a black bag was left in a car
16 while my client was handcuffed and placed in a patrol car.
17 One Officer, one witness, the Officer, testified, on direct-
18 examination, that he carefully placed my client under arrest,
19 and maintained eye contact with the black bag, and pulled the
20 black bag out of the car before he even took my client to the
21 patrol car. That little bit of testimony was played in
22 response to a question as to whether or not a door was closed.
23 They barely got in their jury room before they came back with
24 a guilty verdict. I would submit to Your Honor, respectfully,
25 that that had a very heavy play in that verdict, and based on

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MOTIONS/SENTENCING

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1 that, is unfair to my client, and would respectfully request,
2 Your Honor, that you grant us a new trial.

3 THE COURT: All right, sir.

4 Madame Court Reporter, could I have those last two
5 Court's Exhibits back?

6 All right, Mr. Long, the -- and these are marked as
7 Court's Exhibits 1 and 2, so they are part of the record for
8 further proceedings -- they asked the question, "Did the
9 Police Officer testify that he closed the door after he took
10 Danny Brown out of the car?"

11 The answer that I wrote on their question, which was
12 approved both by the State and the defense before the answer
13 went into the jury was, "You have heard all of the testimony
14 in this case. I cannot answer your question. You may request
15 to hear any portion of any testimony you wish."

16 Shortly thereafter the jury sent out a note, that's
17 marked as Court's Exhibit 2. It states, "May we hear the
18 portion of the Police Officer's testimony about if he closed
19 the door after getting Brown out of the vehicle." That was a
20 specific request of the jury to hear that portion of the
21 testimony.

22 Further, when the jury came out I told them that there
23 was testimony that could pertain to their particular question
24 both on direct and cross-examination, but that they were in
25 charge of how much of the testimony they requested to be

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1 heard. We started the testimony of the Police Officer. After
2 a certain portion of the testimony of the Police Officer was
3 done, the jury indicated they had heard enough, when it was
4 clear to them that they could hear any, all, or any portion of
5 it that they wanted to. It was a question they had about the
6 evidence in this case.

7 This was clearly a factual dispute; they had a question
8 about a particular fact, apparently they were satisfied with
9 what they heard, and I do not find that there was any
10 prejudice to your client. I do not find that anything
11 improper was done in this matter, and I respectfully decline
12 to grant your motion at this time.

13 Further motions on behalf of the defense?

14 MR. LONG: Your Honor, I would renew my motion for --
15 now it would be judgment notwithstanding the verdict, based on
16 the questionability of the stop, of the seizure, and then the
17 search of the black bag, and not just the black bag, but of
18 the Fritos bag inside the black bag. Your Honor, I think
19 that, clearly, it was a difficult question of law that Your
20 Honor took great detailed research, and worked on very, very
21 hard to come up with your ruling. Based on that, Your Honor,
22 in and of itself, it was such a close call that I would hope
23 that Your Honor would see to seek the ends of justice in that
24 and allow us an opportunity with a judgment notwithstanding
25 the verdict of not guilty.

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1 THE COURT: All right, sir. I would respectfully
2 decline to grant your motion for a directed verdict. I would
3 reaffirm my previous rulings, and the comments that I
4 previously made on the record in this matter. I would, in
5 addition, say that the replaying of the Officer's testimony --
6 there was one sentence in the replaying of the Officer's
7 testimony that I made an additional note of, that when he
8 discovered that it was a beer, that he indicated, when he was
9 getting the Defendant out of the car, that he wanted to see if
10 there were any more in there, indicating any more beers in the
11 vehicle, that going to the issue, if there is any question as
12 to any of the cases cited about probable cause, then clearly
13 it's there. I would say that's in addition to the ruling that
14 I previously made, but if there is any question about probable
15 cause, that answers it.

16 All right. With that, as I told you, I respectfully
17 decline to grant your motions in that regard.

18 Any further motions on behalf of the defense?

19 MR. LONG: No sir.

20 THE COURT: All right. Is the defense then ready to
21 proceed with sentencing?

22 MR. LONG: Yes sir.

23 THE COURT: Solicitor.

24 MR. HIXSON: Your Honor, I simply -- I believe the we
25 are dealing with mandatory minimums in this case, Your Honor,

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1 and as a result I will just defer to Your Honor.

2 THE COURT: All right, sir.

3 Mr. Long, anything that you would like to say, or Mr.
4 Brown would like to say?

5 MR. BROWN: No sir.

6 THE COURT: All right, sir. Thank you.

7 Mr. Long, is there anything you would like to say?

8 MR. LONG: Your Honor, I -- unfortunately it doesn't
9 matter a whole lot what I say. I think if you had an
10 opportunity -- if it mattered -- had an opportunity to talk to
11 the court staff around here, and everybody else that has been
12 hanging out in the courthouse for the last two weeks, Danny is
13 a super guy, a very likable guy.

14 He's been convicted of trafficking in cocaine now. He
15 faces a minimum mandatory. I hate to see him go to prison
16 this long, but he's on the way. That's really not much to
17 say.

18 THE COURT: All right, sir. Thank you.

19 The statute gives me no choice. Once the range of
20 cocaine goes above ninety-nine point nine nine grams there is
21 no discretion in the Court. The ten to twenty-eight is three
22 to ten, twenty-eight to ninety-nine is seven to twenty-five,
23 twenty-five -- and a hundred -- twenty-eight to ninety-nine
24 point nine grams is seven to twenty-five years, above a
25 hundred grams, to infinity. The minimum is twenty-five years.

JURY IN/VERDICT
MOTIONS/SENTENCING

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1 It doesn't matter. Once it gets over a hundred grams I have
2 no discretion in this matter.

3 (06-GS-26-1349), the State of South Carolina, County of
4 Horry, versus Danny Cortez Brown, regarding trafficking in
5 cocaine, weight one hundred to two hundred grams, the sentence
6 of the Court is, the Defendant is committed to the State
7 Department of Corrections for a determinate term, twenty-five
8 years.

9 MR. LONG: Thank you, Your Honor.

10 THE COURT: Thank you very much.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE OF COURT REPORTER

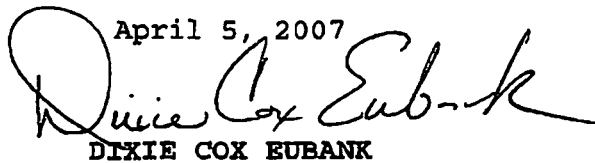
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth 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 evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA, on the 12th and 13th days of September, 2006.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

April 5, 2007



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANNY CORTEZ BROWN,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the police officer go on a mere fishing expedition when he searched a potato chip bag that was contained in a duffel bag that was located on the sidewalk next to a car pulled over for open container? The police officer was not justified in searching Brown's Fritos bag, and Brown should have his conviction reversed. ¹

¹ The undersigned calls to this Court's attention the case Arizona v. Gant (07-542) which is currently before the United States Supreme Court. Oral arguments are scheduled for October 7, 2008, and the question certified is: Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured? The undersigned submits this case is relevant to the issues submitted in this brief.

and secured him in the patrol car. Williams walked back to the passenger side of the car, where the bag was located on the sidewalk, and "want[ing] to get a glance into the bag", unzipped it and looked inside. (ROA. page 9, line 13). Among the deodorant, underwear, and other personal effects, was a "crumpled up" bag of Frito chips. (ROA. page 9, lines 17-19). Still curious, he opened the bag of chips and found what he believed to be drugs. At that point, Williams ran the drivers license of Smith, who had been sitting alone in the car this entire time, and found that it was suspended. Smith was arrested and Williams called for back-up. (ROA. page 11, lines 18-23).³

Although William's patrol car was outfitted with video equipment, apparently his tape had "just ran out." Smith, a confessed drug dealer (ROA. page 47, lines 13-14), still has not been prosecuted for the drugs that belonged to him, and today Brown is serving a 25 year prison sentence. Brown was subjected to an illegal search, and the fruits of that search should be suppressed as fruits of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

Prior testimony of Officer Williams

longer period of time. Smith said that Williams grabbed the bag after he had taken Brown back to his patrol car. (ROA. page 89, line 17 to page 92, line 9).

³ Williams testified on cross-examination that Smith was very nervous acting even before he had run his drivers license through the system. (ROA. page 25, lines 10-21). When the officers searched the vehicle, they found a bag containing several different types of illegal drugs under the driver's seat. (ROA. page 37, lines 17-21) where Mr. Smith had been sitting. Mr. Smith ultimately claimed ownership of those drugs. (ROA. page 41, lines 1-2).

Officer William's justification for removing the duffel bag, opening the duffel bag, and searching the Frito chip bag changed almost overnight. This case initially was called to trial and resulted in a mistrial during the State's case. On September 12, 2006, when the case was again called to trial, Williams again provided testimony on the issue of the duffel bag, and the trial judge had this to say:

THE COURT: All right. Well, let's look at the facts here, as testified. The Officer testified that, when he gets to the passenger side of the vehicle, said he observed the bag. Gets to the passenger side of the Defendant, gets the Defendant out of the vehicle, arrests him, handcuffs him, puts him in his car. Now, he testified to two different things today. One, that he then got the bag and put it on the sidewalk, and then he also said, when he was arresting the Defendant he got the bag and put it on the sidewalk. There was no doubt that the bag was on the sidewalk, and he hadn't looked at it at all when he put the Defendant in the patrol car. The Defendant was handcuffed and in the patrol car, couldn't get out, and the bag is on the sidewalk. *He testified this time—and he clearly—and I'll say this for a fact. He clearly did not testify to this at his previous testimony under oath. In this time, the fact that I'm talking about right now—he said this time that it was an unknown bag; there might be a safety issue; there might be a weapon; it might pose a threat. The Officer never, at any point in time, mentioned anything like this in his previous testimony, under oath, when the Court declared a mistrial before. He never said anything about that.*

In his prior testimony, under oath, all he said was, he secured the bag, put it on the sidewalk, put the Defendant under arrest in his car, and then he went back and opened up the bag, -- didn't give any—

MR. HIXSON: Did—

THE COURT: *No sir. No sir. That is clearly what he said, and there is no doubt about that's what he said before. He never, ever said anything about that in his prior testimony, because I made note of it when I heard this matter before, because I saw this issue coming up.*

He now, in this testimony before the Court, has raised the issue about bag safety issue, weapon poses a threat. Even

with that you've got a bag that's, on the sidewalk; he goes over, unzips the bag, rummages through it, sees the Frito bag that is open but crumpled shut, opens up the Frito bag and sees what he believes to be drugs. All during this point in time the driver of vehicle is not under arrest. The driver of the vehicle is on the other side of the car.

(ROA. page 65, line 21 to page 67, line 10) (emphasis added).

The changing testimony of Williams is important because it illustrates that Williams's prime motivation for searching the duffel bag was not related to his safety concerns; a fact that the judge clearly understood. In neither case did Williams claim that the purpose of his search was to prevent the destruction of evidence. These factors, of course, are the fundamental bases for allowing the temporary exception to the Fourth Amendment's prohibition against warrantless searches and seizures as contemplated by the United States Supreme Court in Chimel v. California, 395 U.S. 752 (1969) and New York v. Belton, 453 U.S. 454 (1981).

The Searches

Despite his misgivings about the motivation of Williams, the trial judge ruled that that the search in this case was justified by the holding in New York v. Belton, *supra*. This was error.

As I said, though I have concerns about the officer's conduct in this particular case, it is clear that the U.S. Supreme Court set forth a bright line test. The officer's conduct falls within that bright line test. The motion to suppress is denied.

(ROA. page 153, lines 16-20).

The judge's ruling was predicated on his belief that Belton created a bright-line test, and that this test applies in Brown's case. This ruling was erroneous, and Brown should have his conviction reversed.

There are three (3) distinct searches present in this case—(1) removing the bag from the car, (2) searching the duffel bag, and (3) searching the Frito bag located in the duffel bag. Each search should be analyzed separately to determine whether William's actions in this case were justified. Additionally, no South Carolina search and seizure case is properly analyzed without reference to our independent state grounds as embodied under Article I, Section 10 of the South Carolina Constitution. Thus, the judge's decision was erroneous for two reasons: (1) By concluding that Belton was applicable to *the* search and thereby failing to consider and separately analyze three separate searches, and (3) By failing to analyze the conduct under South Carolina law.

Why New York v. Belton Does Not Apply

As an initial matter, the seminal search incident to arrest case for automobiles does not apply in this particular case for two reasons: (1) there were no exigent circumstances present, and (2) there was no nexus between the cause of arrest and the search of the duffel bag. Belton is clearly distinguishable.

In Belton, the officer pulled over a car with four occupants. Immediately upon approaching the car, the officer smelled burned marijuana. He then removed the occupants from the car and arrested them for unlawful possession of marijuana. He patted them down. Then he entered the car. At the time he smelled the marijuana, the officer had probable

cause to arrest them for that offense. He also had probable cause to *believe there were drugs in the car* because he smelled the burning marijuana. In Belton, there was a clear exigency present that justified the search—the possible destruction of evidence. In this case, there were no exigent circumstances.

The language in the Belton decision, *supra*, makes it quite clear that it is an extension of law as propounded in Chimel, *supra*. “Our holding today does no more than determine the meaning of *Chimel*’s principles in this particular and problematic context. It in no way alters the fundamental principles established in the *Chimel* case regarding the basis scope of searches incident to lawful custodial arrests.” Belton, *n.3*.

In Chimel, searches incident to arrest are limited by the existence of exigent circumstances. Without this limiting factor, “Fourth Amendment protection in this area would approach the evaporation point.” Id. at 765. These exigent circumstances are (1) officer safety, and (2) destruction of evidence.

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. . . . There is ample justification, therefore, for a search of the arrestee’s person and the area ‘within his immediate control— construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Id. at 762-63.

Without exigent circumstances, a warrantless search is presumptively unreasonable under the Fourth Amendment of the Federal Constitution and our State Constitution and laws. See S.C. Code Ann. §17-13-14- (1976) (search warrant statute), and Article I, Section 10 of the South Carolina Constitution.

In the case *sub judice*, the officer had probable cause to arrest Danny for an open container, but he did not have any reasonable belief as to any other illegal activity taking place that would have provided the necessary exigency. There was nothing about Danny's behavior that aroused any suspicion of illegal activity. There was no smell of drugs, for example. Williams testified that he was searching for more beer cans (even though if Danny had more beer in the duffel bag, that would not have been a crime) (ROA. page 5, lines 4-5). There was nothing to give rise to the belief that there were drugs in the duffel bag, or that there were any safety concerns. That Williams had no concern for his safety is evidenced by the fact that he allowed the driver to remain in the car throughout the entirety of this transaction, notwithstanding the testimony he presented the second time he was asked to justify the searches. This fact should not be allowed to constitute any "exigency" in this case. As Justice Scalia points out in his concurrence in Thornton v. United States, 541 U.S. 615 (2004): "Indeed, if an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable *precisely because* the dangerous conditions justifying it existed only by virtue of the officer's failure to follow sensible procedures." *Id.* at 627 (emphasis in original). Rodney Smith's suspicious actions did not justify the search of Brown's property when Brown was detained in the back of a patrol car and the officer allowed Smith free rein during Brown's arrest.

A second reason why this case falls beyond the purview of Belton is that there was no nexus between the cause of the arrest and the duffel bag.⁴ In Danny's case, Williams had no reason to believe that evidence relative to the traffic infraction was contained in the bag. The traffic violation was that Brown had an open container while seated as a passenger in the vehicle. As noted earlier, even if Brown had a case of beer in his duffel bag, this would not have been relevant to his open container charge as it would not have been illegal.

⁴ Limiting a search for evidence relevant to the crime that precipitated the arrest ("the nexus") was advanced by Justice Scalia in his concurrence in Thornton, *supra*:

"In Chimel v. California, we held that a search incident to arrest was justified only as a means to find weapons the arrestee might use or the evidence he might conceal or destroy. We accordingly limited such searches to the area within the suspect's "immediate control", "the area into which an arrestee might reach in order to grab a weapon or evidentiary item." In New York v. Belton, we set forth a bright-line rule for arrests of automobile occupants, holding that, because the vehicle's entire passenger compartment is "in fact generally, even if not inevitably," within the arrestee's immediate control, a search of the whole compartment is justified in every case.

When petitioner's car was searched in this case, he was searched in this car, he was neither in, nor anywhere near, the passenger compartment of his vehicle. Rather, he was handcuffed and secured in the back of the officer's squad car. The risk that he would nevertheless "grab a weapon or evidentiary item" from his car was remote in the extreme. The Court's effort to apply our current doctrine to this search stretches it beyond its breaking point . . ." (citations omitted). *Id.* at 625.

After exploring various arguments purporting to justify the searches for officer safety, Justice Scalia concludes: "If Belton searches are justifiable, it is not because the arrestee might grab a weapon or evidentiary item from his car, but simply because *the car might contain evidence relevant to the crime* for which he was arrested." *Id.* at 629 (emphasis added).

Importantly, in response to the Scalia concurrence, Justice Rehnquist in Footnote 4 of the opinion states: "Whatever the merits of Justice Scalia's opinion concurring in the judgment, this is the wrong case to address them. Petitioner has never argued that Belton should be limited "to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle . . ." *Id.* at 624. And as Justice O'Connor stated: "While the approach Justice Scalia proposes appears to be built on firmer ground, I am reluctant to adopt it in the context of a case in which neither the Government nor the petitioner has had a chance to speak on its merit." *Id.* The significance of this discussion in Thornton is that it implicitly rejects a claim that *all* searches incident to arrest, whatever the scope the search, are subsumed by the reasoning in Belton.

All of the evidence necessary to secure a conviction for open container was apparent immediately upon approaching the car. See Knowles v. Iowa, 525 U.S. 113 (1998):

Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car.

Id. at 118.

Of course, the officer did not even bother to collect the evidence relative to the detention in the first place (ROA. page 17, line 13 to page 18, line 15), but in any event, there was no nexus between the crime and the duffel bag.

For these reasons, this case is significantly different from Belton. The search into the duffel bag was unjustified and therefore a violation of the 4th Amendment and South Carolina law.

Search #1—Removing the Duffel Bag from the Car

Williams had no basis to remove, or seize, the duffel bag from the car. Williams articulated no reason to believe any illegal activity was afoot, and Brown was secured at the time the duffel bag was removed. The fundamental bases for a warrant search—officer safety and/ or destruction of evidence -- were utterly lacking. The State's position would essentially grant officers a general right of entry into any vehicle that commits even a *de minimis* traffic infraction. The 4th Amendment and the South Carolina Constitution demand more.

Search #2—Opening the Duffel Bag

As Williams proceeded to dig deeper and deeper into Brown's personal belongings, the justifications for the warrantless search still needed to be present. If Williams was justified in removing the duffel bag from the car, he still needed a reason to then open the bag. Arguably, having removed a bag which may have contained a weapon (although the record does not reflect any such belief on the part of the officer), that safety justification would have been dissipated by its removal from the vehicle and the driver who, after all, was allowed to remain in the car. Additionally, by the time the bag was opened, Brown was secured in handcuffs, and ensconced in Williams's patrol car.

Search #3—Opening the Fritos Potato Chip Bag

The most illustrative fact in support of the claim that Williams's was merely fishing for a crime is his rooting through the closed Fritos bag that was contained inside of the closed duffel bag, located on a sidewalk, next to the car pulled because the passenger had an open container. At this point, any conceivable justifications for conducting a warrantless search were entirely dissipated. Again, the record is devoid of any reasonable belief that criminal activity was afoot, and the bag, which may have contained a weapon, was removed from the car, and searched. Brown was still secured in the patrol car, and the officer elected to leave the driver in the vehicle. There is simply no argument available to support the search at this point. If Williams believed that evidence of a crime was present, he was obligated to contact a magistrate and obtain a warrant. Williams's search of Brown's Fritos bag was improper, and the fruits of that search should be suppressed. Wong Sun, supra.

South Carolina Analysis

It has long been acknowledged that state courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution. See State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007); Virginia v. Moore, 553 U.S. ____ (2008) (2008 WL 1805745). The South Carolina Constitution provides a distinct right to privacy under Article I, §10. “The South Carolina Constitution with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 841 (2001). Under South Carolina law, these searches do not pass constitutional muster. Even if this Court concludes that the searches were reasonable under federal constitutional law, they fail under the heightened protections afforded South Carolina citizens. Respectfully, Brown asks this Court to reverse his conviction.

CONCLUSION

For the preceding reasons, Brown respectfully asks this Court to reverse his conviction.

Respectfully submitted,

Elizabeth A. Franklin-Best
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Appellate Defender

ATTORNEY FOR APPELLANT.

This 15th day of April, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANNY CORTEZ BROWN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoport, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 15th day of April, 2009.

Elizabeth A. Franklin-Best
Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 15th day of April, 2009.

Joseph A. [Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

APP'X 204

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County
Steven H. John, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANNY CORTEZ BROWN,

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STATEMENT OF ISSUES ON APPEAL**I.**

Is Brown's Issue available for appellate review?

II.

Did the trial judge err by denying Brown's motion to suppress evidence seized from his duffel bag incident to his arrest?

III.

Was the search of the duffel bag proper under the automobile exception to the exclusionary rule?

IV.

Was the search of the duffel bag proper as an inventory search?

STATEMENT OF THE CASE

Respondent concurs with the procedural Statement of the Case of Appellant Danny Cortez Brown.

ARGUMENT

Brown's Issue is not available for appellate review. The trial judge did not err by denying Brown's motion to suppress evidence seized from his duffel bag incident to his arrest. The search of the duffel bag was proper under the automobile exception to the exclusionary rule. The search of the duffel bag was proper as an inventory search. (Brown's Issue; Respondent's Issues I-IV).

Around 7:20 p.m. on October 6, 2005, Officer Daryl Williams was patrolled Kings Highway in Myrtle Beach, when he observed two individuals in a vehicle. He testified that Brown, the passenger, was drinking a beer. Williams said Brown then took the beer and appeared to tuck it between his legs when Brown saw him. (R. 1-4, 15-17).¹

Williams stopped the vehicle and approached the driver's side. Williams testified he spoke to Brown about the beer. Brown first denied possession of a beer, but then pulled it up. (R. 4, 31-32). Williams said he circled around to the passenger's side of the vehicle and asked if there were more beers inside. Brown said there were none. (R. 4-5, 18-20). Williams then asked Brown to step out of the vehicle, handcuffed him, and placed him under arrest for the open container violation.² (R. 5). Williams admitted he wanted to find out if there were any more beers in the vehicle. (R. 5, 20). Williams stated:

Of course I got him out of the car, you know, he is stepping -
- just imagine, you know, a vehicle right there in the roadway,
and I'm basically - - there's not too much room between the

¹William explained that, although it was close to dark at the time, there was enough light for him to see into the vehicle. (R. 2-3, 15-16).

²Williams testified he took possession of the beer can from Brown, but he did not preserve it as evidence because of the subsequent drug charge. (R. 17-18, 21).

sidewalk and the car, basically. I'm standing there. I can't recall whether I was up on the sidewalk or actually in the street. But he steps out, and I kind of placed him under arrest kind of quickly. I thought it was a safety issue, because he looked like a pretty big guy, and I didn't want to - - and being there was another subject in there, if I had to go ahead and tangle with him I didn't want to - - I wanted to make it quick, more or less . . .

(R. 6-7). Williams recalled Brown's demeanor as "artificially laid back, more or less like a - - trying to be cool . . . it seemed suspicious to me, personally, just as the nervousness of the other occupant seemed suspicious, so I mean, I kind of governed how I handled myself." (R. 32-33).

Williams also testified that he observed a black duffle bag on the floorboard in front of Brown when he first spoke to him from the driver's side of the vehicle. (R. 5-6). When Brown was arrested, Brown admitted the bag belonged to him. (R. 5, 26). Williams said he had the bag removed once Brown was taken from the vehicle. Williams explained why he removed the duffle bag.

. . . it is an unknown bag. It could - - as a safety issue for me. It's a lot of options I have at that point, but I would say, let me separate this bag from - - you know, there could be anything there, a weapon, for instance, so I wanted to separate the bag from the other person, because I didn't know if it would pose a threat, so like I said, I placed it on the sidewalk . . . As I said, it was just starting to get dark, and eventually did, of course, and so throughout the whole duration of the traffic stop I don't believe there was any other, you know, outside people, other than when I did eventually call an officer to the scene for backup . . .

(R. 7).

Williams testified that after Brown was secured in his patrol vehicle, he returned to

the vehicle and briefly spoke to Rodney Smith, the driver.³ Williams said he then went to look inside the duffle bag. He unzipped it and found deodorant, underwear, and other personal effects. There was also a "crumpled up" bag of Frito chips. (R. 9, 23-24). Williams testified he then opened the bag of chips and found what he believed were drugs. (R. 9). At this point, Williams ran the driver's license of Smith and found that it was suspended. Smith, too, was arrested, and Williams requested back-up. (R. 11-12, 27).

After Smith's arrest, other officers further searched the vehicle. They discovered a small pouch "maybe a little bit bigger than a cigarette case" under Smith's seat that contained several different types of illegal drugs. (R. 37-40). Smith ultimately admitted the drugs belonged to him. (R. 41, 45). Smith further claimed he had been dealing drugs for the past year. (R. 47).

When the trial concluded after the first day, defense counsel moved to suppress the drugs seized from the duffel bag. He argued Brown was already in custody, and that Williams could not thereafter remove the duffel bag from the car and then search it without consent. Defense counsel stated, "the driver of the car was not under arrest. This is not an inventory search, because the car, at this point, would still have been free to go, was not ready to be towed." (R. 64). The State contended the officer could search the duffel bag for his safety under the circumstances, and also to inventory Brown's personal belongings once he admitted the duffel bag belonged to him. (R. 64-65).

The trial judge recalled Williams' testimony from Brown's prior trial which ended

³Contrary to Brown's demeanor during the stop, Williams stated Smith acted very nervous when he spoke to him. (R. 25, 31).

were drugs inside Brown's duffel bag. (R. 78, 104).⁴

The State's last witness testified there were 122.65 grams of cocaine inside the duffel bag. (R. 117). When the State requested the admission of the drug report, defense counsel stated: "... along with my objection - - my previous suppression motion, I would object to that document going in at this time." (R. 118). The State then moved to admit the drugs. Defense counsel again objected subject to his previous motion. (R. 119-20). Both the drug report and the drugs were then admitted into evidence. (R. 120).

Then, after the State rested its case, defense counsel specifically renewed his suppression motion and requested the trial judge to dismiss the case. Following lengthy arguments by counsel, the trial judge ruled the drugs were admissible pursuant to Chimel v. California, 395 U.S. 752 (1969), and New York v. Belton, 453 U.S. 454 (1981). (R. 147-71).

On appeal, Brown argues the trial judge erred by denying his motion to suppress the drugs seized from his duffel bag, because the search was not valid incident to his arrest. Brown further argues that even if the search was constitutional under the Fourth Amendment, it violated the heightened protections afforded him pursuant to the South Carolina Constitution.

A. Error preservation

The preservation of Brown's issue is dubious. An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004); Wilder Corp. v.

⁴Smith stated Brown was ultimately charged with trafficking the drugs discovered inside the duffel bag and under his seat. At the time of Brown's trial, however, he had not been tried on these charges. (R. 78-79, 96-97).

Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003); Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002). Error preservation requirements are intended “to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” I’On v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 724 (2000); see also State v. Nelson, 331 S.C. 1, 501 S.E.2d 716, 718 n.6 (1998)[“the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court”].

Here, when defense counsel moved to suppress the drugs the trial judge decided to take the matter under advisement and indicated he would rule on it at the conclusion of the State’s case. When the State later introduced the drugs, however, defense counsel not only needed to renew his objection to the introduction of the drugs, which he did, but he was also required to obtain a final ruling from the trial judge before they were admitted. Defense counsel could not wait until the directed verdict stage of the trial to obtain a ruling from the trial judge. Brown’s Issue must be dismissed. See State v. Burton, 356 S.C. 259, 589 S.E.2d 6 (2003)[noting that, because the defendant only raised the propriety of the police action in a motion for a directed verdict and after the evidence pertaining to the search and seizure had been admitted, he could not challenge the search on appeal]; State v. Green, 350 S.C. 580, 567 S.E.2d 505 (Ct. App. 2002)[holding the appropriate vehicle for challenging the admissibility of evidence based on a search and seizure violation is to obtain a ruling on a motion to suppress before it is introduced and not at the time of a motion for a directed verdict]; see also State v. Shumpert, 312 S.C. 502, 435 S.E.2d 859 (2003)[unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not

preserved for appellate review]; State v. Pierce, 263 S.C. 23, 207 S.E.2d 414 (1974)[a defendant must timely object and ask for a ruling to preserve error]; State v. Carlson, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005)[noting the trial judge's earlier statement to the defendant was not a ruling on the admissibility of the defendant's prior criminal record].

Additionally, an appellant has "the responsibility to identify errors on appeal, not the court." Kennedy v. South Carolina Ret. Sys., 349 S.C. 531, 564 S.E.2d 322, 322-23 (2001). An objection should be addressed to the trial judge in a sufficiently specific manner that brings attention to the exact error. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213, 216 (2001); State v. Funderburk, 367 S.C. 236, 625 S.E.2d 248, 250 (Ct. App. 2006); see also State v. Byram, 326 S.C. 107, 485 S.E.2d 360, 362-63 (1997)[holding a constitutional argument is not preserved for appeal where a defendant failed to argue the constitutional basis for his request at trial]; State v. Patton, 322 S.C. 408, 472 S.E.2d 245, 247 (1996)[holding a defendant must articulate specific factual and legal grounds to support his claim that evidence was obtained by conduct violative of his constitutional rights]. If a party fails to properly object, he is procedurally barred from raising the issue for the first time on appeal. State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996); see State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000)[party may not argue one ground at trial and an alternate ground on appeal]; State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994)[to preserve error for appellate review, a defendant must make a contemporaneous objection on a specific ground]. "An issue that was not preserved for review should not be addressed by the Court of Appeals." State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691, 693-94 (2003).

In the present case, defense counsel's argument was based upon federal grounds only.

Nowhere in the record does he cite or make reference to the South Carolina Constitution. He likewise failed to specifically argue the South Carolina Constitution afforded more expansive rights than the rights conferred by the Fourth Amendment. Patton, 472 S.E.2d at 247; see also Dunbar, 587 S.E.2d at 694 [holding the Court of Appeals improperly addressed the state's warrant statute in the suppression of drugs, because nowhere in the record did defendant cite or make reference to the warrant statute]. Brown's assignment of error in this regard, therefore, cannot be addressed for the first time on appeal. Id.⁵

B. Search incident to arrest

The admission of evidence is within the discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). An abuse of discretion occurs when the conclusions of the trial judge either lack evidentiary support or are controlled by an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000).

In criminal cases, an appellate court only reviews errors of law. State v. Butler, 353 S.C. 383, 577 S.E.2d 498 (Ct. App. 2003)[citing State v. Wilson, 345 S.C. 1, 545 S.E.2d 827, 829 (2001)]. The appellate court is bound by the trial judge's factual findings unless it finds that they are clearly erroneous. This standard of review also applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. Id. The appellate court is limited in its review of Fourth Amendment search and seizure cases to

⁵Further, no point may be considered which is not set forth in the statement of issues on appeal. Rule 208(b)(1)(B), SCACR; State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000). Brown failed to set forth this assignment of error in his Statement of Issue on Appeal. (BOA at 3). It cannot, therefore, be addressed on appeal. Id.

determining whether there is any evidence to support the trial judge's finding. State v. Bowman, 366 S.C. 485, 623 S.E.2d 378 (2005). An appellate court may reverse only when clear error exists. Id.

Evidence seized in violation of the Fourth Amendment must be excluded from trial. State v. Khingratsaiphon, 352 S.C. 62, 572 S.E.2d 456 (2002)[citing Mapp v. Ohio, 367 U.S. 643 (1961)]. Generally, a warrantless search is per se unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures. State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995). However, a warrantless search will withstand constitutional scrutiny where the search falls within one of several well-recognized exceptions to the warrant requirement. Id. One such exception is in cases of a search incident to arrest. State v. Ferrell, 274 S.C. 401, 266 S.E.2d 869, 871 (1980)[once probable cause exists for an arrest, “[p]olice officers may make a search of an arrestee’s person and the area within his immediate control for weapons and destructible]; see also Chimel, 395 U.S. at 762-63 [when an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape]. The burden of establishing probable cause and the existence of circumstances constituting an exception to the general prohibition against warrantless searches is upon the prosecution. State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995)[burden is upon State to justify warrantless search].

There are two historical rationales for the “search incident to arrest” exception to the warrant requirement: (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. State v. Freiburger, 366 S.C. 125, 620

S.E.2d 737, 740 (2005)[citing Knowles v. Iowa, 525 U.S. 113, 116, (1998)]. A search may be conducted incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986).

As noted by the trial judge, the instant case is controlled by Belton. Belton involved the police stop of a speeding car on the New York Thruway. The policeman smelled marijuana and observed an envelope marked "Supergold," which he associated with marijuana, on the floor of the car. He ordered its four male occupants out of the car and placed them under arrest for unlawful possession. "He patted down each of the men and 'split them up into four separate areas of the Thruway at this time so they would not be in physical touching area of each other.' " Id., 453 U.S. at 456. Then, the policeman searched the passenger compartment of the car. On the back seat he found a leather jacket belonging to Belton. He unzipped one of the pockets of the jacket and discovered cocaine. The Court of Appeals of New York held that the warrantless search of the zippered pockets of the inaccessible jacket violated the Fourth Amendment.

The USSC reversed. It established a "bright line" rule. In so doing, the Court clarified the application of the rule in Chimel to the search of the interior and contents of an automobile incident to the lawful custodial arrest of its recent occupants. It said:

When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority. While the Chimel case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of "the area within the immediate control of the arrestee" when that

area arguably includes the interior of an automobile and the arrestee is its recent occupant. Our reading of the cases suggests the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within "the area into which an arrestee might reach in order to grab a weapon or evidentiary item." Chimel, [395 U.S. at 763.] In order to establish the workable rule this category of cases requires, we read Chimel's definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach. United States v. Robinson [414 U.S. 218 (1973)]; Draper v. United States, 358 U.S. 307 (1959). Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have. (footnotes omitted.)

Belton, 453 U.S. at 460-61. The Court defined a "container" as "any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like." Id. at 461 n.4.

Even more applicable to the present case, the USSC stated:

It is true, of course, that these containers will sometimes be such that they could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested. However, in [Robinson], the Court rejected the argument that such a container - there a "crumpled up cigarette package" - located during a search of Robinson incident to his arrest could not be searched: "The authority to search the person

incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.” [Robinson,] 414 U.S. at 235.

Belton, 453 U.S. at 461.

Belton concludes with the following summary;

It is not questioned that the respondent was the subject of a lawful custodial arrest on a charge of possessing marihuana. The search of the respondent’s jacket followed immediately upon that arrest. The jacket was located inside the passenger compartment of the car in which the respondent had been a passenger just before he was arrested. The jacket was thus within the area which we have concluded was “within the arrestee’s immediate control” within the meaning of the Chimel case. The search of the jacket, therefore, was a search incident to a lawful custodial arrest, and it did not violate the Fourth and Fourteenth Amendments. (footnote omitted.)

Belton, 453 U.S. at 462.

In the present case it is not even suggested that Brown’s custodial arrest was unlawful.⁶ The search of the duffel bag from the passenger compartment of the vehicle was contemporaneous with his arrest. It did not matter whether Brown was already confined in the patrol car.⁷ See Thornton v. United States, 541 U.S. 615, 617, 623-24 (2004) [“Belton

⁶Brown testified at trial, and he admitted possession of the open container. (R. 163-65).

⁷In a related argument, Brown notes that the USSC recently granted certiorari in Arizona v. Gant, ___ U.S. ___, 128 S.Ct. 1443 (2008), to review the decision by the Arizona Supreme Court in State v. Gant, 216 Ariz. 1, 162 P.3d 640 (2007). In Gant, the state court invalidated a search of a vehicle incident to arrest, because the physical restraint on the arrestee precluded any threat to officer safety or the destruction of evidence. However, this Court

governs even when an officer does not make contact until the person arrested has left the vehicle.” As long as the arrestee is a “recent occupant” of the vehicle, “officers may search that vehicle incident to arrest”]. It further made no difference whether Smith remained inside the car, because Williams had already removed the duffel bag from the passenger compartment when he arrested Brown and placed it on the ground until he secured Brown.

Additionally, there is no distinction of any legal significance between the zippered pocket of the defendant’s jacket in Belton, and Brown’s duffel bag and its contents. Brown contends that, under Belton, the police were not entitled to open the Frito bag.⁸ The Belton Court rejected this argument in favor of a bright-line rule permitting the search of all “containers” in the passenger compartment. See also Robinson, 414 U.S. at 235 [“crumpled up cigarette package”]. Indeed, the Frito bag at issue fell within the USSC’s definition of a “container.” The manner in which the drugs were hidden in the “container” was irrelevant. Finally, the search of the vehicle did not violate Belton because the initial search was to discover evidence of the unlawful container offense for which Brown had been arrested. Brown’s characterization of the duffel bag search as three separate searches is patently without merit.

Belton is dispositive in this case. The search of Brown’s duffel bag and its contents by the police did not violate the Fourth and Fourteenth Amendments.

should still apply the law as it currently exists until it is directed to apply a different rule. In light of the precedent in the USSC, the State strongly doubts the USSC will seek to limit Belton. To the contrary, the USSC will likely either reaffirm its precedent or expand Belton. The State notes the USSC heard oral arguments in this case on October 7, 2008.

⁸The Frito bag is in the possession of this Court. It is about the size of a sheet of paper and was certainly large enough to conceal evidence of the crime.

C. Automobile exception

As an additional sustaining ground,⁹ the search of the duffel bag was lawful pursuant to the automobile exception to the exclusionary rule. A warrantless search of a vehicle may be made if: (1) there is probable cause to believe the vehicle contains evidence of a crime; and (2) there are exigent circumstances arising out of the mobility of the vehicle and its consequently likely disappearance if the search is not executed immediately. This is commonly referred to as the Carroll Doctrine. See Carroll v. United States, 267 U.S. 132, 149 (1925)[holding “the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure is valid”]. If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more. Pennsylvania v. Labron, 518 U.S. 938 (1996); State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007).

The two bases for the exception are: (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation. State v. Cox, 290 S.C. 489, 351 S.E.2d 570 (1986). When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes-temporary or otherwise-the two justifications for the vehicle exception

⁹Rule 220(c), SCACR; On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)[an appellate court may affirm a ruling of the trial judge upon any grounds appearing in the record on appeal].

come into play. California v. Carney, 471 U.S. 386 (1985).

First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Id. Automobiles, because of their mobility, may be searched without a warrant upon facts not justifying a warrantless search of a residence or office. Chambers v. Maroney, 399 U.S. 42 (1970). The opportunity to search an automobile is fleeting since a car is readily movable. Id. An immediate intrusion is necessary because of the nature of an automobile in transit. United States v. Ross, 456 U.S. 798 (1982). The mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. South Dakota v. Opperman, 428 U.S. 364 (1976); State v. Brannon, 347 S.C. 85, 552 S.E.2d 773 (Ct. App. 2001). Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulations inapplicable to a fixed dwelling. Carney, supra; State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995).

Further, the automobile exception allows law enforcement officials to conduct a search of an automobile based on probable cause alone due to the lessened expectation of privacy in motor vehicles traveling on public highways. Brannon, supra. The Supreme Court, in Cox, examined the principle of "probable cause" as it relates to the automobile exception as follows:

The [Carney] Court makes clear that under the automobile exception, probable cause alone is sufficient to justify a warrantless search. As the Court stated, "the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches [of vehicles] without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met." That is, the inherent

mobility of automobiles provides the requisite exigency.

Cox, 351 S.E.2d at 571-72 (citation omitted).

Additionally, the USSC in Wyoming v. Houghton, 526 U.S. 295 (1999) reasoned that, under the automobile exception, if probable cause exists to justify the warrantless search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and every container within a vehicle and its contents. Houghton, 526 U.S. at 301-02; see Brannon, 552 S.E.2d at 777; Bultron, 457 S.E.2d at 621.

The automobile exception was applicable to the case at bar. Williams stopped the vehicle and lawfully arrested Brown for the open container violation. Because Williams wanted to ascertain whether there were more beers in the vehicle, he could, therefore, lawfully search the vehicle and/or the duffel bag and its contents. It was not unreasonable for him to believe further evidence of the violation was concealed in the duffel bag or hidden in any container. Houghton, 526 U.S. at 302. Therefore, the search of Brown's duffel bag was not outside the scope of a lawful search pursuant to the automobile exception. State v. McLaughlin, 307 S.C. 19, 413 S.E.2d 819 (1992). After Williams inspected the duffel bag and the Frito bag, it would have defied common sense to require him to overlook incriminating evidence because this evidence did not relate to the initial purpose of the search. United States v. Ross, 456 U.S. 798, 825-26 (1982).

D. Inventory search

In State v. Morris, 312 S.C. 116, 439 S.E.2d 291 (Ct. App. 1993), this Court held that once the defendant was lawfully stopped, the open container of alcohol in plain view gave the officer probable cause to arrest him. Consequently, the crack cocaine discovered

during the resulting inventory search was not the product of an illegal stop and was admissible as evidence.

In the present case, Williams observed the open container of alcohol in plain view. He had probable cause to stop the vehicle and arrest Brown. Williams was, therefore, justified in making a routine inventory to secure the bag and its contents after he arrested Brown for the violation. State v. Lemacks, 275 S.C. 181, 268 S.E.2d 285 (1980). Further, it does not invalidate the inventory search even if Williams' subjective intent was to find other evidence rather than to safeguard Brown's property. See Colorado v. Bertine, 479 U.S. 367, 371 (1987).¹⁰

¹⁰The inevitable discovery doctrine is also an exception to the exclusionary rule. The rationale behind the exception is that where evidence inevitably would have been discovered by lawful means the exclusionary rule should not be applied, because the goal of deterrence is so attenuated. Nix v. Williams, 467 U.S. 431, 444 (1984). Here, once Brown and, subsequently, Smith, had been lawfully arrested, the contents of the duffel bag would have been inevitably discovered by the police during the routine inventory of the items in the vehicle.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

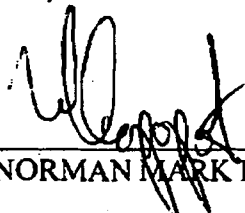
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May 5, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County
Steven H. John, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANNY CORTEZ BROWN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

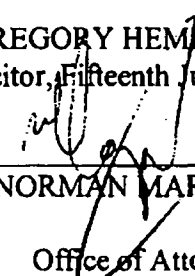
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May 5, 2009

APP'X 229

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County
Steven H. John, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANNY CORTEZ BROWN,

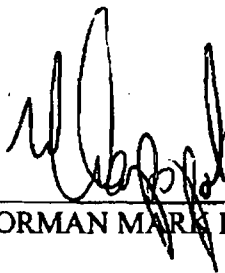
Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Elizabeth A. Franklin-Best, Esquire, Appellate Defender, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 5th day of May, 2009.



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APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANNY CORTEZ BROWN,

APPELLANT

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*****EXHIBIT'S HAVE BEEN TRANSPORTED TO THE COURT OF
APPEALS. *****

DARYL WILLIAMS - DIRECT BY HIXSON

19

1 Q. Good afternoon, sir.

2 A. Good afternoon.

3 Q. What do you do for a living?

4 A. I am a police officer with the Horry County Police
5 Department.

6 Q. And about how long have you done that?

7 A. I have been with the County for about two years. I was
8 with Conway before that.

9 Q. And what is your position with the Police Department
10 now?

11 A. Currently I am in the Training Division. I train other
12 officers on primarily computer equipment and programs. I do
13 some minor figuring, and I also do patrol, still, about half
14 and half.

15 Q. So you were working for Horry County back in October
16 6th of 2005?

17 A. Yes sir.

18 Q. Could you please tell -- on that day, did you have an
19 opportunity to come across Mr. Danny Cortez Brown?

20 A. Yes sir.

21 Q. And could you please tell the jury about the
22 circumstances that gave rise to you coming into contact with
23 him.

24 A. Okay. On that day, October 6, 2005, I was on patrol in
25 the Myrtle Beach section of Horry County, and I was driving

1 southbound on Kings Highway in the vicinity of 16th Avenue
2 South, I believe. I saw a -- I believe it was a Plymouth,
3 older model, 1972 yellow Plymouth, two occupants, right beside
4 me, and as I looked over at them I saw that the passenger was
5 drinking what appeared to be a beer, and upon seeing -- me --
6 as a passenger Mr. Brown was holding a beer, he took it,
7 tucked it down, appeared to be between his legs, and so I
8 initiated a vehicle stop at that time.

9 Q. Let me interrupt you briefly at that point.

10 A. Yes sir.

11 Q. You said that you were at Sixteen Avenue South in
12 Myrtle Beach?

13 A. Yes sir.

14 Q. Now, was that in Horry County?

15 A. Oh, indeed, I mean ---

16 Q. I just have to ask that question.

17 A. Okay.

18 Q. Now, could you give me a little detail, or give the
19 jury some detail about the circumstances surrounding that.
20 That's a pretty important point.

21 Were you in a marked patrol vehicle?

22 A. Yes sir. I was in -- basically dressed similar to I am
23 now, in a marked Horry County police patrol vehicle, yes sir.

24 Q. Now, what would you say the lighting conditions were
25 around that period of time?

1 A. Well, at that time it was -- like I said, it was around
2 seven o'clock, just a little bit thereafter. It was beginning
3 to get dark, as you say, but in my opinion it was still pretty
4 bright. My visibility was still high. I don't think the
5 street lights were on at that time. I'm not sure. But my
6 visibility was pretty -- I didn't have my headlights on yet.

7 Q. Now what relative position -- I think you indicated you
8 were driving up to the vehicle.

9 A. Yes sir.

10 Q. Could you please describe that in some more detail?

11 A. Okay. South Kings Highway has two lanes in either
12 direction. I'm in the left lane. This other vehicle was in
13 the right lane, and I was coming up from behind the vehicle,
14 and I basically came up just a hair shy of being parallel to
15 the vehicle. Upon coming up to the vehicle I could see
16 basically, kind of diagonally straight toward -- into the
17 vehicle. The vehicle has pretty large, long door, you know,
18 older two-door model car, where you have a lot of visibility,
19 because you have the large window opening. And, you know, as
20 I came up, then I saw it. Came up all the way, just about
21 parallel to them, looked over, you know, just to kind of
22 confirm, and then I backed off and initiated that stop.

23 Q. So did he make eye contact -- did the Defendant make
24 eye contact with you?

25 A. Yes sir.

1 Q. Did he react when he saw you?

2 A. Like I said, initially upon seeing me -- and he had the
3 can in his hand, he looked back, we connected eyes, and his
4 eyes got real big like, you know, ut oh, and he put it down,
5 and then I went from there.

6 Q. Did you indicate you made a traffic stop at that time?

7 A. Yes sir.

8 Q. Please tell the jury about that.

9 A. Okay. Upon pulling behind that vehicle I initiated a
10 traffic stop. Basically I turned on my blue lights, and the
11 vehicle did stop there in the roadway. Upon the vehicle
12 stopping I approached the vehicle from the driver's side.
13 Like I said, there were two -- there was the driver and the
14 passenger. I chose the driver's side at that time for, you
15 know, just reasons of instinct, and upon approaching that
16 vehicle I primarily spoke with the passenger. The driver, you
17 know, he sat there kind of -- just not saying anything, and I
18 spoke with the passenger. I asked him about the beer I had
19 seen. I introduced myself, how are you guys doing; I'm an
20 officer with the Horry County Police Department; I see you've
21 got a beer over there; what kind is that, you know, I was
22 small-talking. He said, I -- I don't have a beer. Sure you
23 do; what's that between your legs. He pulls it up, and it was
24 a beer. I don't remember what -- exactly what kind it was,
25 but it was a beer. And so I commenced to talk and eventually

DARYL WILLIAMS - DIRECT BY HIXSON

23

1 circled around the car to the passenger's side, and I asked --
2 I said, are there any more beers. He says, no. I said, are
3 you sure; let's see it; I'm going to be honest with you. I
4 said, okay, well, come on and step out; I want to see if
5 there's any more in there. And upon him stepping out of the
6 vehicle is when I went ahead and placed him under arrest for
7 open container, which is basically having an open beer in the
8 vehicle in South Carolina.

9 Q. Now, prior to removing him from the vehicle, asking him
10 to step out, I should say, did you observe anything in the
11 passenger floorboard area of the vehicle?

12 A. Yes sir.

13 MR. LONG: Object to the leading, Your Honor.

14 THE COURT: All right, Mr. Hixson, don't lead your
15 witness, sir.

16 MR. HIXSON: Thank you, Your Honor.

17 A. May I respond to that?

18 THE COURT: Ask -- ask another question, Mr. Hixson.

19 A. Okay.

20 MR. HIXSON: Thank you, Your Honor.

21 Q. Before asking him to come out of the vehicle, did you
22 observe anything in the vehicle?

23 A. Yes sir. Actually when I first approached the vehicle
24 from the driver's side -- and you know I'm looking in the
25 vehicle, trying to observe everything that's going on, as a

1 safety issue -- I did observe a black -- what appeared to be a
2 black duffle bag on the passenger side floorboard, between the
3 legs of the passenger, and that's kind of why I wanted to get
4 over there on that side, and I kind of crossed over and the
5 whole time I'm sitting -- talking with him, and kind of
6 looking at the bag. It just appeared to be a closed black bag
7 at that time.

8 And as I go on I did get that passenger out of the
9 vehicle, and I did place him under arrest, placed the cuffs on
10 him and -- pardon me -- and then I did secure that bag and
11 take it and put it on the sidewalk.

12 Q. Did you ask him, Mr. Brown, anything about that bag?

13 A. I did. I asked him, I said, is this your bag, and he
14 said yes.

15 Q. All right. You indicated, I believe, you had placed
16 the Defendant under arrest.

17 A. I did.

18 Q. Could you please tell the jury more of what happened
19 during that period of time, and subsequent to that?

20 A. Okay. Of course I got him out of the car before
21 getting the bag out, and as he stepped out of the car, you
22 know, he is stepping -- just imagine, you know, a vehicle
23 right there in the roadway, and I'm basically -- there's not
24 too much room between the sidewalk and the car, basically.
25 I'm standing there. I can't recall whether I was up on the

1 sidewalk or actually in the street. But he steps out, and I
2 kind of placed him under arrest kind of quickly. I thought it
3 was a safety issue, because he looked like a pretty big guy,
4 and I didn't want to -- and being there was another subject in
5 there, if I had to go ahead and tangle with him I didn't want
6 to -- I wanted to make it quick, more or less. So he ---

7 Q. Why -- I apologize.

8 A. I'm sorry.

9 Q. Why did you remove the bag from the vehicle at that
10 time?

11 A. Because it is an unknown bag. It could -- as a safety
12 issue for me. It's a lot of options I have at that point, but
13 I would say, let me separate this bag from -- you know, there
14 could be anything there, a weapon, for instance, so I wanted
15 to separate that bag from the other person, because I didn't
16 know if it would pose a threat, so like I said, I placed it on
17 the sidewalk

18 And it was drizzling that day. It was -- just started
19 to drizzle, and it actually progressed into a rain as the time
20 went on, and there wasn't any street traffic in that vicinity.
21 As I said, it was just starting to get dark, and eventually
22 did, of course, and so throughout the whole duration of the
23 traffic stop I don't believe there was any other, you know,
24 outside people, other than when I did eventually call an
25 officer to the scene for backup, and then later they called

1 the narcotics detective to the scene.

2 Q. Did you place Mr. Brown in your vehicle?

3 A. I did. After I got him out of the car I placed him
4 under arrest, and put that bag on the sidewalk, I did take him
5 back to my vehicle, and put him in the rear passenger
6 compartment.

7 Q. Okay.

8 MR. HIXSON: I would like to approach the witness, Your
9 Honor.

10 THE COURT: Yes sir.

11 Q. I'm going to show you what's already been marked as
12 State's Exhibit 1. It's not in evidence yet. Do you
13 recognize that item?

14 A. Yes sir.

15 Q. And what is that?

16 A. That looks like the bag that I'm just speaking about
17 that was sitting on the passenger's floorboard.

18 Q. Now, I notice that it doesn't appear that that's on the
19 sidewalk.

20 A. No, this bag -- excuse me -- this picture -- I believe
21 this picture was taken in our Horry County Police Department
22 in Detective Delpercio's office.

23 Q. And is that a fair and accurate representation of the
24 bag that you remember removing from that vehicle?

25 A. I would say so, yes.

1 Q. Now, when you first saw the bag what was -- I think you
2 indicated it was closed?

3 A. Yes sir.

4 Q. Could you please describe it's position -- or position
5 to the jury?

6 A. Like I say, it was in the passenger's side floorboard.
7 It was a -- had a zipper. I'm not exactly sure if it was
8 straight across or kind of, you know, smiley face or what have
9 you, but it was zipped shut. Upon finding -- you know, upon
10 securing him in the vehicle I returned back to the subject's
11 vehicle, basically, and I'm kind of talking to the driver,
12 kind of some small talk. I wanted to deal with him later, but
13 I just wanted to get a glance into the bag, so I did unzip the
14 bag, and look in. It was personal items like, perhaps
15 deodorant, undergarments, something to that effect, and there
16 was a bag of Fritos potato chips, corn chips, whatever --
17 however you -- and it was open, so it was kind of crumpled
18 shut, I believe, so I went and just opened it up to get a look
19 into the bag, and then I seen inside that bag a -- what
20 appeared to be a plastic bag with a white powdery substance,
21 which is -- you know, looks -- appears to be cocaine.

22 So at that time, you know, flags go up in my head. I
23 said, oh, so I just resecured it, zipped it back, didn't say a
24 word about it, started dealing with the driver of the vehicle
25 at this time.

1 MR. HIXSON: May I approach the witness also, Your
2 Honor?

3 THE COURT: Yes sir.

4 Q. Let me show you what has been marked for exhibit only -
5 - it's not in evidence yet -- as State's 2. Do you recognize
6 that?

7 A. Yes sir.

8 Q. Now, does that appear to be the substance that you saw
9 in that Fritos bag?

10 A. It appears to be.

11 Q. Now, when you first saw that, did it have that
12 packaging like that around it?

13 A. No.

14 Q. Okay. So what was the nature of the packaging again?
15 I know you already answered that question, but ---

16 A. It was a plastic bag, probably a -- you know, like
17 I'm -- I'm not sure what you call it, a little zip bag, but it
18 was a -- just a plastic bag. These are clearly evidence bags.
19 I'm familiar with them ---

20 Q. And you indicated ---

21 A. ---And it wasn't in this originally.

22 Q. You indicated you saw that inside that Fritos bag?

23 A. Yes sir.

24 MR. HIXSON: At this time the State would like to
25 publish -- we move State's 1 into evidence, Your Honor, at

1 this time.

2 THE COURT: Any objection?

3 MR. LONG: No sir.

4 MR. HIXSON: And we would like to publish that to the
5 jury, Your Honor.

6 THE COURT: Any objection to that?

7 MR. LONG: No sir.

8 THE COURT: State's 1 is in evidence without objection.

9 (PHOTO OF BLACK BAG ADMITTED INTO EVIDENCE AS STATE'S
10 EXHIBIT NUMBER 1.)

11 Q. Now, upon seeing what was in that Fritos bag, what did
12 you do at that time?

13 A. Like I said, upon seeing what was in that bag -- of
14 course what it appeared to be at that time -- I re -- I don't
15 know how I closed the bag, probably crumpled it, or whatever,
16 but I kind of -- I didn't even go in the bag with my hand. I
17 just kind of opened the bag and saw it, closed the bag, closed
18 the duffle bag back, left it there on the sidewalk, and then I
19 commenced to deal with the driver at this time, and eventually
20 I got his -- I asked for his driver's license, and ran a check
21 on that, and he did come up driving under suspension. His
22 license was suspended. So at that time he was placed under
23 arrest for that.

24 And at this time I already had called another unit, and
25 I had -- soon upon seeing that I radioed for the narcotics

1 Detective, and Officer Delpercio is his name. He responded.

2 I'm not sure exactly what time it was.

3 Q. Now you indicated you radioed a narcotics officer?

4 A. Yes sir.

5 Q. And why, generally, would you do that?

6 A. It's just our practice, the Police Department practice,
7 that whenever I encounter something to -- that large amount of
8 drugs, you want to call a narcotics detective because he
9 specializes in that sort of thing. Similarly, if I were to be
10 called out to a homicide scene, or something like that. We
11 want to call a homicide detective so he can -- people
12 specialize in these different things.

13 Q. Now, at some point in time did Detective Delpercio
14 arrive?

15 A. Yes sir, he did. I'm not sure exactly what time it
16 was, but he came as fast -- as soon as he could.

17 Like I say, it was still light rain going on, and at
18 that -- upon his arrival I believe both subjects were in
19 police cars. One was -- Mr. Brown was in my car, and Mr.
20 Smith was -- who was the driver, was in another police car,
21 because another officer did come to the scene, and we put them
22 into separate vehicles.

23 Upon him coming I showed him the bag. I said, okay,
24 this bag appears to have some drugs in it, and then he took
25 custody of the bag.

1 Q. Now, prior to Mr. Delpercio, Detective Delpercio taking
2 custody of this stuff, did you maintain the integrity of this
3 bag?

4 A. Oh yes. As I said, I reclosed it immediately, and it
5 had no further contact from anyone, until Detective Delpercio
6 came on the scene.

7 Q. Did you tamper with that in any way?

8 A. No sir.

9 Q. Did you alter it's contents?

10 A. No sir.

11 Q. Did you protect it from everybody else, to make sure
12 that they couldn't do that?

13 A. Yes sir. Even once the other officer came on the scene
14 I told her, I said, we've possibly got some drugs in this bag;
15 I'm leaving it there on the sidewalk; just keep an eye on it
16 and protect, you know, the general security of the area, and
17 he said, hey, you know, I ain't got no problem; I don't want
18 to touch it; I don't want to be in your chain of custody. I
19 said, great. So -- and it stayed there the whole time.

20 Q. And you -- you turned custody of it over to Detective
21 Delpercio?

22 A. Yes sir, I did.

23 Q. Now prior to removing -- or during the period of time -
24 - getting back to try to reference you, when you were
25 discussing this with the Defendant, did you maintain kind of

1 visual surveillance? Did you see what was going on in the
2 car?

3 A. When I was talking with Mr. Brown?

4 Q. Right.

5 A. As I say, he stepped out the vehicle, and he -- in just
6 a normal way anyone, I guess, would step out of a vehicle. I
7 eventually placed -- well, I placed him under arrest pretty
8 quickly so if -- I mean, he had -- kind of had his back to me.
9 It wasn't totally with his back to me, but he kind of pivoted.
10 It's hard to explain but -- and I had to deal with him

11 directly. You know, I try to keep a visual what's going on on
12 the whole scenario because you have another subject in there,
13 but I can't honestly say that I watched him the whole time,
14 because Mr. Brown was my main point of interest at that time.

15 Q. Let me ask a direct question. Did you see the driver
16 of the car get into that black bag at any time?

17 A. I did not see that.

18 MR. HIXSON: I have no further questions for this
19 witness at this time, Your Honor.

20 Please ask -- answer any questions that Mr. Long may ask
21 you.

22 A. Yes sir.

23 THE COURT: Cross-examination, Mr. Long.

24 CROSS-EXAMINATION BY MR. LONG:

25 MR. LONG: Thank you, Your Honor.

1 Q. Officer Williams, did you know Danny Brown before you
2 met him on October the 6th, 2005?

3 A. Did I know him, sir?

4 Q. Yes sir.

5 A. No sir.

6 Q. Did -- you never -- you had never met him before?

7 A. No sir.

8 Q. Did you know any of his family, or his fiance, Ms.
9 Monica Brisban, before October the 6th, 2005?

10 A. I knew -- or since I know Ms. -- what's her name,
11 Brisbon?

12 Q. Brisbon.

13 A. I believe my -- I didn't know that was her last name,
14 but yes.

15 Q. Did you know she was engaged to Danny?

16 A. No sir.

17 Q. All right. Now, October the 6th of 2005, at 7:20 at
18 night, you were driving down Highway 17, southbound, correct?

19 A. Yes sir.

20 Q. And you would agree with me that, on October the 6th,
21 at 7:20, it's dark?

22 A. I would not say it's dark, no.

23 Q. And would you agree with me that the time had already
24 changed back at that point?

25 A. Like I say, I'm not sure on what day it does, but that

1 sounds about right. But I recollect the day -- like it was a
2 year -- over a year ago, of course, but I can safely say it
3 was still enough light to see a beer can.

4 Q. Okay. Well -- and I understand you to say there's
5 still enough light, but I'm trying to figure out -- you said
6 it was still daylight and you didn't even have your headlights
7 on.

8 A. And I did not, no. It was ---

9 Q. Assuming it got dark right around -- right after five
10 o'clock -- because the time had changed, right? That's about
11 what time it gets dark ---

12 A. I'm not sure. I can't say that.

13 Q. You don't know. Well, let's -- we know it was 7:20
14 when you saw this car going down the highway ---

15 A. Okay.

16 Q. Right?

17 A. Yes sir.

18 Q. ---Because you reported that in your Incident Report,
19 right, 7:20?

20 A. Yes sir.

21 Q. So, at 7:20, with light drizzling rain, you say you
22 were in the left-hand lane, and this car was in the right-hand
23 lane, and you pull up beside it, and you were able to look
24 through the window, the driver's side window, and across to
25 the passenger window, and see a beer can in Danny Brown's

1 hand?

2 A. Yes sir.

3 Q. What color was the beer can?

4 A. It was silver.

5 Q. How many ounces?

6 A. I'm not sure.

7 Q. Was it one of the great big ones, or was it a regular

8 old beer can, twelve ounces?

9 A. I'm not sure. I -- if I had to guess, I would say a

10 smaller one, but I'm not sure.

11 Q. Was he holding it in his left hand or his right hand?

12 A. I believe it was his right hand.

13 Q. Okay. Did you bring the beer can with you here to

14 court?

15 A. No sir.

16 Q. Where is the beer can?

17 A. We didn't take it into evidence.

18 Q. You did not take it into evidence?

19 A. No.

20 Q. It's the reason why you stopped this car, and it's the

21 reason why you arrested Danny Brown. Why did you not take

22 that into evidence?

23 A. Because most of the time when we have a charge like

24 this we don't take that type of thing in evidence. It's -- I

25 knew it -- I knew it was beer; he knew it was beer, and he

1 affirmed, said yeah, I've got a beer, you know. I'm not even
2 sure if -- no, we did -- I did write him a blue ticket for it.
3 I want to say yes. But it was definitely the pretext for me
4 to make the stop. I would not have stopped him had he not
5 been drinking a beer can.

6 Q. I know. That's why I was wondering why you don't have
7 the beer can with you. You do not have it. Okay. The beer
8 can -- when you asked him about the beer can, and then he
9 finally pulled the beer can out, was it full, empty, half-
10 full, hot, cold? What was the condition of it?

11 A. It was not full. I want to say it was -- I want to say
12 it was still cool. Maybe it looked -- you could see some
13 condensation I believe. It wasn't full. It was -- I remember
14 when he pulled it up finally, and I kind of retrieved it, it
15 was crumpled a little bit, I guess from pressure on it.

16 Q. Okay. Now, when you retrieved it. When were -- where
17 were you standing when you retrieved the beer can?

18 A. On the passenger's side of the vehicle.

19 Q. Okay. So he held the beer can until you walked from
20 the driver's side back around to the passenger's side, right?

21 A. Yes. He kept it down between his legs.

22 Q. And before you did that you walked up to the driver's
23 side window, and the driver rolled his window down for you; is
24 that right?

25 A. I'm not -- I can't say for sure.

1 -Q. You didn't ask the driver for his driver's license and
2 registration?

3 A. Not at that time, no. I just told him, like, hey
4 driver; how are you doing; hold on for a minute; I'll deal
5 with you in a moment, and I commenced to talk with Mr. Brown.

6 Q. And then, without asking the driver any questions you
7 walked back around the back of the vehicle?

8 A. That is correct.

9 Q. In front of your vehicle, right?

10 A. Yes.

11 Q. Around to the passenger's side, right?

12 A. Yes.

13 Q. Now, you are in the right-hand lane of Highway 17
14 Business, 16th Avenue South, heading south, and there's a curb
15 there with the sidewalk, correct?

16 A. Yes.

17 Q. So did you ask Danny Brown to roll his window down, or
18 did he roll it down for you, or was it already down?

19 A. I don't recall.

20 Q. It was raining, right?

21 A. It was -- well, no, at the initial time of the stop it
22 was not raining yet. It was probably just very, very light
23 drizzle, if that, and like I say, it commenced to begin to
24 rain as time passed.

25 Q. So you don't know if you asked him to roll his window

1 down, or if he rolled ---

2 A. You know what, let me -- let me clarify it. Actually,
3 upon driving -- when I first saw the two they -- I know for
4 sure the driver's side window was open. My windows were open.
5 I know that. And I looked over, that window was open, so it
6 even helped in the visibility, being able to see into that
7 car. Whether -- and so therefore, upon approaching the
8 driver's side it was already open. I can answer that. The
9 passenger's side, I don't recall. I want to say it was open,
10 because I don't recall having any obstruction in talking with
11 him from that side.

12 Q. So you walked over to the passenger's side -- and let's
13 assume that -- because we don't know for sure -- assume that
14 the window is down -- and you said what to Danny Brown?

15 A. I asked him about the beer can. Like I said, before I
16 went around I believe I said -- I asked him did he have any
17 more. He said no. Then I commenced to, you know, talking. I
18 said, well, you know, I want to see -- I want to -- what was
19 it? I can't remember the jargon, but basically I wanted to
20 find out was there any more beer cans, so then I asked him out
21 of the vehicle, yes sir.

22 Q. Okay. And he told you there were no more beer cans?

23 A. He did.

24 Q. And in fact, there were no -- there were none?

25 A. No, that was the only one.

1 Q. So did you reach in and get the beer can from him, or
2 did he hand it out to you?

3 A. I want to say neither, actually. I want to say I just
4 asked him out of the vehicle, and he probably had it in his
5 hand. Upon getting out of the vehicle probably placed it on
6 top of the car, or something like that. I don't recall
7 actually him handing me a beer, or ---

8 Q. So you don't know if he handed it to you; you don't
9 know if you took it from him?

10 A. I said he did not -- we did not exchange hands had -- I
11 don't know if he took it out of the car -- wait, let me back
12 up. He did not hand me a beer can, no. I didn't reach in and
13 get a beer can. That's against -- I'm not going to reach in
14 and get anything from a person on traffic stop. That's a
15 safety hazard. He got out of the vehicle, and when he got out
16 he may have had the can in his hand, or what have you. I
17 eventually did take the can out, but as for hand to hand the
18 can, no.

19 Q. Okay. So after he got out of the vehicle you would
20 have taken the can out of his hand, right?

21 A. If he had a can in his hand I would have probably taken
22 it out of his hand.

23 Q. Well, you said he had a can.

24 A. That's not what I said. What I said was, we did not do
25 a hand to hand thing. Okay. He had -- he had a beer can in

1 the car. Okay. I asked him out of the car, and we are kind
2 of going on some tangent, but he -- he got out of the car, and
3 upon him getting out of the car I placed him under arrest kind
4 of rapidly, okay. In that -- whether or not he had a can in
5 his hand and all I don't recall, because my main objective was
6 to go ahead and get some cuffs on this individual, for his and
7 my safety. Okay.

8 Q. Okay. So if he had a beer -- we don't know that, if he
9 did have a beer can in his hand you would have taken the beer
10 can out of his hand before you put handcuffs on him?

11 A. Possibly. It depen -- my objective was to get cuffs on
12 him.

13 Q. And you did put cuffs on him, and he did not have a
14 beer can in his hand when you finished ---

15 MR. HIXSON: Your Honor, this has be asked and answered
16 quite a few times.

17 THE COURT: I'm going to allow it. Thank you, sir.

18 MR. HIXSON: Thank you, Your Honor.

19 THE COURT: You may continue.

20 Q. That -- when he got out of the car, you would agree
21 with me that he would have stepped out of the car facing you;
22 is that correct?

23 A. How -- the manner in which he got out of the car was
24 he, of course, stepped out first with his right leg, then
25 attempted to stand up. He didn't get out directly facing me.

1 He got out kind of sideways. He was in -- let's say he was
2 kind of facing forward, toward the front of the car, and ---

3 Q. Okay.

4 A. ---At this time, as he is getting out, I'm kind of
5 going to him, and helping him get out, more or less, and by
6 the time he stood totally up, pretty much had him handcuffed
7 at that time, and then I did turn him to face the vehicle,
8 basically.

9 Q. Okay. Were you standing up on the sidewalk or ---

10 A. As I said, I don't recall. It's a possibility, but I
11 don't recall that for sure.

12 Q. So you don't know if you were on the sidewalk before
13 you arrested him, or if he stepped out onto the sidewalk?

14 A. We were -- I'm right there at -- basically there is not
15 much space between the sidewalk and the vehicle. I could have
16 been on the sidewalk, hal -- at one point on it, back and
17 forth, but I'm standing right there in that close, give or
18 take, couple of inches.

19 Q. Okay. So you would say there were a couple of inches
20 between the car and the curb?

21 A. Yes.

22 Q. All right. So he stepped out, you arrested him for
23 open container?

24 A. Yes sir.

25 Q. And then you did what with him?

1 A. And then I placed him into my patrol vehicle.

2 Q. Okay. And then you went back -- then you asked him --
3 after you placed him in your car you asked him whose bag it
4 was in the car?

5 A. No sir. Actually I asked him before, as we stood
6 there, before we left, right there at that passenger side
7 door. I had him -- hands on him. He was cuffed, and I had my
8 other -- right hand free, and I pointed down and said, is that
9 your bag. He said, yes, so then I reached into the bag ---

10 Q. Put it on the sidewalk?

11 A. Yes sir.

12 Q. Then you walked back to your car, with him handcuffed,
13 right?

14 A. Yes sir.

15 Q. And then you opened the door, and you put him in the
16 back seat?

17 A. Yes sir.

18 Q. And you closed the door?

19 A. Yes.

20 Q. And then you stood up and started heading back toward
21 the driver's side of the vehicle, right?

22 A. No. No sir.

23 Q. You went to the passenger's side?

24 A. Yes.

25 Q. And did what?

1 A. I went to the passenger's side, and I said some words
2 to the driver, you know, kind of -- hey, what's going on in
3 there, you know; your buddy is over here drinking, you know,
4 you know better than that; what's going on; are you drinking
5 too, you know, and stuff like that, and then I went to briefly
6 inspect the bag, as I kind of small-talked with the driver.

7 Q. So the driver wasn't under arrest for anything at this
8 point?

9 A. Not at that time.

10 Q. And you hadn't even run his driver's license and
11 registration?

12 A. Not at that time, no sir.

13 Q. And you are talking to him. Was he nervous acting?

14 A. Yes sir.

15 Q. Very nervous acting?

16 A. I would say so.

17 Q. The driver of the car was very nervous acting?

18 A. Yes sir.

19 Q. Was Danny Brown nervous acting when you were talking to
20 him about the beer can?

21 A. No.

22 Q. And when Danny Brown asked you if there are any more
23 beers in the car, and he said no, he was actually telling the
24 truth, right? (Sentence seems incorrectly worded.)

25 A. When I asked him that, I believe he was.

1 Q. And when he asked you whose black bag that was, he said
2 mine? (Sentence seems incorrectly worded.)

3 A. He did.

4 Q. Right. Now, so you -- while you talked to the driver
5 of the vehicle you went through the bag and you say you
6 found -- you opened the bag, black duffle bag -- do you have
7 that black duffle bag here with you today?

8 A. I believe we have some pictures of it.

9 Q. Do you have the bag here?

10 A. The bag -- I believe the bag was returned to him, the
11 duffle bag itself, and miscellaneous property in it, like
12 underwear and all that, but the evidence as far as narcotics,
13 that is retained, yes.

14 Q. All right. So, you are looking through the duffle bag,
15 and you say you found a Frito bag, and you looked inside the
16 Frito bag and there was a bunch of white powder?

17 A. Yes sir.

18 Q. Then at that point what did you do?

19 A. At that point I got a roaming narcotics detective -- he
20 can look into this -- and I -- then I started to talk with the
21 driver more aggressively, to find out what's going on, and of
22 course I ran his identification. He came up the driver's
23 license suspended.

24 Q. So you did not place the driver of the car under arrest
25 for possession of these drugs at that moment?

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1 A. No. At that moment -- actually I had already completed
2 taking the driver's car keys, put them on the hood, or told
3 him to, and he just -- I basically just -- I thought of it
4 like this. Here we go, we've got this one guy sitting in the
5 back there, under arrest, got a bag with drugs, two guys
6 together; I don't know their relationship -- I'm pretty sure,
7 upon me seeing this, he know -- you know, I'm thinking maybe
8 he knows this, life is going on, so I don't know what's going
9 on at this time, so I got him just remain, cool small-talking
10 it with him, until the other unit got there, and then, as soon
11 as it got there we went -- took him out to the car and placed
12 him under arrest.

13 Q. Under arrest for what?

14 A. For driving under suspension.

15 Q. So you must have run his driver's license?

16 A. We did. I just said that we did.

17 Q. Okay. You ran his driver's license before the other
18 unit got there?

19 A. Upon me talking to him I said, well, let me see your
20 I.D., and then I did run it.

21 Q. All right. Now after you placed him under arrest did
22 you go back and search the vehicle?

23 A. Upon me placing him under arrest, shortly thereafter --
24 I didn't touch the vehicle just yet. Shortly after Detective
25 Delpercio came on the scene and I basically directed him

1 toward the bag on the sidewalk, told him what I think we got.
2 He took custody of that, and then we initiated a search of the
3 vehicle.

4 Q. Did you find anything else in that vehicle when you
5 initiated that search?

6 A. Did I find anything?

7 Q. Yes sir.

8 A. I found -- I -- upon the search -- Detective Delpercio
9 did most of the searching of the vehicle. Practically -- most
10 of the passenger compartment he searched. I probably searched
11 maybe twenty percent, at most, of it. I did look into the
12 truck, primarily, and in the truck I found a lot of, you know,
13 miscellaneous electronic equipment, and different things, but
14 Mr. -- Detective Delpercio found other things in the vehicle.
15 He did. I didn't. He did.

16 Q. Okay. Now, this whole thing could have been video
17 taped?

18 A. Yes sir.

19 Q. Why not?

20 A. Unfortunately my tape had just ran out, and our
21 Sergeant was off that day -- I think he was sick -- and we
22 usually get some from him, so I was -- I was going to get with
23 a gun, probably one of the Corporals, and get a tape from them
24 after -- that's kind of why I was going down that way. I was
25 going in to get -- pick up some money from another officer,

1 and get a tape. It just so happened it happened in that
2 window, after the tape ran out.

3 Q. So -- and your car is -- so it is equipped with a video
4 camera?

5 A. It is.

6 Q. And it is equipped so that when the blue lights come on
7 the video camera comes on?

8 A. Yes sir.

9 Q. And so when you flipped your blue lights on the video
10 camera did not come on. Is that because you did not have a
11 tape in there, or was it because the tape was all used up?

12 A. The tape was all used up.

13 Q. You had a tape in there?

14 A. Yes, but it was used up.

15 Q. Why did you not rewind it a little bit and capture this
16 arrest?

17 A. Well, I don't think you can do that actually.

18 Q. You can't do that?

19 A. No. I don't think so. Once it has been recorded over,
20 you can't like re-record -- you know, it's kind of a safety
21 mechanism, so it -- you don't want to like -- say you want to
22 cover something up, you can't. That system there won't allow
23 you. You probably have to take it to an outside video
24 recorder or whatever, and do something to it, but I ---

25 Q. Had you just gotten on work, or had you been on work

- 1 for a long time?
- 2 A. I'm sorry.
- 3 Q. Had you just gotten on work that day?
- 4 A. Just got on, pretty much, starting at six.
- 5 Q. You started with yesterday's video tape?
- 6 A. Yes. I didn't finish the video -- I -- upon starting
- 7 that day -- I had done another stop before this, and I did see
- 8 that my tape ran out. Actually I think I did discover it just
- 9 upon that stop, but it was -- at this time it wasn't time for
- 10 me to run into Wal-Mart and get a tape in the middle of a
- 11 traffic stop, you know.
- 12 Q. Okay. So there clearly is no video tape of this
- 13 arrest?
- 14 A. No sir, unfortunately not.
- 15 Q. All right, now, after Danny Brown is clearly in the
- 16 back seat of your car, and you have gone up and searched the
- 17 duffle bag, and you've gone and arrested the driver, and the
- 18 other people have come and searched the car, you take Danny
- 19 Brown back to J. Reuben Long; is that correct ---
- 20 A. Yes sir.
- 21 Q. ---To the jail?
- 22 A. Yes sir.
- 23 Q. Did you talk to him on the way to the jail about
- 24 anything?
- 25 A. I didn't ask Danny Brown any questions. He kind of

1 made some statements here and there, but I asked him no
2 questions personally.

3 Q. When you got to J. Reuben Long did you participate in
4 an interview with Danny Brown?

5 A. I did not.

6 Q. You were not in the room when he was interviewed?

7 A. When you say he was in it -- I was in the room when
8 they searched him, and you know, some in-house things, but as
9 for him being interviewed, no. I think -- to my knowledge
10 Detective Delpercio did that.

11 Q. All right. Were you in the room when Rodney Smith, the
12 driver of the car, was interviewed?

13 A. No sir.

14 MR. LONG: That's all I have. Thank you.

15 THE COURT: Redirect.

16 MR. HIXSON: Briefly, Your Honor.

17 REDIRECT-EXAMINATION BY MR. HIXSON:

18 Q. I think you indicated -- defense counsel asked about
19 statements that Mr. Brown admitted to the beer that he had in
20 his hand?

21 A. Yes.

22 Q. Prior to that did he deny having a beer in his hand?

23 A. Yes, he did.

24 Q. So the first thing out of his -- the first thing he
25 said was that, I don't have a beer?

1 A. Yes. I asked him -- this is when I was on the driver's
2 side of the vehicle -- say, what kind of beer you got; I'm not
3 drinking a beer; I don't know what you are talking about; I
4 said sure you do, the beer right there between your legs;
5 looked down, and he said, what -- what beer; right there, and
6 he finally went oh, you know, come on, man, you know.

7 Q. Also defense counsel asked about the demeanor of the
8 occupants of the vehicle.

9 A. Yes sir.

10 Q. I believe you testified that Mr. Smith was nervous.

11 A. He was, yes sir.

12 Q. Could you please, in more detail, describe what you
13 perceived Mr. Brown's demeanor to be.

14 A. He appeared to be pretty laid back, I mean, you know.
15 I don't -- I had never met him before. I don't know how he
16 is, but he appeared to be -- it appeared to be artificially
17 laid back, more or less like a -- trying to be cool, just
18 trying to -- you know, you have one guy who is like, hey, I'm
19 nervous, you know, I'm just -- like a deer in headlights, and
20 the other guy is like, I got this, you know, let's be cool. I
21 can't say, you know, if that's not his normal demeanor, but it
22 seemed suspicious to me, personally, just as the nervousness
23 of the other occupant seemed suspicious, so I mean, I kind of
24 governed how I handled myself.

25 Q. Did he have that same demeanor when he was denying that

1 he had a beer in his hand?

2 A. Yes.

3 MR. HIXSON: That's all the questions.

4 THE COURT: Anything on those questions.

5 MR. LONG: Real quick.

6 RECROSS-EXAMINATION BY MR. LONG:

7 Q. Officer, are you saying that it seemed suspicious to
8 you that Danny wasn't nervous?

9 A. Yes. And I may explain that. Two guys, together.
10 Like I say, I don't know them, I don't know their
11 relationship. Who knows, they could have been brother, or
12 they -- you know, but one guy extremely nervous, and the other
13 guy is just, you know, acting -- what appeared to me as being,
14 you know, artificially cool. It seemed like, ho, what's going
15 on here, so I'm not saying that that in itself was meaning
16 that, you know, he was guilty of anything. It just kind of
17 made me suspicious, made me keep my eyes open a little bit
18 more.

19 MR. LONG: All right. Thank you.

20 A. You are welcome.

21 THE COURT: Solicitor.

22 MR. HIXSON: No further questions, Your Honor.

23 THE COURT: You may step down, sir.

24 A. Thank you.

25 MR. HIXSON: At this time the State would call

1 Detective Tom Delpercio.

2 MR. LONG: Before he comes back, may we approach?

3 THE COURT: Yes sir. Come around to the side, please.

4 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

5 THE COURT: Have him come on, please sir.

6 THOMAS DELPERCIO, being first duly
7 sworn, testifies as follows:

8 DIRECT-EXAMINATION BY MR. HIXSON:

9 Q. Good afternoon, sir.

10 A. Good afternoon, sir.

11 Q. What do you do for a living?

12 A. I'm a Sergeant with the Investigation Division of the
13 Horry County Police Department.

14 Q. And how long have you worked for Horry County Police
15 Department?

16 A. Approximately seven years.

17 Q. And were you working for the Horry County Police
18 Department around October 6th of 2005?

19 A. That is correct.

20 Q. And what were your duties at that time?

21 A. At that time I was a Detective agent assigned to the
22 Narcotics and Vice Division of the Horry County Police
23 Department.

24 Q. And it may be kind of obvious, but just tell the jury
25 what Narcotics -- what that Division does in Horry County.

1 A. We handle primary illegal drug complaints, and/or vice
2 complaints, i.e., prostitution, gambling, things like that.

3 Q. You were working October 6th of 2005, that day?

4 A. Yes, I was working and then I went off, and I believe I
5 was called out to the incident.

6 Q. I'm called out, what do you mean by that?

7 A. We take in rotation as Narcotics and Vice Agents, and
8 on-call rotation about once every other month for a week, and
9 any time a patrolman or other officer needs assistance with
10 any drugs or vice related crime then we are called out if it's
11 after normal working hours.

12 Q. Were you, in fact, called out on that day?

13 A. That is correct.

14 Q. And please tell the jury about what happened after that
15 call.

16 A. Refer to -- just to my notes. It was October 6. I'm
17 not exactly sure about the hour. It was in the evening hours.
18 I was called out to make contact with an Officer Williams, at
19 which time I made phone contact and he advised me he had a
20 large quantity of what he believed was an illegal narcotic
21 known as cocaine, the drug cocaine, on a traffic stop. He
22 gave me his location and I responded out to the scene.

23 Q. You, in fact, arrived?

24 A. Yes sir.

25 Q. And then if you could please tell the jury what you did

1 when you got there.

2 A. Sure. Upon arrival I met with Officer Williams. He
3 explained the situation and how he the stop. He showed me a
4 quantity of white powder substance that was inside a clear
5 plastic bag that was inside a Fritos bag. The Fritos bag was
6 inside a black duffle bag.

7 Q. Now I'm going to show what's already been marked -- I
8 believe it's already in evidence as State's Exhibit 1. Do you
9 recognize that item?

10 A. That is the item I'm speaking of.

11 Q. And is that a fair and accurate representation? You
12 remember that call?

13 A. Yes.

14 Q. Would you please -- could you please -- just please
15 tell the jury what happened after that.

16 A. Okay.

17 Q. Did you, in fact, take custody of the duffle bag while
18 at the scene?

19 A. I did take custody from Officer Williams of the duffle
20 bag and the contents inside, at which time -- again, asking
21 details of the nature of the stop I approached -- look at my
22 notes real quick. Officer Williams advised me that the duffle
23 bag was taken from between the Defendant's feet, I believe in
24 the car area, the passenger side area of the vehicle.

25 At that time Mr. Brown was in the custody of the Horry

1 County police car when I got there. I approached him, advised
2 him verbally of his Miranda Rights, and asked him if he would
3 speak to me about the situation. He did not want to speak at
4 that time.

5 At that time I moved over to a second patrol car that
6 was there, and spoke to a second person, Mr. Rodney Smith, who
7 was the driver of the vehicle, and at the time -- I don't
8 believe at that point in time I advised him of his Miranda
9 Rights. I don't believe Mr. Smith said anything at that time.

10 Q. Did you have occasion to search that vehicle pursuant
11 to the arrest?

12 A. Yes. Yes sir. Under a lawful search incident to
13 arrest of the vehicle, in the passenger area, and pursuant
14 also to guidelines of doing inventory of the vehicle before
15 towing, we searched that vehicle.

16 Q. And did you find anything inside that vehicle?

17 A. I did. I did find a second smaller bag containing
18 several different types of illegal drugs.

19 Q. And where did you find that?

20 A. That bag was underneath the driver's seat.

21 Q. The driver's seat?

22 A. Yes sir.

23 MR. HIXSON: Your Honor, I would like to approach the
24 witness with Exhibit marked State's 3.

25 THE COURT: All right, sir.

1 Q. Do you recognize that?

2 A. Yes. That is the black pouch and the contents that
3 were located on the driver's seat.

4 Q. And where was that photograph taken?

5 A. That photograph taken was on the -- on the chair at my
6 office, after we got back in a controlled environment.

7 Q. Okay.

8 A. On the night in question it was -- the weather was -- I
9 believe it was pretty bad, so we didn't do too much out on the
10 scene, plus it was on the side of the highway. We usually
11 just take the evidence and secure it.

12 Q. But could you give the jury an indication of size
13 differences in the duffle bag versus the pouch.

14 A. In comparison?

15 Q. Yes.

16 A. Okay. The pouch itself, as seen in that picture, would
17 probably be a little bit smaller, actually, than the quantity
18 of cocaine that was found in the duffle bag itself.

19 Q. Let me introduce -- move this.

20 MR. HIXSON: At this time, Your Honor ---

21 Q. Is that a fair and accurate representation of the
22 condition of the contents of that pouch at the time when you
23 saw it?

24 A. The items were in the pouch at the time I first
25 discovered it, but that is the items that were inside the

1 pouch, spread out for the photograph.

2 Q. And that's a fair and accurate representation?

3 A. Yes sir. Yes.

4 MR. HIXSON: At this time the State would move 3 into
5 evidence, Your Honor.

6 MR. LONG: No objection, Your Honor.

7 THE COURT: In evidence without objection.

8 (PHOTO OF CONTENTS OF BLACK BAG ADMITTED INTO EVIDENCE
9 AS STATE'S EXHIBIT NUMBER 3.)

10 Q. Also I would like to approach the witness with what's
11 been marked State's 2. That's not in yet, Your Honor.

12 THE COURT: All right, sir.

13 Q. Do you recognize that?

14 A. Yes, I do.

15 Q. And what do you recognize that to be?

16 A. This appears to be the powder substance, that was
17 believed to be cocaine, that was found inside the black duffle
18 bag, in several little bags.

19 Q. And is that what was found inside the Frito-Lays bag?

20 A. That is the white substance -- I believe it as in a
21 clear plastic bag when it was inside the Frito bag, but that
22 is the substance. It appears to be the substance.

23 Q. While I think you indicated -- and I apologize for
24 interrupting you. I think you indicated something about the
25 sizes between the two of them, and I wanted to let you see

1 that. Could you please continue testifying as it relates to
2 the size of the black pouch versus the duffle bag.

3 A. Sure. The black -- the black pouch, as seen in the
4 photograph, was maybe a little bit bigger than a cigarette
5 case, that was found on the driver's seat, that contained
6 small amounts of several different narcotics, or drugs. The
7 black duffle bag was more like a gym bag, like a small carry-
8 on bag to take on an airplane, or to a gym, and that's where
9 this was located, and it was indicated to me that that black
10 duffle bag was found between the Defendant's feet, in the
11 passenger's side of the vehicle at the time of the stop.

12 Q. Now subsequent -- you, yourself, found that black pouch
13 under the driver's seat?

14 A. The small black pouch I found, yes, under the driver's
15 seat.

16 Q. At that time did you place the Defendant, Rodney Smith,
17 under arrest for anything at that time, on D.U.S.?

18 A. Mr. Smith was already -- if I'm not -- if memory serves
19 me, he was already under arrest for driving without a driver's
20 license. So then I did -- advised him he was under arrest for
21 that.

22 As we moved to the Detention Center I, again, met with
23 Mr. Smith, again, advised him of his Miranda Rights, in
24 writing, on a form at this time, because I was able to. He
25 signed the form understanding his rights and wishing to waive

1 them, and provided me a statement stating that the drugs that
2 were found under the driver's seat were, in fact, his.

3 Q. Now after discovering -- after Mr. -- Officer Williams
4 turned those narcotics over to you, did you protect the
5 integrity of those items?

6 A. Yes, I did.

7 Q. Did you tamper with them in any way?

8 A. Did not tamper. We placed them as per procedure into a
9 "Best Kit", to be submitted through evidence to the lab to be
10 tested.

11 Q. Now, could you explain to the jury what "Best Kit" is.

12 A. Sure. A "Best Kit" is the State used kit in South
13 Carolina, or any drug -- usually for a drug or narcotic,
14 except for marijuana, to be tested by a lab. It is a brown
15 envelope that contains a plastic one-time sealing envelope, to
16 where the -- once the plastic envelope is sealed, if it is
17 attempted to be unsealed, the integrity of it will be lost,
18 and you will if it's been damages. It also has separate forms
19 to provide a chain of custody with it. So the brown envelope
20 has a sticker on it with a -- what's called a "Best Kit"
21 number, tracking number, and the envelope and the subsequent
22 forms all have the same number.

23 The first thing we do is take that "Best Kit", we make
24 sure all the numbers match, make sure there's not a problem,
25 then we take the evidence -- we do a field test kit most

1 times, which I did on this substance here, which showed
2 positive results. We mark that into our incident report. And
3 we take the substance and we place it into the "Best Kit",
4 with the proper forms filled out for who it was taken from,
5 date time, case number, then we seal it all in that self-
6 sealing envelope, then we take it and we submit it to
7 evidence, and the only time that would be reopened is by the
8 chemist checking the substance.

9 Q. Now, what are all those safeguards for? What are they
10 intended to do?

11 A. We protect the integrity of the evidence.

12 Q. To make sure no one tampered with it?

13 A. That's correct.

14 Q. Did you prevent anybody else from tampering with this
15 also when it's in your custody and control?

16 A. Yes. Once -- Once I received this from Officer
17 Williams I am the only person until it was placed into
18 evidence. I don't know -- once we place it in evidence to a
19 secure facility then I -- they take their procedures from
20 there, but nobody else tampered with this.

21 Q. And are there any indications or markings of any kind
22 on that package to indicate ---

23 A. Yes sir. On the "Best Kit" bag itself, right here,
24 there is a place for the agency name -- it's H.C.P.D., Horry
25 County Police Department, date sealed, October 6th, '05,

1 appears to be control number, which is 002901, which will
2 match any of the forms, and then there is a place for me to
3 print my name, and also a place for my signature.

4 Q. What did you do with that package after you took
5 custody and control of it from Officer Williams?

6 A. Okay. I secured that till we got back to the Horry
7 County Police Department. It was locked in the security of my
8 vehicle, along with several other pieces of evidence we had.
9 Once we got back to my office I carried it in. We started to
10 sort out evidence. I had this with me at all times. Any drug
11 evidence the control agent just keeps with him, just to
12 protect the integrity of the case. I submitted it into the
13 "Best Kit", and then take it across the hall, and we have the
14 evidence office, and we submit it to a lockable area, to where
15 then the Evidence Technicians will get it when they come in
16 the next day, and nobody can get in there to get to it before
17 then.

18 Q. And briefly describe your -- you indicated an evidence
19 lock-up. Just briefly describe what that is.

20 A. Okay. Well, there are several. We have a secured
21 wooden door with several locks that has a drop slot in it, and
22 then we also have lockers that you -- there's a key on the
23 outside, almost like a bus depo locker, but after you secure
24 it there's a whole, about the size of a half dollar, where you
25 take the key and drop it in, so nobody else can get into that

1 locker, except through evidence, from the inside.

2 Q. And the Evidence Custodian then has the key to get the
3 evidence bag?

4 A. That's correct. They have a master key from the inside
5 of their office, that is secured all the way around. When
6 they come in to collect their evidence they go in from the
7 inside, open the lockers and collect what was put in from the
8 outside, so -- in fact, nobody ---

9 Q. That also protects the integrity of the evidence?

10 A. That's correct.

11 Q. Well, at some point in time did you receive a phone
12 call from your evidence technician in reference to a black
13 duffle bag and some personal items?

14 A. Yes. I don't remember the exact day. I know I was
15 contacted by, I believe, Lori Rabon, one of our Evidence
16 Technician Supervisors, reference if I -- it would be all
17 right to release some items to Mr. Brown. I know there was
18 the black duffle bag itself, a cell phone, and I believe some
19 miscellaneous clothes -- excuse me -- and I was asked if that
20 would be okay to release those.

21 At that time they -- they posed no evidentiary value.
22 We had photographed the black duffle bag. We knew that we had
23 pictures of that. The illegal drugs were in the custody of
24 the evidence area, so we knew that, so the phone and the
25 clothes really served no evidentiary purpose, so I had no

1 problem at that time. I told her it would be fine with me to
2 release that back to Mr. Brown.

3 MR. HIXSON: I have no further questions for Detective
4 Delpercio at this time, Your Honor.

5 THE COURT: Cross-examination.

6 MR. LONG: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. LONG:

8 Q. Detective Delpercio, you searched the driver's side
9 portion of this Plymouth, and found a black -- small black
10 pouch full of drugs, right?

11 A. That's correct.

12 Q. And when was it that you asked Rodney Smith who that
13 belonged to?

14 A. I believe that was at J. Reuben Long, later on that
15 evening.

16 Q. Okay. And you just -- I believe you just testified --
17 I want to clarify -- that the white powder bag would have been
18 too large to put inside of that little white pouch, correct?

19 A. That bag in your hand probably would have fit in the
20 pouch if the other substance weren't in it, but I don't
21 believe they would have fit together.

22 Q. So with the drugs that were already in that pouch
23 underneath the driver's side, there was not room for this in
24 there?

25 A. In that pouch, I would say no, probably not.

1 Q. Okay. Now, when you interviewed Rodney Smith back at
2 J. Reuben, did you ask him if he knew Danny Brown?

3 A. One second. Let me refer to my notes, sir.

4 I actually don't have it on my notes. I'm looking at a
5 statement of Mr. Smith. It does not say anything about Mr.
6 Brown on that statement. I don't recall if I asked him if he
7 knew Mr. Brown.

8 Q. So you -- if he told you, I don't even know that guy; I
9 was just giving him a ride; you don't remember?

10 A. I remember that Mr. Smith -- I can tell you what I
11 remember talking about. I don't recall if I asked him if he
12 was just giving him a ride, or I don't remember that
13 testimony, no. I don't remember that statement.

14 Q. Did you tape record your interview with Rodney Smith?

15 A. No. No.

16 Q. Why not?

17 A. South Carolina does not require that we do. I usually
18 just talk to somebody and have them handwrite a statement and
19 sign it. It's just not investigative technique I use.

20 Q. You don't ever record people's statements when you sit
21 down and talk to them?

22 A. Thirteen years as a policeman and I never had -- I have
23 never had the need, no.

24 Q. Do you have a tape recorder?

25 A. No. At that time I did not actually. It was hooked to

1 my phone in my office.

2 Q. And so when you did interview him you did not tape it,
3 but you did interview him. He told he was a drug dealer,
4 right, Rodney Smith?

5 MR. HIXSON: Your Honor, I would object to that. Mr.
6 Smith is testifying. It's hearsay for the Detective to answer
7 those questions. Mr. Smith can answer those questions.

8 MR. LONG: Your Honor, actually ---

9 THE COURT: Gentlemen, you don't need to argue it. I'm
10 going to allow the question.

11 Thank you very much.

12 MR. LONG: Thank you.

13 Q. He told you he was a drug dealer?

14 A. Mr. Smith gave me a statement that he had been dealing
15 drugs for the past year.

16 Q. Did he tell you what kind of drugs he had been selling?

17 A. No, he did not, not in the statement. I mean, I know
18 what he had on him, and he confessed to those drugs, so one
19 can say he's been dealing those drugs.

20 Q. He confessed to a small amount?

21 A. That's correct, that was under his driver's seat, yes
22 sir.

23 Q. Did you interview Danny Brown?

24 A. Mr. Brown did not want to speak to me.

25 Q. Did you go into a room and ask him to be interviewed?

1 A. No. No. He made it clear he did not want to speak to
2 me at the time. He invoked Miranda at the time at the scene,
3 and I did not ---

4 Q. So at no time at J. Reuben Long did you ever go into a
5 room with Danny Brown and ask him to make a statement?

6 A. I don't believe I talked to him at all. No.

7 Q. When you went in the room with Rodney Smith at J.
8 Reuben, did this officer go in with you?

9 A. I don't believe so. I think we were alone.

10 Q. You were by yourself?

11 A. I believe so.

12 Q. Did you ask this Officer if he had a video tape from
13 the traffic stop?

14 A. No, I did not.

15 Q. Did you take into evidence -- you are the guy who went
16 out there and took everything into evidence, right?

17 A. That's correct.

18 Q. Did you take into evidence the beer can?

19 A. I believe I remember a beer can being there, but I did
20 not take it into evidence, only because, again, I was called
21 out for the narcotic or drug part of this case. That would
22 have been an open container. That would be handled by the
23 officer. Now, I don't see it on my evidence sheet. I don't
24 recall taking it. If you will let me refer back to my
25 evidence sheet to make sure I didn't. There were several

1 pieces of evidence taken that night.

2 Q. Okay.

3 A. I do not see anything on my chain of evidence reference
4 to the beer can.

5 Q. Okay. So, if -- well, let me ask you this way. Did
6 you know that the reason for the traffic stop that Officer
7 Williams gave was that there was a beer can?

8 A. Officer Williams advised that he had witnessed the
9 passenger in the vehicle drink. That's why he stopped him,
10 pulled him over, and subsequently arrested him.

11 Q. Arrested him for open container?

12 A. I believe that was drinking. I don't know the exact
13 charge.

14 Q. Was it not important to you at that point to take that
15 beer can into evidence?

16 A. Well, as I said, I'm assigned to Narcotics and Vice,
17 and that would be a Magistrate level charge that would be
18 handled by the officer in Magistrate's -- little court, so it
19 was not necessary for me to take that.

20 Q. Okay. You would agree with me that the contents of the
21 small bag that Rodney Smith had under his seat were -- and
22 we've got a picture of the crack cocaine, marijuana, Xanax
23 pills, and powder cocaine; do you agree with that?

24 A. I -- give me one second. I would agree to that from
25 the picture, yes sir. There were several different drugs on

1 that -- let me refer to my picture again.

2 Q. Did you send to S.L.E.D., or anybody else, this powder
3 cocaine, and this, to see if they were the same chemical
4 makeup?

5 A. The large amount of cocaine that was found between
6 Danny Brown's feet was placed in the "Best Kit" -- one
7 second -- was placed in "Best Kit" number H002901. The other
8 items of narcotics, which would be the cocaine and the pills,
9 and any other drug besides marijuana, was placed in "Best Kit"
10 002900.

11 Q. I understand your ---

12 A. "Best Kit".

13 Q. Did you ever ask anybody who is one of these chemist
14 people that y'all have over there, or anybody over at S.L.E.D.
15 in Columbia, to test this powder cocaine, and this powder
16 cocaine, to see if they had the same chemical makeup?

17 A. No sir. State law states powder cocaine is cocaine.
18 The different makeup would not be a concern of mine. I submit
19 it to the lab to make sure it is, in fact, cocaine.

20 Purity or same, no sir, does not play a part in the
21 case.

22 Q. Okay. I'm not asking you if it's a concern. I just
23 want to know if you did that?

24 A. No. I did not ask for that specific test.

25 Q. So these two different bags of cocaine have not been

1 tested to see if they are the same thing?

2 A. The only thing that I would say they've been tested
3 for, to see if they are, in fact, cocaine.

4 Q. Okay. Now, the black duffle bag, did you send that to
5 someone to fingerprint it, and see who had been touching it?

6 A. I don't believe the black duffle bag was fingerprinted,
7 no sir.

8 Q. Why didn't you have somebody to fingerprint that duffle
9 bag?

10 A. In truth, that's not something that is normally done,
11 especially on a porous material like that, because it's not a
12 reality that you would find usable fingerprints on that.
13 Again, in this case, the Officer states that, when he arrested
14 Danny Brown it was between his feet, okay. It had cocaine in
15 it. We took it out. I don't believe if we did have that
16 fingerprinted that any fingerprints at all of a usable quality
17 would be found on that, and that's my experience.

18 Q. So you just assumed there wouldn't be any fingerprints,
19 so you decided not to have it tested?

20 A. We don't normally fingerprint a bag, or something like
21 that, that fingerprints are not going to come out on, no.

22 Q. You fingerprinted this Fritos bag.

23 A. Yes. Fritos bag is a smooth surface that maybe prints
24 could be on. When you have a nylon or cloth substance, you
25 know, substance, fingerprints aren't going to show on those,

1 sir.

2 Q. Were Danny Brown's fingerprints found on the Fritos
3 bag?

4 A. I don't believe so. I don't believe any fingerprints
5 of usable quality were found on any of the bags, it's my
6 understanding.

7 Q. What about the little bag that the powder was in? You
8 would agree with me that this is not the bag that this powder
9 was found in?

10 A. I believe -- that's not the bag I submitted. I believe
11 that is a bag that evidence put it in after they took it out
12 of the original packaging.

13 Q. The original packaging was another clear plastic bag,
14 and you sent that for fingerprinting too, didn't you?

15 A. I believe so.

16 Q. Were Danny Brown's fingerprints found on that bag?

17 A. Not that I'm aware of.

18 Q. On the side of the road, when you got there, Danny
19 Brown was in the back of one car, and Rodney Smith, I assume,
20 was in the back of a different car, handcuffed; is that right?

21 A. That's correct.

22 Q. And did you go -- after you found all these things in
23 this car, the stuff underneath Rodney's seat and everything,
24 did you go back and talk to Rodney about what you had found?

25 A. I believe I may have told him I found the rest of the

1 drugs under the seat -- I found some drugs under the seat. I
2 don't believe I questioned him. I believe I let him know I
3 had found some more, and that he would be charged with that as
4 well as his driving under suspension, or driving without a
5 license, whatever the charge was. I don't believe I
6 questioned him until we went back to the Detention Center.

7 Q. Okay. When you told him that the drugs were found
8 under the seat, was there any change in his demeanor at that
9 point?

10 A. Not that I can recall.

11 Q. And you know that, when you were talking to him, he had
12 not been placed under arrest for the possession of this bag,
13 right?

14 A. No. At that time I didn't believe anybody was placed
15 under arrest because of that. I know that Mr. Brown was
16 placed under arrest for the open container, or drinking in
17 public, and I know Mr. Smith was placed under arrest for
18 driving without a license.

19 Q. Was Rodney Smith ever charged with possession of this?

20 A. Let me refer to my warrants. I believe he was, but let
21 me refer to my warrants.

22 Yes, he was.

23 Q. So Rodney Smith has been charged, or at least had been
24 charged, with trafficking in cocaine; is that right?

25 A. That's correct.

1 Q. And when you went back to J. Reuben you decided to go
2 into a room and talk to Rodney Smith, but not go into a room
3 and talk to Danny Brown. Now why is that?

4 A. Because at the scene, if memory serves me correct,
5 Danny Brown was not of a demeanor to speak to us -- speak to
6 me about the situation. Mr. Smith -- and again, from being in
7 investigations for a while -- seemed that he would be willing
8 to maybe communicate with me and give me a statement. Mr.
9 Brown, pretty much, was unequivocally that he was going to
10 seek an attorney, and that he didn't want to speak to police.

11 Q. Well, neither one had talked to you so far, right? You
12 went out there at the site, you went back and -- in car, you
13 talked to both of them, and ---

14 A. Not talking -- not talking, and giving off what I later
15 called qualifiers, that you don't want to speak to me, are two
16 different things.

17 Q. When you went back there and you talked to Rodney
18 Smith, what did you tell him that you could do for him?

19 A. I don't remember telling him I could do anything for
20 him, because I can't do anything for him.

21 Q. You didn't tell him, right now things look really bad
22 on you and you need to cooperate with me?

23 A. I don't remember the exact statements that I talked
24 about. I know I would have explained to him that he had -- is
25 looking at several different charges, including the drugs

1 under the seat, and that it was his option to speak to me at
2 that time, and speak to me about the truth, and that if he did
3 want to talk to me and cooperate, that that would be noted in
4 my investigation report, that he did cooperate and admit to
5 his part in what was going on, which is what we do when we do
6 an interview.

7 Q. Right. So after you told him that, if he talked to
8 you, and told you some things that were beneficial to your
9 case, then you would do what you could for him down the line.

10 A. Well, I told him to say the truth. Now if the truth is
11 beneficial to my case, well then I guess that would be
12 beneficial to my case, but I told him to speak to me the
13 truth.

14 Q. Well, how do you know if he ---

15 A. I specifically, on an interview, make sure I tell
16 people not to embellish any truth to try to get help for it.
17 That's what I do.

18 Q. Well, you don't expect anybody that -- actually that
19 you have arrested for trafficking in drugs to just tell you
20 the truth all the time anyway, right? You don't expect that?

21 A. You never know when you talk to somebody, they may.

22 Q. Okay. Do you know Rodney Smith was telling you the
23 truth?

24 A. A hundred percent, unequivocally, no. Do I believe he
25 was, yes.

1 Q. Why? Have you ever met him before?

2 A. No.

3 Q. You testified that you never took Danny Brown into a
4 room and talked to him about this case. You don't remember
5 going in there and talking to him about trying to seize some
6 money from him or something?

7 A. I -- I don't recall. I may have. I don't recall
8 talking with Mr. Brown. I know his demeanor was not of a
9 cooperating nature that I can recall.

10 Q. He wasn't uncooperative, was he?

11 A. Standoffish, if memory serves.

12 Q. Standoffish. You just arrested him and charged him
13 with trafficking in cocaine; you've got him locked up at J.
14 Reuben Long, and you are saying he was standoffish?

15 A. Well, in fact, he had cocaine. I arrested him by the
16 law, so I don't think that should make him standoffish.

17 MR. LONG: Okay. That's all I have. Thank you.

18 THE COURT: Redirect.

19 MR. HIXSON: Thank you, Your Honor.

20 REDIRECT-EXAMINATION BY MR. HIXSON:

21 Q. Let me show you a couple of packages that I think
22 defense counsel brought up.

23 MR. HIXSON: These have not been marked as an exhibit,
24 Your Honor.

25 Q. Detective, I believe defense counsel talked --

1 mentioned about why you didn't fingerprint the duffle bag.
2 Based on your investigative experience, can you give us some
3 indication of the difficulty of taking fingerprints off a
4 cloth surface, or a surface such as that?

5 MR. LONG: Your Honor, I would inquire, and object to
6 the question. I don't know if he has ever been trained to do
7 fingerprinting. I don't know if he's a fingerprint analyst.
8 I don't know anything about that.

9 THE COURT: Sustained at this point in time.
10 You may rephrase your question.

11 MR. HIXSON: Also there's separate packaging. It's not
12 marked as an exhibit either.

13 Q. Did you request these items be submitted for
14 fingerprint analysis?

15 A. I believe I did, verbally, with the evidence
16 technicians -- custodians.

17 Q. Did you receive a report indicating -- let me present
18 you with what's been marked as State' 6. Do you recognize
19 that item?

20 A. That is the Fritos bag that was seized that night.

21 Q. And when you first saw the Fritos bag, was it in that
22 condition?

23 A. It did not have the fingerprint dust on it, no.

24 Q. That's this material you see?

25 A. Yes sir.

1 Q. Now, generally speaking, you received training, as it
2 relates to general investigative techniques, I assume. You
3 went to the South Carolina Police Academy?

4 A. That's correct.

5 Q. Are you aware during that -- were you taught, during
6 the course of that, that there were differences in the
7 surfaces that fingerprints can be removed from?

8 A. Yes sir. I actually attended that at the base academy.
9 I am also an Investigator I. They teach a portion on
10 fingerprinting. In 1998 I also went to a week long, or two
11 week long school on how to read fingerprints, and the surfaces
12 and all that can be taken ---

13 Q. Now, is there a difference between no fingerprints and
14 unusable fingerprints?

15 A. Yes.

16 Q. Could you please just generally describe just ---

17 MR. LONG: Your Honor, I would object to that.

18 Q. ---Based on your basic training and experience, and
19 your ---

20 THE COURT: All right. I'm going to allow the answer
21 over the objection of the Defendant at this time.

22 Q. Just generally. I'm not asking for your opinion or
23 anything like that.

24 A. Yes. No fingerprints would have no residue, no showing
25 up, either using the dust or using perfuming techniques to

1 bring fingerprint, or the oils on the finger to arise.
2 Partial or unusable fingerprints -- well, you will see detail,
3 maybe a circle of the finger, or a part of a swirl, or part of
4 a loop, or anything on there, but it will be unusable to make
5 an I.D..

6 Q. I think you indicated you recognize that item?

7 A. Yes. The bag, yes sir.

8 MR. HIXSON: Your Honor, at this time the State would
9 move State's 6 into evidence.

10 THE COURT: Any objection?

11 MR. LONG: No sir.

12 THE COURT: In evidence without objection.

13 (FRITOS BAG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 6.)

15 Q. And of course when you saw it it wasn't in this
16 plastic?

17 A. Negative. No. It was just a Fritos bag.

18 Q. I'm also -- I'll show you what's been marked as State's
19 -- not in evidence yet -- but do you recognize that item?

20 A. I do.

21 Q. And what is that?

22 A. That appears to be the plastic bag that contained the
23 cocaine that was inside the Fritos bag.

24 Q. And that -- was it in that condition when you first saw
25 it?

1 A. Oh, no sir. It was just a clear plastic bag, and was
2 absence of the fingerprint dust.

3 Q. And that's what that black powder substance you see on
4 there?

5 A. Yes sir. That's what it appears to be.

6 MR. HIXSON: At this time the State would move State's
7 into evidence.

8 THE COURT: Any objection?

9 MR. LONG: No sir.

10 THE COURT: In evidence without objection.

11 (FRITOS BAG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 7.)

13 Q. You say there were no usable fingerprints recovered
14 from those? That's your understanding?

15 MR. LONG: Object, Your Honor. I don't know if he has
16 any indication. He wasn't the one that did the test.

17 THE COURT: I'm going to sustain the objection at this
18 time.

19 MR. HIXSON: Thank you, Your Honor.

20 THE COURT: You may rephrase the question.

21 MR. HIXSON: Thank you, Your Honor.

22 Q. You received a report as it relates to the findings of
23 analysis of that?

24 A. I actually don't have a copy of it. I was made aware
25 that there was no usable fingerprints. I believe verbally, by

1 one of the evidence technicians.

2 Q. Okay. I think also there was some brief discussion
3 about fingerprinting the duffle bag, and things like that.
4 Did you know at the time you made the decision on forensic
5 examination of Danny Brown's statement that it was his bag?

6 A. I remember Officer Williams told me that at the scene,
7 that it was -- he stated it was his bag.

8 Q. All right. Do you usually make a practice of
9 fingerprinting items that you already know who the identity of
10 the owner is?

11 A. No. We don't normally make that a practice.

12 MR. HIXSON: I have no further questions, Your Honor.

13 THE COURT: Questions on those particular questions.

14 MR. LONG: Yes sir.

15 RECROSS-EXAMINATION BY MR. LONG:

16 Q. Officer Delpercio, if you sent the black duffle bag for
17 a fingerprint, and they found Rodney Smith's thumbprint on it,
18 would that change your opinion of the case?

19 A. No.

20 Q. Not at all?

21 A. No.

22 MR. LONG: Thank you.

23 THE COURT: Anything else?

24 MR. HIXSON: Nothing, Your Honor.

25 THE COURT: You may step down, sir.

1 Do you wish this witness to be excused?

2 MR. HIXSON: Absolutely, Your Honor.

3 MR. LONG: Yes sir.

4 THE COURT: You are excused to go back to your regular
5 duties.

6 A. Thank you, Your Honor.

7 THE COURT: Gentlemen, y'all come and talk to me for
8 just one second.

9 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

10 THE COURT: All right, ladies and gentlemen, what we
11 are going to do is recess for the evening at this point in
12 time. I have some matters that I have to handle outside your
13 presence, so no sense in you sitting in your jury room while I
14 do that.

15 Please remember when you go home this evening, not to
16 talk about this case with anyone at home or elsewhere.
17 Unintentionally people will give you their opinion. They
18 don't have an opinion about this case. I told you, you can't
19 talk about this case, so obviously nobody else can talk to you
20 about it. If somebody would persist in trying to talk to you
21 about this case after you tell them not to, please inform the
22 Court who that person is and we will take care of that person.

23 You can't conduct any investigation on your own. You
24 can't look up anything on the internet; you can't do any kind
25 of research on your own on any matter. You must decide this

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1 case solely upon the evidence that is presented in this
2 courtroom, and from no other source, so with that I'm going to
3 ask that you be back tomorrow morning, 9:30. I'll see you
4 back in your jury room, 9:30.

5 Thank you very much.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: All right, gentlemen, we are going to take
9 a short break for about five or ten minutes, then we'll come
10 in and hear the suppression motion at that time.

11 Thank you.

12 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
13 THE PRESENCE OF THE JURY.)

14 THE COURT: All right, Mr. Long, I'll be glad to hear
15 from you, sir.

16 MR. LONG: Thank you, Your Honor. Your Honor, this --
17 I am moving to suppress the evidence that was seized from a
18 black duffle bag. The basis of my motion is this. I
19 understand the facts to be as follows: Officer Williams, on
20 the dark, almost raining night, pulls up beside a vehicle,
21 looks through the driver's side window and sees what appears
22 to be a beer can in the hand of Danny Brown, the passenger of
23 the car. He pulls behind them, walks up to the driver's side
24 window, inquires about the video -- I'm sorry ---

25 THE COURT: Go ahead.

1 MR. LONG: ---Inquires about the can, finds the can,
2 walks around, asks Danny to exit the vehicle, places him under
3 arrest for open container, and then searches a black duffle
4 bag. The driver of the car was not under arrest. This is not
5 an inventory search, because the car, at this point, would
6 have still been free to go, was not ready to be towed. The
7 pat-down, and the necessary search of Danny Brown, as required
8 by his arrest, was done, and that should have ended any search
9 of Danny Brown or the contents of that vehicle without
10 consent. There is no evidence in here, in this trial, that
11 consent was requested of either of the occupants of the car to
12 remove a black duffle bag from the floorboard of that car and
13 just begin searching it. That's where the items, this bag,
14 State's Number 2, that's not in evidence -- that's where that
15 bag was recovered, and Your Honor, based on the Fourth
16 Amendment, based on the requirements of the police officer out
17 there, I firmly believe that that evidence should be excluded
18 from the trial in this case.

19 THE COURT: All right, sir.

20 All right, Mr. Hixson, be glad to hear from you, sir.

21 MR. HIXSON: Your Honor, I don't think that we -- the
22 initial facts, the basis for the stop, are controverted. The
23 Defendant -- excuse me -- the Officer in this case stopped the
24 Defendant based on his observation of a misdemeanor being
25 committed in his presence. Prior to placing the Defendant

1 under arrest he inquired as to the personal belongings, and
2 indicated -- affirmatively indicated, expressly indicated that
3 those, in fact, were his personal belongings. They didn't
4 belong in that vehicle. They belonged with Mr. Brown during
5 Mr. Brown's transport from that area. Certainly he's entitled
6 to look in that area if it was a protective sweep, and for
7 officer's safety, in addition to the fact that he expressly
8 said that the search inventory to being placed under arrest --
9 Mr. Brown expressly said that's his item -- and he is allowed
10 to do that as a search incident to an arrest, and the
11 protective sweep would be after that fact if
12 (unintelligible) -- doesn't think he was allowed to go in to
13 begin with.

14 Even if the Defendant wasn't placed under arrest we
15 think there is a protective sweep issue when he is not sure;
16 he's there by himself and he's not sure what Rodney Smith's
17 situation is, to be -- for officer's safety, to make sure
18 there is no weapon or anything else that could harm the
19 officer in the stop, Your Honor, so we would respectfully ask
20 that that motion be denied.

21 THE COURT: All right. Well, let's look at the facts
22 here, as testified. The Officer testified that, when he gets
23 to the passenger side of the vehicle, said he observed the
24 bag. Gets to the passenger side of the Defendant, gets the
25 Defendant out of the vehicle, arrests him, handcuffs him, puts

1 him in his car. Now, he testified to two different things
2 today. One, that he then got the bag and put it on the
3 sidewalk, and then he also said, when he was arresting the
4 Defendant he got the bag and put it on the sidewalk. There
5 was no doubt that the bag was on the sidewalk, and he hadn't
6 looked at it at all when he put the Defendant in the patrol
7 car. The Defendant was handcuffed and in the patrol car,
8 couldn't get out, and the bag is on the sidewalk. He
9 testified this time -- and he clearly -- and I'll say this for
10 a fact. He clearly did not testify to this at his previous
11 testimony under oath. In this time, the fact that I'm talking
12 about right now -- he said this time that it was an unknown
13 bag; there might be a safety issue; there might be a weapon;
14 it might pose a threat. The Officer never, at any point in
15 time, mentioned anything like this in his previous testimony,
16 under oath, when the Court declared a mistrial before. He
17 never said anything about that.

18 In his prior testimony, under oath, all he said was, he
19 secured the bag, put it on the sidewalk, put the Defendant
20 under arrest in his car, and then he went back and opened up
21 the bag, didn't give any ---

22 MR. HIXSON: Did ---

23 THE COURT: No sir. No sir. That is clearly what he
24 said, and there is no doubt about that's what he said before.
25 He never, ever said anything about that in his prior

1 testimony, because I made note of it when I heard this matter
2 before, because I saw this issue coming up.

3 He now, in this testimony before the Court, has raised
4 the issue about bag safety issue, weapon poses a threat. Even
5 with that you've got a bag that's on the sidewalk; he goes
6 over, unzips the bag, rummages through it, sees the Frito bag
7 that is open but crumpled shut, opens up the Frito bag and
8 sees what he believes to be drugs. All during this point in
9 time the driver of vehicle is not under arrest. The driver of
10 the vehicle is on the other side of the car.

11 I have looked at -- and I'm going to give you some cases
12 to look at over night, gentlemen, and we will revisit this
13 issue in the morning. I want y'all to look at -- and these
14 are all United States Supreme Court Decisions -- Florida
15 versus Wells, found at 495 U.S. 1, 110 Supreme Court 16-32,
16 109 Lers Edition 2nd 1 -- it's a 1990 Decision of the United
17 States Supreme Court -- United States versus Chadwick, 433
18 U.S. 1, 97 Supreme Court 24-76, and that one is a 1977
19 Decision of the U.S. Supreme Court. Then you've got
20 California versus Acevedo. I may not be pronouncing it
21 correctly, but it's spelled A.c.e.v.e.d.o., found at 500 U.S.
22 565, 111 Supreme Court 1982, and it's a 1991 Decision of the
23 U.S. Supreme Court.

24 Gentlemen, y'all need to read those Decisions. We will
25 revisit this issue in the morning.

1 MR. LONG: Thank you, Your Honor.

2 THE COURT: Mr. Hixson, Mr. Long, I want to talk to
3 y'all in my chambers.

4 Thank you very much.

5 MR. LONG: I do have one matter, Your Honor, before ---

6 THE COURT: Yes sir.

7 MR. LONG: We visited my client being out on bond
8 before ---

9 THE COURT: Yes sir..

10 MR. LONG: ---Come to a close of the testimony again
11 today. I have stayed in contact, and so has he, with the
12 bonds lady. She is till willing to stay on his bond, and we
13 are hoping, Your Honor, since Danny has always done what was
14 required of him -- he's been here, not this last week, we mis-
15 tried a case, came back this week. He helps -- looks after
16 his elderly mother here, Ms. Brown, and I'm hoping that he can
17 go home tonight and be fresh tomorrow and help me defend this
18 case tomorrow and remain out on bond.

19 THE COURT: All right. Mr. Brown, please stand, sir.
20 You remain under the bond as previously issued. You
21 understand that?

22 A. Yes sir.

23 THE COURT: The condition of those bond -- bond, is
24 that if you do not come back for trial this trial will
25 continue in your absence. You understand that?

JURY OUT/SUPPRESSION MOTION/COURT TO DEFENDANT

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1 A. Yes sir.

2 THE COURT: You further understand a bench warrant will
3 be issued for your arrest?

4 A. Yes sir.

5 THE COURT: Further, I'm giving you a direct order that
6 you shall appear tomorrow morning by 9 A.M. in this courtroom.
7 Do you understand that?

8 A. Yes sir.

9 THE COURT: If you do not obey that direct order you
10 are subject to being held in contempt of court, and that will
11 subject you to a year in the Department of Corrections,
12 notwithstanding what happened in this proceeding. You
13 understand that?

14 A. Yes sir.

15 THE COURT: Under those terms and conditions I'll allow
16 him to remain out on bond.

17 Thank you very much.

18 MR. LONG: Thank you, Your Honor.

19 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, SEPTEMBER
20 13, 2006, OUTSIDE THE PRESENCE OF THE JURY.)

21 THE COURT: All right. Mr. Long, you had made a
22 suppression motion, and I had asked y'all to look at some
23 cases, and y'all have brought some other material to me to
24 look at, so what I'm going to do at this point in time is, I'm
25 going to take the matter under advisement, and I will rule on

1 it when the State and the defense have rested their case.

2 Is the State ready to proceed?

3 MR. HIXSON: Yes, I am, Your Honor.

4 THE COURT: All right. Is the defense ready?

5 MR. LONG: Yes sir.

6 THE COURT: Have the jury come in, please.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen. We are ready to continue on with the trial of this
11 case.

12 Is the State ready to continue?

13 MR. HIXSON: I am, Your Honor.

14 THE COURT: Call your next witness, sir.

15 MR. HIXSON: Thank you, Your Honor.

16 The State calls Rodney Smith.

17 May we approach briefly, Your Honor?

18 THE COURT: Absolutely.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 (THE WITNESS, RODNEY SMITH, IS SWORN AT THIS TIME.)

21 THE COURT: All right, ladies and gentlemen, I'm sorry.
22 You need to go back to your jury room for a minute, and I'll
23 call you back out in just a second.

24 Thank you very much.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

1 JURY.)

2 THE COURT: Madame Clerk, call Ms. Barbara Pratt and
3 tell her to come over here now, please Ma'am.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: Is the State ready to proceed?

7 MR. HIXSON: Yes, we are, Your Honor.

8 THE COURT: Defense?

9 MR. LONG: Yes sir.

10 THE COURT: Ask the jury to come in, please.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY.)

13 THE COURT: All right, Solicitor. You may proceed,
14 sir.

15 MR. HIXSON: Thank you very much, Your Honor.

16 RODNEY SMITH, being first duly
17 sworn, testifies as follows:

18 DIRECT-EXAMINATION BY MR. HIXSON:

19 Q. Where do you live, sir?

20 A. Myrtle Beach.

21 Q. Myrtle Beach. And how long have you lived there?

22 A. Twenty years.

23 Q. Twenty years. And what do you do for a living?

24 A. Well, I'm disabled right now.

25 Q. All right. I can see you have a medical condition of

1 some kind. Are you doing all right?

2 A. Yes, so so, sir.

3 Q. Were you living in Myrtle Beach around October 6, of
4 2005?

5 A. Yes.

6 Q. Okay. Do you remember that day?

7 A. Yes.

8 Q. Okay. Could you please tell the jury about that day,
9 specifically -- let me try to rephrase that -- did you see
10 Danny Brown on that day?

11 A. Yes, I saw him.

12 Q. Okay. Could you please tell the jury about that day.

13 MR. LONG: Your Honor, I'm sorry.

14 THE COURT: Yes sir.

15 MR. LONG: May we approach?

16 THE COURT: Absolutely.

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

18 THE COURT: Continue on, please. Thank you.

19 MR. HIXSON: I apologize.

20 Q. Do you remember seeing Danny Brown on October 6, of
21 2005?

22 A. Yes.

23 Q. Could you please tell the jury about that day.

24 A. It been in the afternoon. I had stopped to the Hess
25 station on 9th Avenue south to get some gas, and he was there,

1 and he approached me for a ride, and which we were going to
2 transact some business together, and he said I have to give
3 him a ride home in order to transact the business. I'm going
4 to buy some drugs from him. So on our way home -- he went --
5 he went and he brought a duffle bag into my car, and we left.
6 We got about six blocks down the road and we got stopped by a
7 County Police, and he noticed that Danny was drinking a beer,
8 and he stopped us and he -- they took the duffle bag out the
9 car and they had took me out and checked my license. My
10 license was suspended. So they told me to go sit back down,
11 and they been checking the duffle bag. We -- I didn't know
12 what was in it yet, until -- then they took both of us to
13 jail, and I found out he had a large sum of cocaine in the
14 bag.

15 Q. Let me -- that's basically what happened, overview?

16 A. Yes sir.

17 Q. Let's go back and talk about a little details.

18 A. Okay.

19 Q. You said you were at the Hess station?

20 A. Yes sir.

21 Q. Is that right across from Schlowsky's Deli, right near
22 there ---

23 A. Yes.

24 Q. ---And the Circle K. What did you say that Danny Brown
25 was doing there?

- 1 A. He was just standing there talking to the attendant in
2 the little booth.
- 3 Q. Did you know Danny Brown before?
- 4 A. Yes, I knew him before.
- 5 Q. And how did you know him in the past, in what capacity?
6 Are y'all buddies?
- 7 A. No. We have -- no, we are associates of each other.
8 We had -- deal with each other before.
- 9 Q. And what do you mean by associates, and dealing with
10 each other?
- 11 A. I mean, I didn't buy drugs from him before.
- 12 Q. Okay. So did you approach Danny Brown in the Hess
13 station?
- 14 A. No, he approached me.
- 15 Q. Okay. And what did he say to you at that time?
- 16 A. He said he was straight.
- 17 Q. And what -- what does that mean?
- 18 A. That mean that he had something, if I need any.
- 19 Q. Had something, meaning Diet Coke, or what did he mean?
- 20 A. He had cocaine.
- 21 Q. And what did you say?
- 22 A. I said yes, I could use something.
- 23 Q. And did you ask him for a specific amount or anything?
- 24 A. Yes, a eight ball.
- 25 Q. Okay. I don't -- what does an eight -- what does that

1 mean?

2 A. That's three and a half grams.

3 Q. Three and a half grams?

4 A. Uh huh (indicating positive)

5 Q. And then tell me what happened. Tell the jury what
6 happened.

7 A. Well, that meant that I got in -- we got in the car --
8 well, he got his stuff out somebody else automobile.

9 Q. Okay. When you say his stuff ---

10 A. His duffle bag.

11 Q. Okay.

12 A. His duffle bag.

13 Q. Okay. Let me show you what's already been put into
14 evidence, and that's State's 1. That's in evidence. Do you
15 recognize that picture?

16 A. I recognize the duffle bag. I didn't see what was in
17 it.

18 Q. Okay.

19 A. It was closed up.

20 Q. But that looks like the duffle bag he had?

21 A. Uh huh (indicating positive)

22 Q. I think you were -- well, you said that. You went back
23 to the car. Did you see that car?

24 A. Not really. I been way on the other side, and I
25 couldn't see it, because the building had blocked the car,

1 and it was raining at the time.

2 Q. Did you see who Mr. Brown -- was Mr. Brown with anybody
3 else in that car?

4 A. I'm not sure. Someone else had to been driving that
5 automobile, but I didn't see who it was.

6 Q. And why do you say that?

7 A. Because -- cause he went to the passenger's side, I
8 believe. He had to. If he would -- he had to went and get it
9 out that vehicle, and someone else had to have been driving
10 it.

11 Q. All right. You saw him walk across the parking lot to
12 your car?

13 A. Yes.

14 Q. And that's when I think you said he had a duffle bag?

15 A. Yes.

16 Q. Now, he gets into your Plymouth, I think; is that
17 right?

18 A. Yes.

19 Q. And then please tell us -- you already did. Just try
20 to be in a little bit more detail. I'm sorry to belabor the
21 point. Did you guys have any conversation in the car while
22 you were driving?

23 A. Not really. Just idle talk about going -- we really
24 didn't say nothing too much to each other. I didn't even
25 notice that he had a beer, because the weather was so bad. I

1 had my eye on the road.

2 Q. Okay. Now, why didn't you guys just take care of your
3 business in the parking lot of the Hess station?

4 A. I don't -- I don't know that. I didn't -- that didn't
5 come up. I didn't know he had nothing. I thought I had to
6 take him home in order to get it.

7 Q. Now, at some point in time during the course -- you
8 were arrested; is that right?

9 A. Yes.

10 Q. And they found -- were you there when they searched
11 your car ---

12 A. Yes.

13 Q. ---When the police department searched your car.

14 Let me show you what's been marked as State's 3. That's
15 in evidence. Do you recognize that?

16 A. Yes.

17 Q. And what is that?

18 A. That was the stuff I had under my seat.

19 Q. Is that your black pouch?

20 A. Yes.

21 Q. And those are your drugs in there?

22 A. Yes.

23 Q. Now, when you referred to an eight ball, what are those
24 items in the picture referred to? Is that an eye ball?

25 A. Yeah, that would be -- that's less than an eight ball,

1 but it would be like that.

2 Q. And is that for your use, or were you going to resell
3 that?

4 A. That been for my use.

5 Q. So did you know that there were -- what appeared to be
6 crack cocaine in Danny Brown's duffle bag?

7 A. No.

8 Q. And once again, why not?

9 A. I didn't know.

10 Q. And why didn't you know?

11 A. Because he just brought the bag in the car, and he
12 didn't tell me nothing, so -- and, you know, he usually go to
13 the gym. I figured he been on his way back from the gym.

14 Q. Okay. At some point in time now you gave a -- did you
15 give a statement to law enforcement?

16 A. Yes.

17 Q. Did you give a statement to the police when you were
18 arrested?

19 A. Yes.

20 Q. And at that time did you take responsibility for the
21 drugs under the driver's seat?

22 A. Yes.

23 Q. Now you are currently charged with all your offenses;
24 is that right?

25 A. Yes.

1 Q. In fact, it -- do you know what -- all the offenses you
2 are charged with?

3 A. Not really. I know I was charged with the stuff in his
4 duffle bag too.

5 Q. Are you all right?

6 A. Yes, I'm okay.

7 Q. Do you know all the charges -- are you aware of all the
8 charges you are charged with?

9 A. No.

10 Q. Are you charged with the offenses in your pouch as
11 well?

12 A. Yes.

13 Q. And all those charges are still pending?

14 A. Yes.

15 Q. Now, at some point in time did you -- you were
16 represented by an attorney; is that right?

17 A. Right.

18 Q. And is your attorney present in the courtroom today?

19 A. Yes.

20 Q. And who is that?

21 A. Barbara Pratt.

22 Q. Now you are getting up here telling this jury
23 everything that happened. Did the State promise you anything
24 for your testimony?

25 A. No.

1 Q. Did you enter into any kind of discussion, or
2 agreement, with the State in regards to your testimony?

3 A. No. I just was going to try to clarify what happened.

4 Q. Well, did you sign some kind of proffer agreement about
5 your testimony?

6 A. I wrote a statement -- I signed a statement. That was
7 all.

8 Q. Okay.

9 MR. HIXSON: Beg the Court's indulgence, Your Honor.

10 THE COURT: Yes sir.

11 MR. HIXSON: Approach the witness with that?

12 THE COURT: Yes sir.

13 Q. Does that refresh your recollection?

14 A. Yes.

15 Q. Okay. Now, can I ask you a question if that refreshes
16 your recollection. Did you enter into any type of agreement
17 with the State in regards to your testimony?

18 A. Well, the State -- the State said there ain't nothing
19 they -- you know, they could really do for me, but to testify.

20 Q. Okay. Was your attorney with you during the course of
21 those discussions?

22 A. Yes.

23 Q. Has anybody threatened you in any way for your
24 testimony?

25 A. No.

1 Q. And no promises have been made to you?

2 A. (NODS HEAD NEGATIVE)

3 MR. HIXSON: I have no further questions for this
4 witness at this time, Your Honor.

5 COURT REPORTER: I'm sorry. I didn't get his last
6 answer.

7 Q. All right. Could you please, for the court reporter?

8 A. No.

9 THE COURT: All right. Mr. Long.

10 MR. LONG: One moment, please, Your Honor.

11 THE COURT: Yes sir.

12 MR. LONG: Thank you, Your Honor.

13 THE COURT: Yes sir.

14 CROSS-EXAMINATION BY MR. LONG:

15 Q. Mr. Smith, I'm Russell Long. How are you doing?

16 A. All right, sir.

17 Q. We have never met before, but I think you understand I
18 represent Danny.

19 A. Yes.

20 Q. I'm going to ask you some questions about the incident
21 first, and then I'm going to ask you some questions about
22 these agreements that you signed.

23 You say -- is it true that you say that you pulled up to
24 a Hess station in Myrtle Beach, and the weather was real bad?

25 A. Yes sir.

- 1 Q. How bad -- what was ---
- 2 A. It had been raining.
- 3 Q. Was it dark outside?
- 4 A. It was just starting to get dark.
- 5 Q. What time of day was it?
- 6 A. It had to have been about 6:30, seven o'clock, I
- 7 believe.
- 8 Q. Okay. And it was October, so the time had changed; is
- 9 that right?
- 10 A. Yes sir.
- 11 Q. And you say you just happened to find Danny Brown. He
- 12 was there in ---
- 13 A. Yes.
- 14 Q. ---As a passenger in another vehicle, right?
- 15 A. Right.
- 16 Q. And Danny -- you would agree with me that Danny asked
- 17 for a ride home?
- 18 A. Yes.
- 19 Q. And he got in the car for you to give him a ride home,
- 20 and y'all started -- headed southbound down business 17; is
- 21 that right?
- 22 A. Right.
- 23 Q. And did you have your windows up or down?
- 24 A. It was up.
- 25 Q. Your windows were up?

1 A. Yes.

2 Q. Are you sure?

3 A. Yes. The one -- it been raining.

4 Q. It was raining. So your window was up. Was Danny's

5 window up?

6 A. Yes.

7 Q. Okay. And did you have your lights on?

8 A. Yes.

9 Q. Did you have to have your lights on?

10 A. Yes.

11 Q. And your car -- you had an older model car so they

12 don't come on automatic; you have to turn them on, right?

13 A. You have to turn them on.

14 Q. Did you have your lights on when you were going to the

15 Hess station?

16 A. Yes.

17 Q. Okay. So you head down the highway, lights on, windows

18 up; it's raining, and riding down the road with Danny Brown,

19 and you say he got in your car and he put a black duffle bag

20 on the floorboard, right?

21 A. Yes.

22 Q. Now, it's true, isn't it, your car doesn't have a

23 center console like all of our -- almost every car nowadays

24 has a big center console. Your car is an older car. It's

25 just a big floorboard, right?

1 A. Yes.

2 Q. And he put that duffle bag in the middle, right between
3 you and him, right?

4 A. No. He put that duffle bag down between his legs.

5 Q. Down between his legs. And how big a car is it? What
6 kind of car is it?

7 A. It been a '76 Plymouth Fury.

8 Q. A classic. So he put the duffle bag down on the
9 floorboard between his legs. Y'all started down the road.
10 Your -- the pouch of drugs that you had up underneath your
11 seat, did you put those up under there at that time, or had
12 they been there for a while?

13 A. I put them up under.

14 Q. You put them up under there?

15 A. Uh huh (indicating positive)

16 Q. Is that where you usually keep them?

17 A. Yes.

18 Q. Is that the pouch you usually carry them in?

19 A. Yes.

20 Q. How long you been selling drugs?

21 A. Probably a couple of years.

22 Q. Is this the first time you got caught?

23 COURT REPORTER: Excuse me. Your answer, aloud please.

24 A. Yes.

25 Q. So, you are driving down the highway. Did you see a

1 police car behind you?

2 A. We passed -- I think we passed by the police car. He
3 was on the opposite side.

4 Q. All right. Wait a minute now. You passed by a police
5 car, and he was on the opposite side. What does that mean?
6 Does that mean he ---

7 A. He had to swing back.

8 Q. I'm sorry.

9 A. I think he had to swing back around behind us.

10 Q. Okay. So you think the police car was going in the
11 other direction?

12 A. Yes.

13 Q. And you think he did a u-turn and got behind you?

14 A. Yes.

15 Q. Were you in the -- you are going to Highway 17, there's
16 two lanes of traffic. There is what I call the center lane,
17 which is close to the median, and there's a right-hand lane
18 over here by the curb. Which lane were you driving in?

19 A. I think the outer lane.

20 Q. Well, do you know?

21 A. The answer been the outer lane.

22 Q. The right-hand lane?

23 A. Right-hand lane.

24 Q. All right. So, the police car did a u-turn and got
25 behind you, right?

1 A. I think so.

2 Q. Well, do you think -- I kind of need you to know, sir.

3 A. I'm not ---

4 Q. If you don't know, tell me you don't know.

5 A. I don't know exactly, sir.

6 Q. Okay. So you are not sure but ---

7 A. I'm not sure.

8 Q. ---But did you see a police car?

9 A. Yes.

10 Q. Okay. And did you see a police car eventually get

11 behind you?

12 A. Yes.

13 Q. Did that police car pull up beside you? I'm doing my

14 hands like this, like he was going in the same direction. Did

15 he come up beside you?

16 A. I'm not sure.

17 Q. Okay.

18 A. I don't think he came up beside me.

19 Q. You don't think he came up beside you?

20 A. Uh uh (NODS NEGATIVE)

21 Q. So the police car came up behind you, and he put his

22 blue lights on right away; is that right?

23 A. Yes sir. Well, we just had drive six blocks ---

24 Q. Okay.

25 A. ---From the Hess station.

1 Q. Six blocks from the Hess station?

2 A. Uh huh (indicating positive)

3 Q. He got behind you, and he put his blue lights on, and
4 you stopped pretty quick, right?

5 A. Yes sir.

6 Q. You didn't turn off then into a parking lot or
7 anything?

8 A. No.

9 Q. Why did you stop in the highway?

10 A. I pulled on the side.

11 Q. You pulled to the side?

12 A. On the side of the road.

13 Q. Well, there's a curb there, right?

14 A. Yes, but he been -- that's where he been behind me.

15 Q. I'm sorry.

16 A. That's where I pulled at.

17 Q. You went up on the curb?

18 A. No. I hadn't went on the curb. I pulled right by the
19 curb.

20 Q. You just stopped in the middle of the highway?

21 A. Yes.

22 Q. You stopped in the middle of the highway?

23 A. Yes.

24 Q. My question was why? Why didn't you pull off?

25 A. I don't know why.

1 Q. All right. And when the police officer came -- is this
2 the police officer right here, Officer Williams?

3 A. Yes.

4 Q. Do you recognize him. When he came up to the car did
5 you come to your window or to Danny's window?

6 A. I think he came to my window.

7 Q. All right, and then he -- did you roll the window down
8 for him?

9 A. Yes.

10 Q. Has yours got -- you gotta roll it like this, or is it
11 electric?

12 A. Uh huh (indicating positive)

13 Q. Did you roll it?

14 A. (NODS HEAD AFFIRMATIVE)

15 Q. Okay. And what did he say to you?

16 A. He said -- he said, was that a beer -- was that's a
17 beer you -- Danny lift up.

18 Q. I'm sorry.

19 A. Was that a beer he's drinking.

20 Q. He said, was that he a beer he was drinking. Was he
21 asking you that question?

22 A. No, asking Danny.

23 Q. All right. Did he ask Danny, to Danny, is that a beer
24 you are drinking?

25 A. Yes.

1 Q. That's what he said. And then what did Danny say?

2 A. I don't -- Danny -- I'm not exactly -- Danny then
3 tucked the beer can away.

4 Q. Say that again.

5 A. He had already tucked the beer can away.

6 Q. Who had took the beer can away?

7 A. Danny. He already tucked the beer can away.

8 Q. Tucked the beer can away?

9 A. Yes.

10 Q. Okay.

11 A. And then he went to see -- went to his door, opened his
12 door, and he found the beer can.

13 Q. Okay. Wait a minute now. Officer Williams walked
14 around the car and opened Danny's door ---

15 COURT REPORTER: Excuse me. Your answer, aloud. What
16 was your answer?

17 Q. Did he walk around and open Danny's door?

18 A. Yes. Yes.

19 Q. Was Danny's window still up?

20 A. Yes.

21 Q. Did he reach into that car and grab that beer can?

22 A. I think he asked Danny to step out ---

23 Q. Okay.

24 A. ---And then he found the beer can.

25 Q. Danny found the beer can. Where was the beer can?

1 A. Right down -- he had 'em tucked down, right between the
2 seats, in his jacket.

3 Q. The beer can was tucked down between your seat and his
4 seat?

5 A. No. No. He had it already in his jacket.

6 Q. Okay. And you were pointing down to your left side.
7 Is that the side that Danny had the beer can tucked down in?

8 A. He had put it down in his jacket. He had a jacket, and
9 he had the beer can already in his jacket.

10 Q. Okay. That's good. Where Danny had tucked that beer
11 can, okay -- where that beer can was tucked, was it in what I
12 call plain view, or did -- was it hidden?

13 A. It was hidden.

14 Q. It was hidden. So the police pulled Danny out of the
15 car, and then what? Did he put the cuffs on him right away?

16 A. I believe if he found -- he found -- when he pulled
17 Danny out of the car he found the bag.

18 Q. Okay. He pulled Danny out of the car, and then he went
19 into the car, and looked around inside ---

20 A. Yes, and he had done found the beer ---

21 Q. ---Is that right?

22 A. He found the beer can. The beer can been in his coat.

23 Q. Okay. Hold on one second. I'm -- this is important.
24 Is it true that he took Danny out of the car, and then he went
25 back into the car and searched underneath the coat, and found

1 the beer can; is that right?

2 A. Yes.

3 Q. That's the way it happened. And then when he found the
4 beer can, what did he say to Danny?

5 A. I think he handcuffed him then.

6 Q. He handcuffed him and he told him what, you are under
7 arrest?

8 A. Yes, I think he put him ---

9 Q. Did he tell him what he was under arrest for?

10 A. Yes. Open container, I think.

11 Q. And then what did the police officer do? Took Danny
12 back to his car?

13 A. Yes.

14 Q. So he took Danny back to his car, put Danny in the car.
15 What were you doing this whole time?

16 A. I was still sitting in the driver's seat.

17 Q. Sitting in the driver's seat. Just sitting there?

18 A. Yes.

19 Q. And then what did the police officer do next?

20 A. He came and got the duffle bag.

21 Q. He came back to the car, and went through Danny's door,
22 right? Was the door still open?

23 A. No. He was already ---

24 Q. He had already closed the door back?

25 A. Uh huh (indicating positive)

- 1 Q. The police officer went -- when he arrested Danny for
2 open container -- after he went in the car and found the beer
3 can you are telling me he arrested Danny, cuffed him, and shut
4 the door; is that right?
- 5 A. Uh huh (indicating positive)
- 6 Q. And took Danny and placed him in his car?
- 7 A. Right. No, let me rephrase that. I think he had Danny
8 on the back of the car, and that's when he went and get the
9 duffle bag.
- 10 Q. Okay. He handcuffed Danny and took Danny away ---
- 11 A. No. No.
- 12 Q. ---Some distance?
- 13 A. No. He -- I don't think he had Danny handcuffed yet.
14 He just had him standing up on the back.
- 15 Q. Behind the car?
- 16 A. Had him on the -- like the trunk of my car, just had
17 him standing there.
- 18 Q. Could you see? It was raining. Were you looking in
19 the rear view mirror or something?
- 20 A. Uh huh (indicating positive)
- 21 Q. Could you tell if Danny was handcuffed or not? You
22 couldn't ---
- 23 A. I couldn't tell.
- 24 Q. ---Tell, could you. But he had Danny back there?
- 25 A. Yes.

1 Q. And then after he got Danny back there, it's true
2 that -- that -- Danny's door was closed. It's true, isn't it,
3 that he came back and opened that door again, right?

4 A. Right.

5 Q. He opened Danny's door again, and he reached in the
6 car, and he grabbed the black duffle bag, right?

7 A. Right.

8 Q. Did he ask you anything about that bag?

9 A. No, not really.

10 Q. Didn't ask you a single thing about that bag. Had he
11 asked you a single question yet?

12 A. He had asked me for my license.

13 Q. When did he do that?

14 A. That was when he first stopped us.

15 Q. When he first stopped you he asked for your license?

16 A. (NODS HEAD AFFIRMATIVE)

17 Q. So then he reached in there, he got that duffle bag,
18 and isn't it true, he pulled the duffle bag out, put it on the
19 sidewalk, unzipped it, and started looking through it, right?

20 A. Yes.

21 Q. Were you watching him do this?

22 A. I couldn't see him do it.

23 Q. You couldn't see him do it?

24 A. I couldn't see him do that.

25 Q. Why?

- 1 A. Because he was on that side.
- 2 Q. He was on the right-hand side and the door was open at
3 this point, right?
- 4 A. The door was -- he had done shut the door back.
- 5 Q. He shut the door again?
- 6 A. Yes. And in my glass, you know -- an old car, and the
7 windows been fogged up.
- 8 Q. Say it again.
- 9 A. The windows is fogged up ---
- 10 Q. The windows were fogged up.
- 11 A. ---On my car.
- 12 Q. Were the windows fogged up before he put the blue
13 lights on you?
- 14 A. It been -- not that foggy, because I had the defrost.
- 15 Q. You had the defrost on before he put the blue lights
16 on. Did you turn the defrost off when he stopped you?
- 17 A. I cut the whole car off.
- 18 Q. You cut the whole car off. I've got you. Was it hot
19 or cold outside?
- 20 A. Excuse me.
- 21 Q. Was it hot or cold outside?
- 22 A. It been -- it been kind of warm, because I think I had
23 the air-conditioner on.
- 24 Q. You had the air-conditioning and the defrost on at the
25 same time ---

1 A. Well, I had them on cool, then I had put them on
2 defrost.

3 Q. All right. Okay. So, he pulled the bag out, searches
4 through the bag. He zipped the bag back up. Did you see him
5 do that?

6 A. I didn't see the bag no more.

7 Q. You didn't see the bag?

8 A. Uh uh (NODS NEGATIVE)

9 Q. And then what did the police officer do?

10 A. He called -- he came back to my side and he asked me to
11 step out of the car. I stepped out, and at that time he asked
12 me if I knew my license had been suspended. I said, yes. He
13 handcuffed me, and took me and put me in the car.

14 Q. In the same car that he put Danny in?

15 A. No. It was in another one.

16 Q. What car?

17 A. It was another cruiser.

18 Q. So another policeman had come by this time?

19 A. Yes.

20 Q. You would agree with me, sir, that there was a long
21 time between him looking in the black duffle bag and another
22 police car getting there?

23 A. No, it ain't been that long.

24 Q. It wasn't that long?

25 A. Uh uh (NODS NEGATIVE)

1 Q. Okay. He didn't get you out of the car until another
2 police car got there though, right?

3 A. Yes sir.

4 Q. Okay. And when the police officer -- you got in the
5 car with the policeman, isn't it true that you told that
6 policeman, I don't even know that guy? Didn't you tell him
7 that?

8 A. No, I don't remember saying it.

9 Q. You don't remember saying that?

10 A. Uh uh (NODS NEGATIVE)

11 Q. Okay. The charges that they brought against you
12 included trafficking in cocaine, right?

13 A. Yes.

14 Q. Trafficking in a hundred and twenty-two grams of
15 cocaine, correct?

16 A. Correct.

17 Q. And you are still charged with that crime, right?

18 A. Right.

19 Q. And you've got a lawyer, Ms. Barbara Pratt, a very fine
20 lady, a good lawyer, right? That's your lawyer.

21 THE COURT: Give him your answer, sir.

22 A. Yes sir.

23 Q. And on the day that this thing happened, the policeman,
24 Mr. Delpercio, Detective Delpercio, who is not here today --
25 but he went into the jailhouse to talk to you without a

1 lawyer; is that right?

2 A. Right.

3 Q. You didn't have a lawyer at that time?

4 A. Right.

5 Q. And Officer Williams was in there with him?

6 A. Yes.

7 Q. He was in the room too. So, Williams and Delpercio
8 went into a room with you at J. Reuben Long, and sat down with
9 you, and what did they tell you?

10 A. That's when I found out.

11 Q. When you found out what?

12 A. That's when I found out it been a hundred and twenty-
13 two grams of cocaine was in that bag.

14 Q. And what did they tell you they could do for you?

15 A. They didn't really tell me they could do nothing for
16 me.

17 Q. Okay. You signed -- you wrote out a little three line
18 statement for them. Do you remember that?

19 A. Yes sir.

20 Q. And would you -- would you agree with me that, what you
21 told them was, that the drugs under the seat were yours, and
22 you had been dealing drugs for about a year. That's what you
23 said?

24 A. Yes sir.

25 Q. Is that all you told them that day?

1 A. Yes sir.

2 Q. That was it?

3 THE COURT: Was that a question, Mr. Russell ---

4 Q. Was that it?

5 THE COURT: ---Mr. Long?

6 A. Yes.

7 THE COURT: All right.

8 Q. Now, that was October the 6th, 2005; is that correct?

9 A. Right.

10 Q. When did you get a lawyer?

11 A. I got a lawyer the following week. I didn't get out --

12 I didn't get from incarcerated till that Monday. That was a

13 Thursday.

14 Q. Okay. Now, on August the 30th of 2006, you had a

15 meeting with your lawyer and who? August 30th. I'm talking

16 about a couple of weeks ago.

17 A. Okay.

18 Q. You had a meeting with your lawyer and who else?

19 A. The Solicitor ---

20 Q. Mr. Hixson?

21 A. Uh huh (indicating positive)

22 Q. Who else?

23 A. ---And Debecio.

24 Q. Delpercio?

25 A. Delpercio.

1 Q. Okay. And they handed you what Mr. Hixson showed you,
2 which I'm going to show you again, what's called a Proffer
3 Agreement; is that right? Do you remember that?

4 A. Yes.

5 Q. Do you understand what that document means?

6 A. No.

7 Q. You don't have a clue. In fact, sir, all you know is,
8 isn't it true, that by signing this document you agreed to
9 come in and testify, and you certainly hope that you are going
10 to get something out of it; isn't that right?

11 A. Yes sir.

12 Q. And what you hope you are going to get out of it is,
13 you are going to get out of it; isn't that true?

14 A. Yes sir.

15 Q. And you agreed in this document that you would come in
16 here and testify, and you agreed that you would take a
17 polygraph test; remember saying that?

18 A. Yes.

19 Q. Have they given you a polygraph test?

20 A. No, sir.

21 Q. No. I show you the third page of that. Is that your
22 signature?

23 A. Yes sir.

24 Q. Okay. So after you signed this, you told them that you
25 ran into Danny Brown -- his daddy's name was Johnny Brown -- I

1 just slipped up -- you ran into Danny Brown, and y'all were
2 going to do a deal; he was going to sell you cocaine. That's
3 when you told them that, right?

4 A. Right.

5 Q. That's the first time you have ever told anybody that.

6 A. Right.

7 Q. After you signed that Agreement, right? You told them
8 that you were going to buy an eight ball cocaine, you were
9 going to pay a Hundred and Fifty Dollars for it, and the
10 deal -- and it just happened -- you just happened upon him but
11 that was going to happen; isn't that right?

12 A. Right.

13 Q. If you were going to buy cocaine from Danny Brown, how
14 come you didn't have any money in your pocket?

15 A. I did had money.

16 Q. I've seen the evidence sheet here. Are you sure you
17 had money in your pocket?

18 A. Yes. I had Two Hundred Fifty Dollars.

19 Q. Two Hundred and Fifty Dollars. Okay. And the drugs
20 that you had already in your car, according to you, were not
21 enough for you; is that right?

22 A. Right.

23 Q. And you had Xanax, marijuana, cocaine and crack
24 cocaine. Do you sell all of those drugs?

25 A. I'm a user too.

1 Q. You are a user. What do you use?

2 A. I use all of them.

3 Q. You use them all.

4 A. Or I used to.

5 Q. I show you what's been marked as State's Exhibit Number

6 3. It looks like one, two, three, four little tiny ziploc
7 bags. You see that?

8 A. Yes.

9 Q. What is that? What are those two little tiny little
10 ziploc bags?

11 A. That's the way you sell it.

12 Q. That's the way you sell it?

13 A. Uh huh (indicating positive)

14 Q. What is this? What's in this bag?

15 A. Probably coke -- cocaine.

16 Q. Probably cocaine.

17 And then I'll show you this big -- looks like a sandwich
18 bag, with just a whole bunch of white stuff. What is that?

19 A. That's cocaine.

20 Q. Cocaine. And then these little brown bags, these two
21 little brown bags, what's that?

22 A. That's crack.

23 Q. Crack cocaine. Is that the difference between crack
24 and cocaine, for those of us that aren't that familiar? It's
25 a different color?

1 A. Sometimes.

2 Q. Sometimes. What makes it a different -- what makes it
3 a different color?

4 A. On crack they cook it.

5 Q. They cook it?

6 A. Yes.

7 Q. Okay. Were you going to do all these drugs, or were
8 you going ---

9 A. I was going to sell some.

10 Q. Sell some and do some?

11 A. Yes sir.

12 Q. You are buying, selling and using, right?

13 A. Right.

14 MR. LONG: Thank you. You have been helpful.

15 THE COURT: Redirect, sir.

16 MR. HIXSON: Thank you, Your Honor.

17 REDIRECT-EXAMINATION BY MR. HIXSON:

18 MR. HIXSON: I would like to get this marked.

19 (3 PAGE PROFFER AGREEMENT MARKED STATE'S EXHIBIT NUMBER
20 9, FOR IDENTIFICATION ONLY.)

21 MR. HIXSON: Your Honor, I have marked this Proffer
22 Agreement as State's 9.

23 THE COURT: All right, sir.

24 Q. Mr. Smith, defense counsel made much of the Proffer
25 Agreement that you talked about signing. Do you recall that?

1 Was this Agreement read to you by your attorney?

2 A. Yes.

3 Q. Did she discuss the contents of that with you during
4 the course of our discussions?

5 A. Yes.

6 Q. And so was she there to answer any questions that you
7 had about it?

8 A. Uh huh (indicating positive)

9 Q. Did you tell her that you understood?

10 A. Yes.

11 Q. I believe you indicated that was your signature?

12 A. Yes sir.

13 Q. Does that appear to be the same document that you
14 recall signing and us discussing, or a xerox copy of it?

15 You have to answer. The court reporter ---

16 A. Yes.

17 MR. HIXSON: At this time, Your Honor, the State would
18 like to move State's Exhibit 9 into evidence.

19 MR. LONG: No objection.

20 THE COURT: In evidence without objection.

21 (STATE'S EXHIBIT NUMBER 9 ADMITTED INTO EVIDENCE.)

22 MR. HIXSON: Your Honor, at this time the State would
23 not publish this to the jury. It's going to be sent to the
24 jury room for the jury to read.

25 THE COURT: All right. You can just give it to the

1 court reporter then, unless you need it.

2 MR. HIXSON: Can I just briefly ---

3 THE COURT: Yes sir.

4 MR. HIXSON: I guess I am publishing it if I'm going to
5 hand it around, Judge. It's a three-page document.

6 THE COURT: Do you wish to publish it or not?

7 MR. HIXSON: Yes -- yes, Your Honor, just ---

8 THE COURT: Any objection?

9 MR. LONG: No objection.

10 THE COURT: You may do so.

11 Q. Are there any promises contained in there?

12 A. No.

13 THE COURT: Please answer out loud, sir.

14 A. No sir.

15 Q. Defense counsel also indicated that you gave a
16 statement to law enforcement. I ask you that question also.
17 Do you remember just prior -- after your arrest?

18 A. Right.

19 Q. And you gave a written statement at that time?

20 A. Uh huh (indicating positive) Yes.

21 Q. And at that time did you indicate that -- took
22 responsibility for the drugs under your seat?

23 A. Yes.

24 Q. And you didn't know anything about the others?

25 A. I didn't know anything.

1 Q. And you entered into that statement prior to any
2 proffer of any kind; is that correct?

3 A. Right.

4 MR. HIXSON: Your Honor, I have no further questions.

5 THE COURT: Questions on those particular questions,
6 Mr. Long.

7 MR. LONG: Yes sir.

8 RECROSS-EXAMINATION BY MR. LONG:

9 Q. Mr. Smith, you said that, when your lawyer asked you if
10 you understood this Agreement, you said yes, but when I asked
11 you if you understood this Agreement today you said no. Why
12 would you do that?

13 A. Well, I guess I was just nervous, because I understand.

14 Q. You were nervous when?

15 A. Just now.

16 Q. Okay.

17 A. But they didn't -- they didn't promise me nothing.

18 Q. Who told you to say they didn't promise you nothing?

19 A. Sir, they didn't promise me nothing.

20 Q. Did somebody tell you to say they didn't promise you
21 nothing?

22 A. No. Uh uh (NODS NEGATIVE)

23 Q. Well, Mr. Hixson just asked you, are there any promises
24 in this document, and you said no.

25 A. Right.

1 Q. Are you sure there aren't promises in this document?

2 A. I'm sure. They said, you know, if I testify, then I go
3 up to trial, they may be lenient on me, what-not, but there
4 ain't no promises, nothing that he can promise me.

5 Q. Isn't it true that you don't know if there are promises
6 in here or not; they told you there aren't promises in here,
7 right?

8 A. Right.

9 Q. Let me read something to you, and you tell me if you
10 think this is a promise or not.

11 A. Okay.

12 Q. Does this -- is this sound like a promise to you?
13 Because you actually have an Agreement with these people right
14 here, okay, and I'm sure, when the day comes, you are going to
15 want to enforce it, so let me ask you if think this is a
16 promise.

17 THE COURT: Mr. Long, if you would, ask questions,
18 please sir.

19 MR. LONG: I am, Your Honor.

20 THE COURT: All right, sir.

21 Q. In return for Rodney Smith's full compliance with all
22 terms stated within this Proffer, statements provided during
23 his debriefing will not be used in the criminal prosecution
24 currently pending against him by this office. Is that a
25 promise?

1 A. It sounds like it.

2 Q. All right. Let me ask you another one. Tell me if
3 this sounds like a promise. In return for Rodney Smith's full
4 compliance with all terms stated within this Proffer the State
5 shall take into consideration the materiality of his truthful
6 testimony and degree of cooperation in the election of
7 charges, and a recommendation of sentencing for your client in
8 this matter. Doesn't that sound like a promise?

9 A. Yes, it sounds like it.

10 Q. All right. I've got one more, and you tell me if this
11 sounds like a promise. The State agrees to fully inform the
12 Court of Rodney Smith's degree of cooperation, and the
13 relative benefit to the State at the time of his sentencing.
14 Does that sound like a promise to you?

15 A. Sounds like it.

16 Q. Those three things are in this Agreement, and when the
17 question was asked, are there any promises in this Agreement,
18 you said no. What do you say now?

19 A. Sounds like some promises.

20 Q. Okay. Thank you.

21 THE COURT: Anything else, Solicitor?

22 MR. HIXSON: Nothing, Your Honor.

23 THE COURT: You may step down, sir.

24 Do you wish this witness to be excused?

25 MR. HIXSON: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. LONG: I better be cautious with this witness, Your
3 Honor, and ask that he remain.

4 THE COURT: All right, sir. You remain under subpoena.
5 You may not leave at this point in time. Just have a seat in
6 the courtroom.

7 At the present time, Ms. Pratt, you are excused.

8 MS. PRATT: Thank you, Your Honor.

9 THE COURT: Thank you, Ma'am.
10 All right, Solicitor, your next witness.

11 MR. HIXSON: Yes, Your Honor. At this time the State
12 would call Deidre Faulk to the witness stand.

13 DEIDRE FAULK, being first duly
14 sworn, testifies as follows:

15 DIRECT-EXAMINATION BY MR. HIXSON:

16 Q. Good morning.

17 A. Good morning.

18 Q. What do you do for a living?

19 A. I work for the Horry County Police Department.

20 Q. And when -- in what capacity?

21 A. I work in the Property and Evidence Section.

22 Q. Okay. And what are your responsibilities in the
23 Property and Evidence Section?

24 A. I'm responsible for all the evidence that the officers
25 turn in regarding any case that they make on the road.

1 Q. And when you say responsible for that, do you log
2 evidence in? Do you take custody and control of that
3 evidence?

4 A. Yes sir. I take custody and control of all evidence.
5 They are secured in a locker. When I come in the next morning
6 we receive it; we log it, key it in the computer and place it
7 in the appropriate location for the type of evidence that they
8 turned in.

9 Q. So it's kind of like a desk job, a little bit?

10 A. Kind of, sort of.

11 Q. Is that safe to say?

12 A. Uh huh (*indicating positive*)

13 Q. A lot of coordination?

14 A. Yes sir.

15 Q. Let me show you what's been marked as State's Exhibit

16 2. See if you recognize that item.

17 A. Yes sir.

18 Q. Did you have an opportunity to come into contact with
19 that item at some point?

20 A. Yes sir.

21 Q. Did you log that item into evidence?

22 A. Yes, I did.

23 Q. That piece of property was in your custody and control
24 for a period of time?

25 A. Yes, it was.

1 Q. Did you tamper with it in any way?

2 A. No sir.

3 Q. Did you maintain the integrity of it?

4 A. Yes, I did.

5 Q. Did you make sure that no one else tampered with it?

6 A. Yes, I did.

7 Q. Did you place that into Horry County evidence?

8 A. Yes, I did.

9 (DRUGS IN CLEAR BAG MARKED STATE'S EXHIBIT NUMBER 2, FOR
10 IDENTIFICATION ONLY.)

11 Q. Okay. After it's in evidence, at some point in time is
12 that tested?

13 A. Yes, it is. We put it in a holding location, in a drug
14 vault, that is secure, then we transfer it to Lisa. It
15 involves a chain of custody where the officer, when they turn
16 it in I accept it, they have to sign it and date it. When I
17 go to give it to her I sign and date it again, and then she
18 signs and dates it where she receives it, in order for her to
19 test it, and then therefore she then has custody and control
20 of that evidence.

21 Q. And is it substantially in the same condition when you
22 received it to a point that you turn it over for testing?

23 A. Yes, it is.

24 MR. HIXSON: I have no further questions of this
25 witness, Your Honor.

1 THE COURT: Cross-examination.

2 MR. LONG: I do not have any questions.

3 THE COURT: All right, sir.

4 You may step down, Ma'am.

5 Is there any reason she should not be excused?

6 MR. HIXSON: None from the State, Your Honor.

7 THE COURT: You are excused and released from your
8 subpoena, Ma'am.

9 You next witness, please.

10 LORI RABON, being first duly sworn,

11 testifies as follows:

12 DIRECT-EXAMINATION BY MR. HIXSON:

13 Q. Good morning.

14 A. Good morning.

15 Q. Lori, what do you do for a living?

16 A. I'm employed by the Horry County Police Department, in
17 the Evidence Section.

18 Q. Okay. Do you have similar responsibilities to the
19 prior witness, Deidre Faulk?

20 A. I do. I'm her supervisor.

21 Q. So you work in a kind of administrative position,
22 handling evidence back and forth, things like that?

23 A. That's correct.

24 Q. Let me show you what's been marked as State's Exhibit
25 Number 4.

1 MR. HIXSON: It's not in evidence yet.

2 Q. Do you recognize that?

3 A. Yes, I do.

4 Q. Now, at some point in time did you come in contact with
5 this Defendant, Danny Cortez Brown?

6 A. Yes, I did.

7 Q. And could you please give us the facts surrounding
8 that?

9 A. Detective Delpercio made a phone call to our Evidence
10 Section, requesting that we release some personal property
11 back to a Mr. Danny Brown, and on October 12th, 2005, a Mr.
12 Danny Brown came up as Agent Delpercio had instructed us to
13 do, to release his property, and I made a copy of his driver's
14 license and had him sign for a black duffle bag, miscellaneous
15 clothes, and one cell phone.

16 Q. Did you actually see Mr. Brown come in and pick up his
17 items?

18 A. Yes, I did.

19 Q. And did he sign for those?

20 A. Yes, he did.

21 Q. This document, is that what you witnessed Danny Brown's
22 signature on?

23 A. Yes, it is.

24 Q. And did you confirm, in any way, that that was Danny
25 Brown?

1 A. Yes, I did. I requested a copy of his driver's
2 license, and made a copy of it.

3 Q. And you did -- you did that. Is that included in that
4 packet?

5 A. Yes, it is.

6 Q. At this time the State would move 4 -- State's Exhibit
7 4 into evidence.

8 THE COURT: Any objection?

9 MR. LONG: No objection. No sir.

10 THE COURT: State's 4 is in evidence without objection.

11 (STATE'S EXHIBIT NUMBER 4 ADMITTED INTO EVIDENCE.)

12 Q. Now is it common, generally speaking as the Evidence
13 Technician, to turn over non-relevant -- or I shouldn't say
14 that -- to -- personal items back to a Defendant?

15 A. Yes, it is. When the items are collected most of the
16 time the Detectives or the Officers are not sure at the time
17 what's going to be evidence and what's not, so it's also our
18 duty to return property safely back to the owner.

19 Q. So you do have a duty to -- does the Defendant usually
20 request those items back?

21 A. Yes, it happens occasionally.

22 Q. But you would have to get permission to do so from the
23 supervi -- the investigative officer?

24 A. We have to have permission from the investigating
25 officer or the Solicitor.

1 Q. Do you know if -- in this case, do you know if Mr.
2 Brown contacted Detective Delpercio about his personal items?

3 A. I'm unsure how the conversation initiated, but Agent
4 Delpercio called us himself and said that Mr. Brown would be
5 coming to pick the property up.

6 Q. Okay. And receive back his duffle bag and his cell
7 phone, and personal items?

8 A. That's correct.

9 MR. HIXSON: Your Honor, I have no further questions
10 for this witness at this time.

11 THE COURT: Cross-examination.

12 MR. LONG: No, Your Honor.

13 THE COURT: Do you wish this witness to be excused?

14 MR. HIXSON: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. LONG: No sir.

17 THE COURT: You are excused and released from your
18 subpoena, Ma'am.

19 Who would be your next witness?

20 MR. HIXSON: Lisa Floyd, Your Honor.

21 THE COURT: All right.

22 LISA FLOYD, being first duly sworn,
23 testifies as follows:

24 DIRECT-EXAMINATION BY MR. HIXSON:

25 Q. Good morning.

1 A. Good morning.

2 Q. Lisa, what do you do for a living?

3 A. I run the Horry County Regional Lab for the Police
4 Department.

5 Q. And what -- what is that, for the people of Horry
6 County? What is that?

7 A. Officers from any agency in the Fifteenth Judicial
8 Circuit can submit anything that they think is drugs to the
9 lab, and I test it to see if it is.

10 Q. Okay. So you must have some training and experience to
11 be able to do that.

12 A. Yes.

13 Q. Could you please tell the jury about your training and
14 experience that allows you to be able to do that job?

15 A. Yes. I have a Bachelor of Science Degree in
16 Biochemistry from Clemson University, and twenty-four hours
17 toward a Master in Biochem, and I took a fourteen week
18 training course, as well, with the former S.L.E.D. agent that
19 runs the Spartanburg County Forensics Laboratory in
20 Spartanburg, South Carolina, and that included testing every
21 type of drug possible, for fourteen weeks, and some more
22 testing which you take in school, just general knowledge
23 tests.

24 And I've also been running the lab for three and a half
25 years now, and tested over twenty-five hundred, three thousand

1 substances.

2 Q. Okay.

3 MR. HIXSON: At this time the State would move this
4 witness to be proffered as an expert witness in the area of
5 narcotics tests and analyses.

6 THE COURT: Any objection?

7 MR. LONG: Has she been -- I would ask if she's been
8 qualified in a courtroom before.

9 THE COURT: All right, sir. If you wish to voir dire
10 the witness you may ask questions you would like. Go ahead.

11 BY MR. LONG:

12 Q. Have you been qualified by a court before?

13 A. Twelve times previously.

14 MR. LONG: I would agree, Your Honor.

15 THE COURT: All right, sir.

16 She's qualified to give her opinion.

17 MR. HIXSON: Thank you, Your Honor.

18 Q. May I approach with what's been marked as State's
19 Exhibit Number 2 into evidence ---

20 It's not in evidence yet.

21 Do you recognize that?

22 A. Yes, I do.

23 Q. Okay. Can you please just give a general idea of what
24 you do when you first receive a package such as that?

25 A. When I receive it it's in the blue inner envelope you

1 see through the clear package outside, and the first thing I
2 do is look at the entire package and make sure that any of the
3 tamper evidence seals have not been tampered with, that there
4 is no evidence of tampering, that the red adhesive seals at
5 the top are not tampered with as well, and if everything is in
6 good order then I will open the package, remove the evidence
7 for testing, and I make a note on it with my initials, the
8 letters "OK", and the date, that it was definitely not
9 tampered with.

10 Then I write our -- or whatever agency's case number,
11 and I assign it a lab number, and at that point then I remove
12 the evidence for testing. It is weighed, analyzed, and then
13 repackaged, like you see it here, and this is how I repackage
14 it, and I seal, again, the lab number, my initials and the
15 date that it's sealed into the package.

16 Q. Did you have an opportunity to test that specific
17 substance?

18 A. Yes, I did.

19 Q. Did you get any results from that?

20 A. Yes, I did.

21 Q. And what were the results from that?

22 A. It was cocaine found, in the amount of one hundred
23 twenty-two point six five grams, which is one thousand eight
24 hundred ninety-two point four eight grains.

25 Q. Did you write a report contemporaneous with your

1 findings or your analysis?

2 A. Yes, I do. I issued a report.

3 Q. I'm going to show the witness what has been marked as
4 State's Exhibit 5.

5 It's not in evidence yet.

6 See if you recognize this item.

7 A. Yes, I do. This is a copy of my report.

8 Q. Could you look at that for a second to see if that is a
9 fair and accurate xerox copy of your report.

10 A. Yes, it is.

11 MR. HIXSON: At this time, Your Honor, the State would
12 move State's Exhibit Number 5 into evidence.

13 THE COURT: Any objection?

14 MR. LONG: Your Honor, along with my objection -- my
15 previous suppression motion, I would object to that document
16 going in at this time.

17 THE COURT: I would ask that you have the witness
18 testify as to what she did, prior to the Court's ruling on
19 your motion.

20 MR. HIXSON: All right. Let me rephrase that, Your
21 Honor, and take some latitude to try to get to that point.

22 THE COURT: All right.

23 Q. You tested those substance -- the substance in the
24 baggie?

25 A. Yes, I did.

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1 Q. And you got results from that test?

2 A. Yes.

3 Q. And could you reiterate again what the results of that
4 test were?

5 A. It was cocaine found.

6 Q. In the amount of a hundred and twenty -- what was that?

7 A. A hundred and twenty-two point six five grams.

8 Q. And that was this, correct?

9 A. That's correct.

10 THE COURT: I'm sorry. She said a hundred and ---

11 MR. HIXSON: Hundred and twenty-two point six five.

12 THE COURT: What? Grams or grains?

13 A. Gram.

14 Q. Grams?

15 A. Grams, yes sir.

16 THE COURT: All right. I did not understand the word
17 that she stated.

18 MR. HIXSON: I apologize.

19 Your Honor, then I need to -- at this time the State
20 would move State's Exhibit Number 2 into evidence.

21 THE COURT: Any objection to State's 2 coming into
22 evidence?

23 MR. LONG: Yes sir.

24 THE COURT: All right. Subject to your previous
25 motion?

1 MR. LONG: Yes sir.

2 THE COURT: All right, sir. Regarding State's Number 2
3 and 5, it's in evidence over the objection of the defense.

4 (STATE'S EXHIBIT NUMBERS 2 AND 5 ADMITTED INTO
5 EVIDENCE.)

6 MR. HIXSON: At this time, Your Honor, may I publish
7 State's 5 to the jury?

8 THE COURT: Any objection?

9 MR. LONG: No sir.

10 THE COURT: You may do so.

11 MR. HIXSON: Your Honor, as well as State's 2.

12 THE COURT: Is there any objection?

13 MR. LONG: Along with my previous objections, but as
14 far as publishing, no sir.

15 THE COURT: All right, sir. You may publish.

16 MR. HIXSON: Your Honor, I have no further questions
17 for Ms. Floyd at this time.

18 THE COURT: All right. Cross-examination.

19 CROSS-EXAMINATION BY MR. LONG:

20 Q. Ms. Floyd, hi.

21 A. Hi.

22 Q. I'm going to show you what's been marked, and entered
23 into evidence, I believe, as State's Number 3, which is a
24 xerox photograph, copy of a xerox photograph of some drugs.
25 One of these bags here has been determined to be -- and

1 admitted to by one of the co-defendants -- as powder cocaine.

2 Did you test that?

3 A. I would not know. It was not in that particular "Best
4 Kit".

5 Q. Okay. Part of this case, part of this arrest?

6 A. As part of Lab Number L050803, no, it was not tested.

7 Q. It was not tested?

8 A. No, it was not received.

9 Q. Tell me how the testing of cocaine works. What is it
10 that -- what is it that you use to test it?

11 A. We use a presumptive test, which is a color test, that
12 gives it -- or gives me an indication of what the drug might
13 be initially, and it's presumptively tested positive to powder
14 cocaine, which is two blue colors and a red.

15 And then at that point we do what's called a
16 confirmatory analysis, and we use a gas chromatograph with a
17 mass-selective detector, which is a really big way of saying
18 that we separate all the components using chromatography, and
19 then those components show up in the detector, which is
20 printed using a report, using software that allows me to look
21 at those different things, and in this case the fingerprint
22 was there, per se, for cocaine.

23 Q. So two tests. First you just drop something on it and
24 if it turns blue -- kind of like a pregnancy test -- if it
25 turns a blue color it's cocaine.

1 A. Sure.

2 Q. Right. I don't know why that was on my mind.

3 And the second test that you use is a gastro-
4 spectrometer; is that what you said?

5 A. It's a gas chromatograph with a mass selective
6 detector.

7 Q. Okay. And it breaks down the different components of
8 the substance; is that right?

9 A. Yes. It separates out anything that's in there.

10 Q. What are -- well, in this particular fact -- let's ask
11 you about that -- what are the particular components of that
12 substance?

13 A. Well, in this particular case cocaine was found as a
14 controlled substance, and benzocaine also showed up as a
15 cutting agent. It was present.

16 Q. Okay, now benzocaine as a cutting agent, is that a
17 commonly used cutting agent?

18 A. It's fairly common, yes.

19 Q. You find it often in your testing?

20 A. About as much as anything else, yes.

21 Q. Well, let me ask you about that. About as much as
22 anything else. What else do you find in your testing as a
23 cutting agent?

24 A. Mostly the only things that are going to show up by
25 this type of analysis are the other "caines", like procaine,

1 or lidocaine, caffeine will show up sometimes.

2 Q. How many "caines" are there?

3 A. A lot.

4 Q. Okay. And this test will actually tell you if it's
5 benzocaine or lidocaine, or it will tell you which one of
6 those "caines" ---

7 A. It does, yes.

8 Q. ---It is. And you run across all different kinds of
9 cutting agents in your testing, correct?

10 A. Yes. And oftentimes nothing will show up.

11 Q. Okay. Oftentimes you will test something that has no
12 cutting agent?

13 A. Well, that does not mean that a cutting agent is not
14 present. It just means that this particular method I use,
15 with this instrumentation, it may not show up.

16 Q. Got ya. Does that instrument, and that method,
17 determine what percentage of substance is cocaine, and what
18 percentage of the substance is a cutting agent, one of the
19 other "caines"?

20 A. No, it does not.

21 Q. Okay. Does any of your testing give any kind of
22 quotient, any kind of figure on purity, strength, or
23 composition of the substance that you test?

24 A. Composition, yes. Purity and strength, no.

25 Q. What do you mean by composition? The same thing we

1 just talked about?

2 A. Yes.

3 Q. So, most -- would you agree with me that most of the
4 cocaine that you test comes out with one of these cutting
5 agents?

6 A. I'd say approximately half show some type of cutting
7 agent.

8 Q. Okay. And if you had tested this cocaine, State's
9 Exhibit Number 3, would you have been able to determine if one
10 of those "caines" showed up in that cocaine?

11 A. If a "caine" was present, yes, it would show up.

12 Q. Other than knowing if the same cutting agent was used
13 in that cocaine, and this cocaine, is there another way, aside
14 from that way, to determine if they are relatively akin to
15 each other, basically have the same chemical composition?

16 A. Not in my laboratory.

17 Q. Is there a way to do that in somebody's laboratory?

18 A. Yes, there is.

19 Q. S.L.E.D. can do it?

20 A. I'm not sure. D.E.A. could do it.

21 Q. D.E.A. can do it. They have a lab in South Carolina?

22 A. Not that I'm aware of, in South Carolina.

23 Q. You don't know that S.L.E.D. can or can't; you just
24 don't know?

25 A. I don't know.

1 Q. But you -- but it is possible to test two different
2 bags of cocaine to determine if their chemical composition is
3 identical?

4 A. Yes.

5 Q. And that was not done in this case?

6 A. No. I never received the other bag.

7 Q. Okay. Now, when you received this bag -- which I don't
8 think I'm going to hand it to you again -- but when you
9 received this bag -- actually I lied to you.

10 I'm sorry, Mr. Foreman.

11 When you received this bag, this inner bag here, it's
12 got twelve twenty -- I'm sorry -- I'm going to show you
13 State's Number 2.

14 I apologize.

15 It's got 12/29/05 on the inner bag there. Is that the
16 bag you received from someone to test?

17 A. No, this bag is not the bag I received.

18 Q. What bag -- where is the bag -- is this the bag over
19 here? Let me show you what's been marked and entered as
20 State's Number 7.

21 A. If I may refer to my notes.

22 Q. Sure. I'm going to hand you State's Number 7. You
23 tell me if that's the bag.

24 A. No. Anything that I would have received would be
25 resealed in this package, and according to my notes I received

1 this cocaine in this other blue bag that you see on the other
2 side, that has the control number of M328390, which is
3 referenced in my notes, and it was sealed when it was
4 received.

5 Q. All right. Do you know, in your notes -- in your case
6 file or anything in there, can you tell me who it was that
7 took that cocaine out of this bag and put it in that bag?

8 A. I would have no record of that.

9 Q. Do you know who would have a record of that?

10 A. I would assume Evidence, but I don't know for sure.

11 Q. All right. Okay.

12 MR. LONG: Thank you.

13 THE COURT: Redirect.

14 MR. HIXSON: Briefly, Your Honor.

15 REDIRECT-EXAMINATION BY MR. HIXSON:

16 Q. Detective Delpercio, does he seal up the "Best Kit",
17 usually, for processing, the lead -- the investigator?

18 A. That would be a part of his job, yes.

19 Q. Now, isn't the chemical comp -- the chemical
20 composition in cocaine -- isn't all cocaine cocaine?

21 A. Yes, cocaine is. It would show up as cocaine, yes.

22 Q. I just -- try to clarify it from different strains, or
23 different things, cocaine is cocaine?

24 A. No. Even in the form of crack it would still show up
25 as cocaine.

1 MR. HIXSON: I have no further questions, Your Honor.

2 THE COURT: Anything on those questions?

3 MR. LONG: No sir, Your Honor.

4 THE COURT: You may step down.

5 Do you wish this witness to be excused?

6 MR. LONG: I do, Your Honor.

7 MR. HIXSON: Yes, Your Honor.

8 THE COURT: You can be released from your subpoena to
9 go back to your regular duties, Ma'am.

10 All right. The next witness for the State.

11 MR. HIXSON: Your Honor, at this time the State of
12 South Carolina rests.

13 THE COURT: All right. Do you have some matters of
14 law, Mr. Long?

15 MR. LONG: Yes sir.

16 THE COURT: All right, ladies and gentlemen of the
17 jury, if you would go to your jury room, please. Thank you.

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, Mr. Long.

21 MR. LONG: Your Honor, I understand that you have
22 admitted the drugs, and I didn't approach to talk about it,
23 but I assumed you admitted them under ---

24 THE COURT: I have not ruled on your suppression motion
25 as of yet. That is still under advisement.

1 MR. LONG: Even though they are admitted they may still

2 ---

3 THE COURT: He -- they. That's correct. That is -- I
4 want to make that clear, that I'm still -- I still have your
5 suppression motion under advisement.

6 MR. LONG: I would like to argue that suppression
7 motion now, in the light of new testimony.

8 THE COURT: All right, sir.

9 MR. LONG: But first, I want to make a directed verdict
10 for failure of the State of South Carolina to have probable
11 cause for the stop. The testimony that we just got -- we've
12 got two witnesses for this. The first witness, Officer
13 Williams, said that it was not raining, that both windows were
14 down; he pulled up beside their car; he looked through the
15 windows and he saw a beer can; he pulled in behind him and he
16 stopped; the reason for the stop was that he saw a beer can.

17 The next witness that they brought testified that the
18 weather was bad; it was real bad, the windows were up, the
19 windows were foggy, that he does not remember the police
20 officer pulling up beside them, just maybe turning around, but
21 he knows he pulled up behind them, and when he came to the
22 window the beer can was not in view, in fact, his answer to my
23 question was, it was hidden.

24 The officer then walked around the car, opened the door,
25 which he has no right to do, pulled my client out, reached

1 back in the car, which he had no right to do, searched between
2 two seats, underneath a jacket, and found the hidden beer can.

3
4 No reason for the stop, no reason to enter that car, no
5 reason for that search. Everything else is fruit of the
6 poisonous tree.

7 THE COURT: All right, sir. Regarding that directed
8 verdict motion I would respectfully decline to grant your
9 motion for the reason that you have presented to me in your
10 argument. There is a dispute in the facts. The jury is the
11 one that judges credibility and believability. Clearly the
12 officer's testimony would support a stop for open container,
13 based upon the officer's testimony. The testimony of Mr.
14 Rodney Smith would not support a stop by the police officer,
15 but that is a conflict in the testimony, and it is not for the
16 Court, at this point in time, to resolve that conflict. What
17 I have to find is that there is sufficient evidence for the
18 matter to go forward, and I certainly find that based upon the
19 officer's testimony, Officer Williams, his testimony, as to
20 the stop and the reasons for the stop.

21 MR. LONG: Okay. Your Honor, on the suppression
22 issue ---

23 THE COURT: Yes sir.

24 MR. LONG: ---The -- again, according to Rodney Smith
25 and they -- it's their witness -- they brought him here -- he

1 testifies that Danny Brown is brought out of the car, the door
2 is closed, the duffle bag is still in the car, he takes him
3 back to the back of the car, comes back, opens the door, pulls
4 the duffle bag out and starts going through it. Now that, I
5 realize, is somewhat different than what Officer Williams
6 said. But we've got issues with what -- with the way it
7 happened, the way Officer Williams says it happened. I've got
8 real serious issues with the way Mr. Smith says it happened.
9 That duffle bag, Your Honor, was a closed container that my
10 client had a sincere right to privacy on.

11 If Officer Williams had a reasonable suspicion, or
12 probable cause, that there was something in that bag, he may
13 have been able to get past and get into searching that bag,
14 but as soon as he got control of that bag, away from everyone
15 else -- which we all agree he did that. Rodney Smith agrees
16 that he took it away, and had control of it, Officer Williams
17 agrees that he took it away and had control of it, then, at
18 that point, based on the case law language, no exigency
19 exists. Based on the United States versus Robinson, and the
20 Preston versus United States case, Your Honor, once law
21 enforcement officers have produced luggage, or other personal
22 property -- this is exactly on point -- the -- to their
23 exclusive control, and there is no longer any danger that the
24 arrestee might gain access to the property, to seize a weapon,
25 or destroy evidence, a search of that property is no longer

1 incident to that arrest. It is, at that point, to be required
2 to gain a search warrant or consent, which we have neither in
3 this case.

4 Your Honor, the day I got this case I knew -- the day
5 that I got this case I knew that this was the issue in this
6 case. It's been the issue in this case ever since. I, based
7 on the information that we get as we defend these cases -- and
8 you know because you were a trial lawyer -- that we get
9 incident reports, and we get case summaries, but we don't know
10 exactly what is going to be testified to over here.

11 When I came over here to defend this case I didn't know
12 exactly how the officer was going to say he got access to that
13 bag, but I know now that he got access to that bag without a
14 right to do so. The Fourth Amendment of the United States of
15 America -- even -- just because he's riding in a car doesn't
16 mean that he gives up the right to the privacy of his closed
17 container, his luggage.

18 Every single one of these cases, Your Honor, the United
19 States versus Chadwick, California versus Acevedo, Florida
20 versus Wells, every single one of those cases, and all of the
21 cases cited within those, and every other case that I can
22 find, the only time that the Court ever allowed a police
23 officer to search a closed compartment, a closed container, a
24 piece of luggage, was if they had probable cause to believe
25 that there was contraband in that bag. Clearly not the case

1 here. He had no reason to look in that bag, other than to --
2 and the language in **Wells** -- "seek more criminal activity".
3 That was it. He was -- there was no reason to look in that
4 bag. He had control of it. It was closed. Danny Brown is
5 arrested. Done.

6 Now, Your Honor, I have been handed a large stack of
7 cases by the Solicitor. The **Belton** case, which is cited in
8 the **Wells** case, and the **Belton** case is good law for my client,
9 even though he has brought it to you. The different here in
10 the **Belton** case, Your Honor, is, there was probable cause.
11 Police officer -- a State Trooper comes up, four men in an
12 automobile, and he smells burned -- burning marijuana. We all
13 know that, when a police officer smells burning marijuana he's
14 got more than probable cause; he's got a reasonable suspicion;
15 he's got a strong suspicion that there is marijuana in that
16 car, which gives rise to a search of just about everything in
17 that car. That case, because of that great distinction, is
18 completely different. We don't have probable cause,
19 reasonable suspicion. There is no other criminal activity,
20 not even a driving violation, not even speeding, nothing, just
21 the allegation that there was an open container, that now
22 they've put two witnesses up. One says it wasn't in plain
23 view and one says it was.

24 Your Honor, the **Brannon** case that he handed to you is a
25 consent search. Clearly we don't have consent in this case.

1 The Illinois versus Lafayette, this was an inventory of
2 the person, not of a closed bag. This is inventory,
3 subsequent to arrest, of an individual, his jacket he was
4 wearing, his clothes. Does not apply.

5 The case that he handed up to you, United States versus
6 Scone, is not even a search case.

7 The United States versus Porter, that's a T.E.R.I. stop.
8 This is not a T.E.R.I. stop. We know this is not a T.E.R.I.
9 stop. That is a completely separate set of circumstances in
10 there, and we know what we are dealing with here. We are
11 dealing with the search and seizure of a closed piece of
12 luggage in this particular case, that they had no other right
13 to search.

14 Your Honor, in the United States versus Han, H.a.n.
15 case, there was a confidential informant that told the police
16 that drugs were going to be in a bag. They had a reasonable
17 suspicion or probable cause to believe that drugs were in that
18 bag when they made that stop, and that's why that case is
19 different.

20 And Your Honor, the case of the United States versus
21 Willie Robinson, that's not a closed container case. That's
22 searching around a vehicle and finding something wide open.
23 That is not a closed container case.

24 United States versus Ross, again, a probable cause case.
25 they had probable cause to believe that there was contraband

1 in the car, therefore they searched the closed -- the closed
2 document.

3 And Thornton versus United States is not a closed
4 container case.

5 Your Honor, textbook unreasonable search and seizure,
6 violation of the Fourth Amendment. My client had a right to
7 privacy of whatever the contents were in that bag. The
8 inventory, or search incident to arrest, or whatever it is
9 that they tried to call it, what it is is a search for more
10 criminal evidence, which is not allowed under the law, and I
11 strongly, strongly, respectfully request, Your Honor, that you
12 suppress that evidence, and ---

13 THE COURT: All right, sir.

14 MR. LONG: ---Dismiss the case.

15 THE COURT: All right, sir.

16 All right, Solicitor, reply arguments.

17 MR. HIXSON: Thank you, Your Honor.

18 Listening to Mr. Long discuss these cases actually
19 helped me highlight what -- I had a difficult time
20 understanding why there appears to be some conflict in the
21 stop, and I think I finally understood it by listening to Mr.
22 Long.

23 The issue in this case is not probable cause. There --
24 once a defendant is placed under arrest a search incident to
25 that arrest flows naturally from. It is, per se, reasonable,

1 according to multiple Supreme Court Decisions -- and we will
2 get into the case law in a second -- but that is the
3 difference. Once the defendant is placed under arrest it is
4 not a probable cause issue, and it's not evaluated by the
5 Supreme Court or others under a probable cause standard, that
6 it's -- it is, per se, reasonable -- as Your Honor is well
7 aware, there are several exceptions to a warrantless search
8 requirement under our Constitution. Obviously you have to
9 stop and frisk. Specifically in this case, a search incident
10 to an arrest, hot pursuit, protective sweeps, things like
11 that, are -- and the Court -- by the cases we will cite later
12 on, expressly say that, and I think perhaps that's the
13 concern.

14 Your Honor, I didn't provide these cases to you to say
15 all these cases were on point. In fact, I did them to help me
16 understand, and then, of course, to help the Court -- try to
17 communicate to the Court my understanding of these.

18 The **Chadwick** case, as well as these other cases, such as
19 **Bertine** and **Wells Lafayette** -- excuse me -- **Bertine**, **Wells**,
20 **Lafayette to Florida**, those are all inventory search cases,
21 Your Honor. Those are all based on a defendant is in custody.
22 There is a standard procedure established because the car is
23 impounded in a lot, or the defendant is in jail, and they are
24 going through his property pursuant to the inventory search,
25 and so the policies surrounding the police department open all

1 the containers, or don't open any, are relevant in that, and
2 that is the nature of those cases. Bertine sets it up, Wells
3 continues it. But those are all not exi -- those aren't
4 searches incident to a lawful arrest. Too much time has
5 transpired. It is not contemporaneous with the arrest. It is
6 inventory. The car is in an impound lot, and at some point in
7 time they go through those.

8 So the facts of this case are distinguished from the
9 Bertine, Wells and Lafayette line of cases. That's why I
10 provided all those to Your Honor.

11 Also, the discussion about Chadwick and Ross, the
12 problem, Your Honor, appears to be that the Court decided
13 Chadwick and they -- they said, we've got probable cause based
14 on a statement that an individual is driving down I-85 and an
15 informant says he may have some drugs in the car. They
16 stopped that car based on the container in the car, not based
17 on a reasonable search incident to arrest. They stopped that
18 car under the Chadwick line, and so they have probable cause
19 for the container, but they don't have it for the car.

20 And then Ross says, we've got a stop for the car, but
21 not the container, and it was an absolute mess, and so the
22 Court, in Acevedo says, enough, this is -- we can't give any
23 instruction to law enforcement to do this; we have to figure
24 some way to help people understand what Constitution asks of
25 our law enforcement personnel, so they came down with Acevedo,

1 Your Honor. In fact, **Acevedo** expressly abrogates **Chadwick**.
2 It says, no longer. And in **Acevedo** -- Your Honor, I believe
3 it's on page seven of that Opinion -- they go through a long
4 discussion, and then on page seven they specifically point to
5 **Belton** and say, you know, we wouldn't have to do all this
6 because search incident to arrest is, per se, reasonable.
7 **Belton** applies here, and we just want to make sure no one gets
8 confused and thinks, somehow, **Belton** doesn't carry the day,
9 and that is -- I specifically want to find that cite for Your
10 Honor. I'm not sure that we all have the same copy, as we
11 should. I didn't copy **Acevedo** for the Court, so I'm not sure
12 what page that is on for you. I have **Chadwick**. I apologize,
13 Your Honor. Let me find **Acevedo**.

14 Specifically, Your Honor, it says, since the police, by
15 hypothesis, has probable cause to seize the property, we can
16 assume that a warrant will be routinely forthcoming in the
17 overwhelming majority of cases, and the police often will be
18 able to search containers without a warrant, despite the
19 **Chadwick** rule, as a search incident to a lawful arrest. In
20 **New York versus Belton** the Court said, quote, we hold that,
21 when a policeman has made a lawful custodial arrest, such as
22 an arrest for a beer -- saw a beer can -- that the occupant in
23 that automobile -- he may, as a contemporaneous incident of
24 that arrest, search the passenger compartment of that
25 automobile. It follows from this conclusion that the police

1 may also examine the contents of any containers found within
2 the passenger compartment, Your Honor. That's the import of
3 the **Belton** case, and made Your Honor -- maybe realize that
4 **Belton** is what's on point, and it's progeny, as you trace
5 **Belton's** lineage, and of course that's what I did, Your Honor,
6 to adequately represent the interest of the State, or tried
7 to. That's Your Honor's decision.

8 The other cases cited by -- that were distinguished by
9 defense counsel, **Han**, as well as **Porter**, **Sloan**, all stem from
10 the basic tenets of **Belton**, and that is, a per se reasonable
11 search, based on the arrest of the -- a defendant. Factually
12 Mr. Long is correct. One is not a car case, and it says the
13 police had probable cause to arrest the defendant, search of a
14 bag containing heroin was incident to that arrest, despite the
15 fact they took some time to do it. In other words, saying
16 that, whether the officer walked back to the back of the car,
17 or whether he looked at it right away, it is all
18 contemporaneous with the arrest of the defendant, based on
19 adequate probable cause to be arrested. So it's a reasonable,
20 per se, flowing from that.

21 United States versus Porter, that's a Court of Appeals,
22 Fourth Circuit case. That indicates that a warrantless search
23 of a carry-on bag, which was within defendant's reach, was a
24 lawful -- as an incident to a lawful arrest. That was a
25 flight coming from Miami, Your Honor. The D.E.A. had some

1 interest in her. They took her to a room, the bag was sitting
2 over there. They talked to her. They went -- arrested her
3 and looked in her bag, and there was heroin in that bag, and
4 factually that is very similar, although there is not a car
5 involved in it, very similar to our case.

6 Finally, Your Honor, as it relates to the **Belton** chain
7 of cases, the Supreme Court, in United State versus Thornton -
8 - and this came out in 2004, Your Honor -- this expands
9 **Belton**, to show Your Honor that **Belton** is still good law. It
10 indicates that the Fourth Amendment allo -- once an officer
11 makes a lawful custodial arrest of automobile's occupants, the
12 Fourth Amendment allows the officer to search the vehicle's
13 passenger compartment. That's **Belton**. But this adds, even
14 when an officer does not make contact until the person
15 arrested has already left the vehicle.

16 In that case -- the **Thornton** case, Your Honor, they
17 pulled into a parking lot, the officer started to pull up
18 behind him, the occupant got out, started to walk away from
19 it, the officer arrested him. At that point in time then went
20 back in the car and got items out of the car at that time, and
21 the Supreme Court said that was, per se, reasonable as a
22 search incident to a lawful arrest, Your Honor, and it also
23 helps show that **Belton** continues that tradition for the Court,
24 and that's 2004.

25 Also is of importance related to exigent circumstances

1 and potential risk to the officer, as well as his safety, the
2 Thornton case of our Supreme Court says that the stress of
3 arrest is no less merely because the arrestee exited his car
4 before the officer initiated contact, nor is the arrestee less
5 likely to attempt to lunge for a weapon, or to destroy
6 evidence. He is outside of the vehicle. That's kind of the
7 thinking behind that, Your Honor.

8 Quickly, Robinson just refers to the basic tenet of a
9 search incident to an arrest, just a basic, kind of seminal
10 type case, Your Honor. Really factually doesn't have much
11 import.

12 The only thing other important in Robinson, it indicates
13 that, this case he arrested the defendant for driving without
14 a driver's license, full custody search, found some drugs on
15 him. The officer testified, I wasn't afraid of the guy; I
16 wasn't concerned or in fear for my life at all. And the
17 Supreme Court in that said that fear is not dispositive,
18 quote, he said, we found the package of the heroin admissible,
19 even though the officer did not indicate any subjective fear
20 of the defendant; he did not suspect that the defendant was
21 armed. So the -- whether he was armed or not, or this or
22 that, according to Robinson, is not dispositive of the
23 reasonableness of the search. The fact he is in custody
24 already makes it reasonable.

25 And then finally, Your Honor, briefly, looking through

1 our -- our jurisdiction in South Carolina I found the State
2 versus Brannon. Now the -- Mr. Long is absolutely correct.
3 That is a consent case. The majority found on consent;
4 however, the concurrent Opinion in that by Judge Anderson is
5 telling, in fact, Judge Anderson indicates that he agrees with
6 the result, but he doesn't understand why the majority went
7 through all of that, because the automobile exception applies;
8 they wasted time on consent because it was search incident to
9 a lawful arrest, it's exigent circumstances, the car -- they
10 can search -- they can search. That's concurring, Your Honor,
11 obviously that's not the majority opinion, but it's rather
12 persuasive, and does a pretty good discussion of the, per se,
13 reasonableness of a search incident to a lawful arrest.

14 The facts of the case, briefly, Your Honor, as the
15 State's understanding, so that's the basis for my argument.
16 The Officer saw the Defendant with a beer can in the passenger
17 seat of the car. It is uncontroverted. Even the witness's
18 testimony -- Mr. Smith, said there was a beer in the car, so
19 we know he had to see that beer in order to stop the car. The
20 facts show that there was a beer can, and where he saw it, or
21 how the visibility was, the facts are uncontroverted, there
22 was a beer can in the car. That's, of course, the testimony
23 of this Officer.

24 He placed the Defendant under -- walked around the car,
25 received -- pulled the bag out of the car. Obviously there is

1 some conflicting facts as it relates to what point in time it
2 was. There is no conflicting facts, that is, a search -- he
3 was placed under arrest, then went in the bag after the
4 Defendant was placed under arrest. The Officer was by himself
5 on a street corner. He indicated in his testimony -- the
6 State recalls -- concern that the nervous nature of Rodney
7 Smith, that perhaps this -- the driver may drive off. He
8 asked the individual to put his keys on top of the car -- the
9 car, put it up on the hood, to prevent, perhaps, Mr. Smith
10 from driving away with the duffle bag in the -- in the
11 floorboard. The Officer testified multiple times as it
12 related to officer's safety, or things of that nature, called
13 for back-up, indicating his concern by himself on a street
14 corner at that time. In his prior testimony I recall him
15 saying something about he didn't know if there was a machine
16 gun in there, something of that nature. The State sees this
17 as a search incident to a lawful arrest.

18 He couldn't -- the interesting part, Your Honor,
19 briefly, is under **Ross** and the other cases. Under defense
20 counsel's theory the drugs would be admissible if he didn't
21 touch them, left them in the car, towed the car and got it,
22 but it's not admissible because he was concerned for himself,
23 he claimed the bag, picked it out, but it's not admissible
24 there. It's kind -- it sounds very close to inevitable
25 discovery type argument as it relates to that, but we still

1 don't believe we get to that point, Your Honor. We believe,
2 on it's face, it's a search incident to a lawful arrest, Your
3 Honor, and for that reason, we would ask that the motion be
4 respectfully denied, and the drugs allowed to remain in
5 evidence, Your Honor.

6 THE COURT: All right. So your argument is that a
7 search incident to arrest allows the officer to go into a
8 closed container that he has complete custody and control
9 over?

10 MR. HIXSON: That's correct. There was no expectation
11 of privacy in that container once the Defendant is under
12 arrest. It's not based on probable cause like a warrant
13 requirement, Your Honor. Probable cause has been established
14 by the existence of an arrest. That's what Belton stands for,
15 Thornton stands for. We never get to the probable cause
16 analysis because it is, per se, reasonable because it is a
17 search incident to a lawful arrest.

18 That -- it's hard to find some cases on that, Your
19 Honor, because that has been seen as rather well settled.
20 That is one of the accepted exceptions to a -- the warrant --
21 search requirements, Fourth Amendment, in essence.

22 THE COURT: Before -- Mr. Long, be glad to hear from
23 you. Before you do that, let me ask you a question. Assume
24 the Officer -- you know, he had sat that bag on the side, and
25 he took complete custody and control over it. There is no

1 question that it is the Defendant's bag, I mean, that's the
2 evidence; it's the Defendant's bag. He takes custody and
3 control over it, puts it in the trunk of his police car, takes
4 it to the jail. When the Defendant is booked, and the items
5 then are of the Defendant, aren't they then, at the jail,
6 inventoried? Would not the drugs have been found at the jail
7 at that point in time? Was it not inevitable that the drugs
8 would be found?

9 MR. LONG: It may be inevitable that they would be
10 found, but it doesn't make it proper. If -- if -- if they had
11 to -- if they had taken that closed duffle bag to a Judge ---

12 THE COURT: He didn't have to take it to a Judge. All
13 he had to do was take it to the jail ---

14 MR. LONG: Well, but if they had ---

15 THE COURT: ---Because it's the Defendant's bag. All
16 he had to do was take -- put the -- take the bag, put it in
17 the trunk, take the bag and the Defendant to jail. The bag is
18 looked at, inventoried at the time the Defendant is booked.
19 That's all he had to do.

20 MR. LONG: All of these -- that would have happened the
21 same way in all these cases, Your Honor, but ends doesn't
22 justify the means. They've got -- in the **Brannon** case that he
23 says that Judge Anderson says that the automobile exception
24 applies, that's not what Judge Anderson said. In the last
25 sentence of the **Brannon** case, in his concurring, but slightly

1 dissenting Opinion, he says, law enforcement officers had
2 probable cause to believe that Brannon and Mayberry were
3 transporting drugs from the tips they got from a confidential
4 informant, accordingly, the warrantless search of the vehicle
5 was proper.

6 Judge, the Belton case is a 1981 case. The Wells case,
7 and the California versus Acevedo cases are '90 and '91.
8 Those -- that's newer law. In Acevedo -- clearly, in Acevedo,
9 they -- it's held that -- and it cites Sanders, that the
10 heightened privacy expectation and personal luggage -- and
11 that case concluded that the presence of luggage in an
12 automobile did not diminish the owner's expectation of privacy
13 of his personal items.

14 Now, whether they've got a right to take that bag -- and
15 because he said it was his -- and take it along with them to
16 the jail, and have someone else search it, is -- that actually
17 -- Your Honor, the point is moot. The point here is, this
18 Officer did what the Constitution says he can't do, and he
19 just went into a closed bag and searched it. He did not
20 search it for an inventory, because if these cases hold -- and
21 especially in the Wells case, I believe it was, that there was
22 evidence in here, that they tried to claim it was an inventory
23 search, but it actually wasn't any inventory done. He didn't
24 go in to inventory that bag. He opened it up to see if there
25 was anything in it. He found what he wanted to found and he

1 zipped it back up. That's an unlawful search.

2 And again, if they went to a Judge with that closed bag
3 and said, okay, Judge, here's what we've got; we've got Danny
4 Brown with an open container of alcohol, and we want a warrant
5 to search that bag -- I'm not a judge, but I see -- fail to
6 see the reason, probable cause to give a warrant to search
7 that bag in that instance, and that is an even stronger
8 standard at that point. Your Honor ---

9 THE COURT: What do you say about the Solicitor's
10 argument about a search incident to arrest?

11 MR. LONG: These cases here, these exact cases, hold
12 that a search incident to arrest does not apply to closed
13 containers, period.

14 The Belton case indicated that they went into a closed
15 container, a zipper pocket in a jacket, but Belton is
16 different. They had reasonable suspicion, they had burned
17 marijuana, and that's 1981. These two new cases, not at all.
18 That is not -- search incident to arrest, Your Honor,
19 indicates the body -- the items that are on that person -- and
20 by the facts of this case he was taken, put into custody,
21 either placed in the car or put behind the car, case over. Go
22 deal with the driver. That's it. That is not a search
23 incident to arrest.

24 And Your Honor, I ---

25 THE COURT: All right.

1 MR. LONG: ---I feel stronger about this than any
2 suppression motion I've ever made.

3 THE COURT: I -- well, I understand that. Obviously
4 you do, and the State ---

5 MR. HIXSON: May I very briefly address one point, Your
6 Honor, briefly?

7 THE COURT: ---Yes sir. All right.

8 MR. HIXSON: Specifically, the quote that -- referring
9 to **Acevedo**, **Acevedo** has taken care of the issues that we have
10 here. That's the import of that case. Specifically, I wanted
11 to address this to the Court, because I think it addresses one
12 of Your Honor's questions to Mr. Long. I had already
13 indicated the holding of **Belton** that said it falls from this
14 conclusion that the police may also examine the contents of
15 any containers found within the passenger compartment after a
16 lawful custodial arrest.

17 In the language in **Sanders** -- that's what **Acevedo** wanted
18 to do, was to get rid of this confusion. It says, finally,
19 the search of a paper bag -- which, in this case, was a paper
20 bag in the car, they had found it -- defense counsel claimed
21 that -- just like Your Honor did, that you have to take the
22 paper bag and go get a warrant. You can search the car, under
23 **Carroll**, but you can't open up that paper bag; they've got to
24 take that paper bag to the warrant -- get a warrant. And the
25 Court, in **Acevedo** says, finally, the search of a paper bag

1 intrudes far less on an individual's privacy than does incur
2 in sanction long ago in **Carroll**. In **Carroll** they cut up the
3 upholstery of a car to search -- hunt for drugs. The Court
4 says that, "Destroying the interior of an automobile is not
5 unreasonable; we cannot conclude that looking inside a closed
6 container is. In light of the mental protections we hold that
7 the Fourth Amendment does not compel separate treatment for an
8 automobile search, but extends only to a container within the
9 vehicle."

10 And they state **Chadwick** and **Sanders** have confused Courts
11 and law enforcement, and repeatedly affected law enforcement,
12 that's why **Acevedo** said, this is too confusing; if you have
13 search incident to arrest, that's a container, that's his, you
14 can take care of it all at one time, Your Honor. That's the
15 import of **Acevedo**, Your Honor.

16 THE COURT: All right. Thank you.

17 We will take a break.

18 Thank you very much.

19 MR. LONG: Thank you, Your Honor.

20 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
21 THE PRESENCE OF THE JURY.)

22 THE COURT: All right, Mr. Long, regarding your
23 suppression motion that you made earlier, and I took under
24 advisement, and that you have now renewed, and made further
25 arguments at the end of the State's case, so it's clear for

1 the record, the facts that I see in this particular matter are
2 one, that there was a lawful custodial arrest made by the
3 Officer of the Defendant. After that, or in that arrest, it's
4 clear that he secured the Defendant, first with handcuffs, and
5 then by placing him in the back of his patrol car before he
6 searched the black bag. The black bag was in the floorboard,
7 in the area controlled by the Defendant, the person arrested.
8 The Officer did, this time, in this particular proceeding,
9 testified to some facts about the rationale and reason for
10 going into the bag, as far as officer's safety, posing a
11 threat, those types of things. It's clear that, when the
12 Officer came back to the bag, it was on the sidewalk, on the
13 passenger's side of the vehicle. The driver of the vehicle
14 was on the other side of the vehicle, opposite the Officer and
15 the bag. The Officer unzipped the bag, looked through it,
16 opened a Frito bag, found some, what appeared to be illegal
17 narcotics, contraband, resealed that, and zipped the bag back
18 up, and thereafter called the narcotics officer.

19 The Officer initially, upon stopping the vehicle and
20 seeing the bag, which he said he did, at the very beginning,
21 could have -- assuming he had probable cause for the stop --
22 and he did -- there is an open container -- there is no
23 question about that he had probable cause to stop the car --
24 searched that item for -- under exigent circumstances. Also,
25 at the time he had secured the Defendant in the back of the

1 car, in handcuffs, and the driver of the vehicle was not in
2 the vehicle at the time, but on the opposite side of the
3 vehicle, he could have picked up the bag and put it in his --
4 trunk of his patrol car, secured it, and it could have been
5 inventoried at the same time the Defendant was transported to
6 the detention center and booked and arrested. Both of those
7 would have been fine under the prevailing law. He did neither
8 of those. This is not an inventory search.

9 With all that, and despite my misgivings as to the
10 actions of the Officer in this particular case, I am looking
11 at the U.S. Supreme Court case of the State of New York versus
12 Roger Belton. This case has been the subject of great
13 discussion by Appellate Courts in the Federal system and the
14 State system. As an example, the State of Ohio. Soon as
15 **Belton** was announced, had a Decision whereby their Supreme
16 Court declined to follow **Belton**. Under their Constitution and
17 other matters they found fault with **Belton**, as set forth in a
18 case, and there have been plenty of commentators that have
19 criticized **Belton**. The State of Ohio, approximately ten years
20 after that Decision, found that they had committed an error in
21 not following **Belton**, and saying that **Belton** established a
22 bright line tests. Numerous other states in the United States
23 have also found that **Belton** establishes a simple bright line
24 test.

25 In **Belton** the U.S. Supreme Court says, "In order to

1 establish the workable rule, this category of case requires we
2 read..." -- and **Chimel** was a previous U.S. Supreme Court
3 Decision -- definition of the limits of the area that may be
4 searched in light of that ruling, indicated that they hold
5 that, "When a policeman has made a lawful custodial arrest of
6 the occupant of an automobile..." -- that is, as is clear here
7 -- there is no question that there was a lawful arrest of the
8 Defendant in this matter for the open container -- "...he may,
9 as a contemporaneous incident of that arrest, search the
10 passenger compartment of that automobile. It follows, from
11 this conclusion,..." that the policy may -- that the police --
12 I'm sorry -- "...the police may also examine the contents of
13 any containers found within the passenger compartment, for if
14 the passenger compartment is within the reach of the arrestee,
15 so also will containers in it be within his reach. Such a
16 container may, of course, be searched, whether it is open or
17 closed, since the justification for the search is not that the
18 arrestee has no privacy interest in the container, but that
19 the lawful custodial arrest justifies the infringement of any
20 privacy interest the arrestee may have. It is true, of
21 course, that these containers will sometimes be such that they
22 could hold neither a weapon, nor evidence of the criminal
23 conduct for which the suspect was arrested. The authority to
24 search the person incident to lawful custodial arrest, while
25 based upon the need to disarm and/or to discover evidence,

1 does not depend on what a Court may later decide was the
2 probability in a particular arrest situation, that weapons or
3 evidence would, in fact, be found upon the person of the
4 suspect. A custodial arrest of a suspect, based upon a
5 probable cause, is a reasonable intrusion under the Fourth
6 Amendment. That intrusion being lawful, a search incident to
7 the arrest requires no additional justification."

8 "In **Belton**..." -- and they were talking about the lower
9 Court Decision -- "...it seems to have been the theory of the
10 Court of Appeal..." -- the lower court -- "...That the search
11 and seizure in the present case could not have been incident
12 to the respondent's arrest because Trooper Nicott, by the very
13 act of searching the respondent's jacket, and seizing the
14 contents of his pocket, had gained exclusive control of him,
15 but under this fallacious theory, no search or seizure
16 incident to a lawful custodial arrest would ever be valid by
17 seizing an article, even on the arrestee's person, or an
18 officer may be said to have reduced that article to his
19 exclusive control." In **Belton** the person was arrested,
20 and detained, and not near the items where the officer went in
21 the car. After he arrested him, and the person was in a
22 different area, he went in the car. He then searched a coat
23 that was in the area where he found the arrestee. He went
24 inside and unzipped the coat, and went into a pocket and found
25 contraband that was not the reason he arrested the defendant

1 for. Those facts are clearly the same as here.

2 The Supreme Court went on to say, "It is not questioned
3 that the respondent was the subject of a lawful custodial
4 arrest." That's the same as here. "The search of the
5 respondent's jacket followed immediately upon that arrest, so
6 that..." -- in that case that defendant was also already under
7 arrest and removed from the area. "The jacket was located
8 inside the passenger compartment of the car in which the
9 respondent had been a passenger just before he was arrested.
10 The jacket was thus within the area which we have concluded
11 was..." -- and it's in quotes -- "...within the arrestee's
12 immediate control, within the meaning of the *Chimel* case. The
13 search of the jacket, therefore, was a search incident to a
14 lawful custodial arrest, and it did not violate the Fourth and
15 Fourteenth Amendments."

16 As I said, though I have concerns about the Officer's
17 conduct in this particular case, it is clear that the U.S.
18 Supreme Court set forth a bright line test. The Officer's
19 conduct falls within that bright line test. The motion to
20 suppress is denied.

21 Is the defense ready to proceed?

22 MR. LONG: Yes sir.

23 THE COURT: All right, sir. Is the State ready to
24 proceed?

25 MR. HIXSON: Yes, Your Honor.

1 A. That's correct.

2 Q. ---Is that right. Did you go to lunch that day in your
3 car?

4 A. Yes.

5 Q. And so when you left A.V.X. to go out to the parking
6 lot, your car was in the parking lot?

7 A. That's correct.

8 Q. And your -- it was your understanding that Danny was
9 gone to Laurinburg with Freddie?

10 A. Yes.

11 MR. LONG: All right. That's all I have. Thank you.

12 THE COURT: Anything on those questions, Solicitor?

13 MR. HIXSON: Nothing, Your Honor.

14 THE COURT: You may step down.

15 MR. LONG: Danny Brown, Your Honor.

16 THE COURT: All right. Come around to be sworn, sir.

17 DANNY CORTEZ BROWN, being first
18 duly sworn, testifies as follows:

19 DIRECT-EXAMINATION BY MR. LONG:

20 Q. How old are you, Danny?

21 A. I'm thirty-eight.

22 Q. From Myrtle Beach?

23 A. Yes sir.

24 Q. Graduated from Myrtle Beach High?

25 A. Graduated from Myrtle Beach High.

1 Q. Went to college?

2 A. Went to Lees McCrea Junior College, playing football
3 there.

4 Q. Did you graduate from college?

5 A. Yes sir.

6 Q. What do you do for a living?

7 A. I work for Johnson Coastal Consulting, consulting
8 company. I deal with the professional athletes that come
9 through the business. I know some athletes that I went to
10 college with that played in the pros, and I know some as of
11 now.

12 Q. Back up just a little bit. Go ahead. I'm sorry.

13 A. I work for Johnson Coastal Consulting. I consult with
14 the professional athletes that they have coming in town.

15 Q. You can stop, Danny. We heard you. I just didn't want
16 you spitting. It kind of -- when you do "p"s it makes a loud
17 noise, and everybody kind of cringes.

18 What is it that Johnson Consulting does?

19 A. It's a real estate company. They do land development,
20 and real estate deals, and my basically job is to consult with
21 the athletes, due to the fact that I'm a athlete myself, and
22 has played with professional athletes that I went to school
23 with, and that still play professional ball now.

24 Q. Who is the owner of the company?

25 A. Mark Johnson.

1 Q. Do y'all actually have athletes, professional athletes
2 that come to Myrtle Beach and buy property?

3 A. All the time, yes.

4 Q. Would you have examples of that?

5 A. I have Charles Shackelford, Raymond Felton, Butchie
6 Wallace, just to name a few names -- that I have dealt with.

7 Q. Okay. And how long have you done that?

8 A. I've been doing that around three years now. I haven't
9 done it recently because of some problems with my family, my
10 mother.

11 Q. All right. Your mother was here in court with you
12 yesterday; she is not today; is that right?

13 A. Correct. Correct.

14 Q. What kind of problems have you been having with her?

15 A. She recently had a stroke, and she has dialysis three
16 times per week.

17 Q. Is that where she is today?

18 A. Correct.

19 Q. And you help take care of your mama?

20 A. Yes.

21 Q. Your father is deceased?

22 A. My father is deceased.

23 Q. And she lives over in Myrtle Beach?

24 A. She has a Myrtle Beach address.

25 Q. Does she still live in the home you all grew up in?

1 A. Yes.

2 Q. And that's over on what street?

3 A. That's on -- at [REDACTED] Dunbar Street.

4 Q. Okay. And your family used to own a funeral home over
5 there, right?

6 A. Correct.

7 Q. Now, October 5th, right before this incident that we
8 are going to talk about -- talk a lot about. October 5th,
9 that night, where did you sleep?

10 A. I went to Green Sea, South Carolina, to stay with
11 Monica Brisbon.

12 Q. All right. And how are you related to Monica?

13 A. She's my girlfriend. She was my girlfriend then, and
14 she's my fiancée as of now.

15 Q. Do you plan on marrying her?

16 A. Yes.

17 Q. When -- don't want to get you in trouble. When are you
18 going to marry her?

19 A. Soon.

20 Q. She lives out there, and you went to stay with her?

21 A. Yes.

22 Q. And did you take that black duffle bag with you?

23 A. Yes.

24 Q. What was in it?

25 MR. HIXSON: Your Honor, this is his witness. I

1 believe he is leading the witness quite a bit at the present
2 time.

3 THE COURT: All right, sir. Don't lead your witness,
4 please sir. Thank you. Go ahead. Continue on.

5 Q. Did you take a change of clothes?

6 A. Yes, I did.

7 Q. What did you take it in?

8 A. I took it in the black duffle bag.

9 Q. What -- exactly what was in there?

10 A. Change of clothes, toothpaste, toothbrush, some
11 cosmetics maybe, personal hygiene stuff.

12 Q. Okay. And then you spent the night there and -- what
13 happened to this vehicle? What happened to your car?

14 A. Well, a week prior we went to Laurinburg, North
15 Carolina, to a friend of mine. He had a black and white party
16 that me and Monica attended, and my car broke down there.

17 Q. Okay. And then -- so how did y'all get home from out
18 there?

19 A. My friend brought us back.

20 Q. And how about Freddie Prince? Who is he?

21 A. He's a mechanic who owns a mechanic shop on Third
22 Avenue. On October the 6th -- you want me to tell you my
23 reason for ---

24 Q. Yes. Go ahead.

25 A. Well, I went to stay in Green Sea on the 5th, due to

1 the fact, you know, she is my girlfriend, and we were going to
2 go that way the next day anyway to pick up my car, so I
3 figured I would just go there and stay with her that night,
4 have them pick me up the next morning, and continue going to
5 Laurinburg to pick up my car.

6 Q. Have Freddie pick you up?

7 A. Right.

8 Q. All right. Go ahead.

9 A. But that morning we couldn't get in touch -- I couldn't
10 get in touch with him, so therefore I had to come back to
11 Myrtle Beach, because I would have been stuck there, in Loris,
12 and Monica had to get to work, so therefore we continued to go
13 back to Myrtle Beach.

14 Q. So you rode with Monica, in Monica's car, back to
15 Myrtle Beach?

16 A. I drove her back to Myrtle Beach to her job, and
17 dropped her off.

18 Q. What did you do with your duffle bag while you were
19 driving back to Myrtle Beach?

20 A. My bag was in the back seat of the car.

21 Q. Okay. And when you drove back, you dropped off at
22 A.V.X., where did you go?

23 A. I was headed home, and then I got a phone call.

24 Q. Okay. And -- you got a phone call from Freddie?

25 A. I got a phone call from Freddie, saying that he could

1 take me.

2 Q. All right. Then what did you do?

3 A. I knew that I probably wouldn't have been back by the
4 time Monica got off, so therefore I turned around and went
5 back to drop her car off, called her and told her that I will
6 be going to Laurinburg, and I'll be dropping her car off and
7 leaving her keys under her seat.

8 Q. Okay. And did you take her car back to A.V.X. and
9 leave the keys under the seat?

10 A. Yes, I did.

11 Q. And what about the black duffle bag? What did you do
12 with it?

13 A. It was still in the back seat of the car.

14 Q. When you left that black duffle car in the back seat of
15 her car at A.V.X., were there drugs in it?

16 A. No.

17 Q. Okay. And then you went to Laurinburg?

18 A. Right, went to Laurinburg.

19 Q. And -- so what happened in Laurinburg?

20 A. I went to Laurinburg, we put my car on a -- I don't
21 know how to explain -- a roller, or a roll-back, or whatever
22 you pronounce it.

23 Q. A trolley.

24 A. Yes. That the drive with -- up upon, put it on that
25 and then came back to Myrtle Beach.

1 Q. All right. And then when you got back to Myrtle
2 Beach -- so Freddie was driving you with his truck?

3 A. Right.

4 Q. When you got back to Myrtle Beach where did y'all go?

5 A. We went to Third Avenue, which is where his mechanic
6 shop is at.

7 Q. Okay. And what was going on there?

8 A. Nothing but us dropping the car off so that he can
9 start working on it.

10 Q. Okay. And then what happened?

11 A. He had some -- some other issues that he had to handle,
12 and my car was till on the car lift, and he needed me to help
13 him get it off, so I just waited around for him so I can help
14 him take my car off of the lift.

15 Q. Okay. And what about -- what happened when Monica got
16 off work?

17 A. Well, she got off from work and I was going to have her
18 to give me a ride home, but it was taking Freddie and I so
19 long that I just let her go, cause she had some other things
20 that she had to do.

21 Q. So she -- when she came to the -- Freddie's shop and
22 then left, that left you with no ride, right?

23 A. Yes. No ride. I mean, I had a ride, but she was going
24 to be my initial ride.

25 Q. Okay. And when you finally got the car off the truck

1 what did you do?

2 A. We got the car off the truck and then I got in the
3 truck with Freddie and he was going to take me home, Freddie
4 and another guy that works with him, and his daughter,
5 Freddie's daughter, and we were going home. He was going to
6 take me home.

7 Q. And then -- so did he start to take you home?

8 A. Yes.

9 Q. And then what happened?

10 A. We headed down Third Avenue toward U.S. 17 Business.
11 Once you come to U.S. 17 Business and Third Avenue it's a
12 redlight there, so we had to come to the stop, take the right
13 to get back on U.S. Business 17 and started heading south, and
14 then he went to the Hess gas station to put some gas into his
15 truck.

16 Q. Okay. And then what happened? Who did you see when
17 you got to the gas station?

18 A. Well, when I got to the gas station I saw Rodney Smith
19 at an adjacent gas pump.

20 Q. How did you know Rodney Smith?

21 A. He's from the Booker T. Washington area, which is the
22 neighborhood that I live in. He's been -- I knew him all my
23 life basically.

24 Q. The neighborhood you live in, or the neighborhood you
25 were raised in?

1 A. The neighborhood that I was raised in ---

2 Q. So you know him ---

3 A. ---And live in, as of now.

4 Q. Okay. And then -- so what did you say to him?

5 A. I asked him which way was he going, and he told me that
6 he was going south, so I asked him would he mind giving me a
7 ride home.

8 Q. And why did you ask him for a ride?

9 A. Because Freddie had another guy in the car that he had
10 to take home, and it was a long day -- it was raining all of
11 that day -- and I was just tired, and I was just ready to get
12 home as soon as I could.

13 Q. Okay. So then when Rodney said yes he could give you a
14 ride, what did you do?

15 A. I went to Freddie's -- Freddie's truck, gave him some
16 money for gas, and then got my bag out and went and got in
17 Rodney's car.

18 Q. Okay. Did you have a beer?

19 A. Yes, I had a beer.

20 Q. Where did you get the beer?

21 A. I got it from Freddie's shop.

22 Q. Okay. You were drinking beer at Freddie's shop?

23 A. Yes.

24 Q. And after you gave Freddie the money for gas, you still
25 had you beer in your hand, and you grabbed your bag; is that

1 right?

2 A. I got the beer and my bag out of his car.

3 Q. Okay. And when you got in Rodney's car, what did you
4 do with the bag?

5 A. I got in and I sat it on the floor.

6 Q. Down in the floorboard?

7 A. Yes.

8 Q. Front seat floorboard?

9 A. Front seat floorboard.

10 Q. Where?

11 A. Right between him and I.

12 Q. And would you say it was between your legs as been said
13 in here earlier, or was it more toward the middle?

14 A. It was not between my legs.

15 Q. So -- but it was certainly beside you?

16 A. Yes. It was beside me.

17 Q. All right. And then you started heading down Highway
18 17, and what happened?

19 A. Heading down Highway 17, just heading south -- I don't
20 know how far it was, but I was drinking the beer -- I did
21 drink the beer -- and as -- coming down from drinking the beer
22 I looked over, through the driver's side door, and I saw a
23 police officer pull up beside me.

24 Q. And then what?

25 A. I kind of like, damn -- excuse my French, but I was

1 like, damn, he saw us -- saw me drinking the beer; I know he's
2 going to pull us over.

3 Q. Did you say that out loud?

4 A. Yes.

5 Q. And then he pulled in right behind y'all and put the
6 blue lights on?

7 A. Yes. He got behind us and pulled us over.

8 Q. And did -- what did the police officer do?

9 A. Came to the driver's side door, asked Rodney to roll
10 his window down, which he did, and asked me did I have a beer.

11 Q. What did you say?

12 A. I kind of nonchalantly said, what beer.

13 Q. Where was the beer can at that point?

14 A. Between my legs.

15 Q. Okay. And then eventually picked the beer can up and
16 showed it to him?

17 A. Yes.

18 Q. Then what did he do?

19 A. He came around to my side of the car, opened the door
20 and took me out of the car.

21 Q. And then what did he do with you?

22 A. He took me to the back of Rodney's trunk.

23 Q. Before he took you to the back of Rodney's trunk, did
24 he leave the door open, or did he close the door?

25 A. The door was closed.

1 Q. He closed the door?

2 A. Yes. Took me out and closed the door behind me.

3 Q. Okay. And he took you to the back of Rodney's car?

4 A. Correct.

5 Q. What did he do with you at the back of Rodney's car?

6 A. Patted me -- patted me down.

7 Q. Okay. So he patted you down. Frisked you?

8 A. Yes.

9 Q. How long did that take?

10 A. Maybe two minutes, maybe, two or three minutes, maybe.

11 Q. And after he patted you down, what did he do?

12 A. He proceeded to handcuff me.

13 Q. So he handcuffed you back behind Rodney's car?

14 A. Correct.

15 Q. And did he tell you you were under arrest?

16 A. I don't recall, but honestly telling you, I don't think
17 he did at that particular time.

18 Q. Okay. And then after he handcuffed you, what did he
19 do?

20 A. He took me from the back of his car to his patrol car,
21 and put me in the back of that car.

22 Q. From the back of Rodney's car, back to the back seat of
23 the patrol car?

24 A. Yes.

25 Q. Did he open the door for you and put you in?

1 A. Yes.

2 Q. And then shut the door?

3 A. Yes.

4 Q. And then what did he do?

5 A. He went back to the -- Rodney's car.

6 Q. Driver's side or passenger's side?

7 A. To tell you the honest truth, I don't know which side
8 he went to at that particular time, cause I was handcuffed,
9 and the handcuffs was real tight. I was much bigger then.

10 Q. Was it light or dark out?

11 A. It was dark.

12 Q. Was it raining?

13 A. Raining, yes. It was real hard. It was raining all
14 over the State that day, I think, cause it was raining even in
15 Laurinburg.

16 Q. Okay. So after he took you out of the car and closed
17 the door, and took you back and frisked you, and handcuffed
18 you, and then put you in his car, you don't really know -- do
19 you know, or do you not know what was happened up there in
20 Rodney's car?

21 A. I don't know what was happening.

22 Q. When he took you out of your car -- out of Rodney's
23 car, and closed the door, where was the black duffle bag?

24 A. Still in the car.

25 Q. Still on the floorboard?

1 A. Yes.

2 Q. And then -- so eventually, did the Officer come back to
3 the car and talk to you about something?

4 A. No, he didn't.

5 Q. Another officer did?

6 A. Yes.

7 Q. And they ended up telling you that they had found drugs
8 in the car?

9 A. Correct.

10 Q. And did they ask you questions about that?

11 A. Yes, they did.

12 Q. Did they ask you questions on the scene about it?

13 A. Yes.

14 Q. What type of questions did they ask you?

15 A. By the other arresting officer?

16 Q. Yes.

17 A. Asked me was that my stuff in the bag, and I didn't
18 know what we was talking about. I said no.

19 Q. You told him -- did you say no, or did you say, I don't
20 know what you are talking about?

21 A. I said, I don't know what you are talking about. I
22 said, I don't have -- I don't have nothing in my bag.

23 Q. Okay. And then they took you to J. Reuben Long?

24 A. Yes. I went to J. Reuben Long then.

25 Q. Were you interviewed, or at least attempted to be

1 interviewed out there by a police officer?

2 A. J. Reuben Long, yes.

3 Q. Who?

4 A. Delpercio and Officer Williams.

5 Q. Delpercio and Officer Williams?

6 A. Correct.

7 Q. They were both in the room when they interviewed you?

8 A. Both in the room.

9 Q. And did they ask you -- what did they ask you?

10 A. They asked me how long did I know -- do I know Rodney
11 Smith, and I said yes.

12 Q. What did they say about that? Why did they ask that
13 question? Did they tell you?

14 A. They asked me did I know him, and I said yes, and then
15 they made a response as if though -- he didn't know me, so
16 therefore they were not going to ask me any more questions,
17 because they will feel as though they are trying to trick me.

18 Q. Okay. And then did they end up asking you any
19 questions?

20 A. No more questions.

21 Q. Okay. Those drugs -- I'm going to show you what's been
22 marked, and is now in evidence as State's Number 2. Does that
23 belong to you?

24 A. I never seen that till I got here, and it doesn't
25 belong to me.

1 Q. Was that in your duffle bag ---

2 A. No.

3 Q. Did you know that was in your duffle bag?

4 A. No.

5 Q. Did you tell Rodney Smith that he -- that you could
6 sell him some cocaine?

7 A. No, I did not.

8 Q. The Solicitor is going to have an opportunity to ask
9 you some questions, and he's going to ask you about a criminal
10 record. You do have a criminal record; is that correct?

11 A. Yes, fourteen years ago.

12 Q. Fourteen years ago. Did you have a trial, or did you
13 plead guilty?

14 A. I pled guilty to a conspiracy.

15 Q. Conspiracy.

16 A. Yes.

17 Q. Fourteen years ago?

18 A. Yes.

19 Q. Are you telling the truth, Danny?

20 A. All -- absolutely, I am.

21 Q. Are you a drug dealer?

22 A. No.

23 MR. LONG: Answer any questions Mr. Hixson may have.

24 THE COURT: Cross-examination.

25 MR. HIXSON: Thank you, Your Honor.

1 CROSS-EXAMINATION BY MR. HIXSON:

2 Q. So you used to be a football player, or an athlete? I
3 heard you say athlete. That's ---

4 A. Yes. I played football.

5 Q. Football. Play for Conway -- in this area ---

6 A. I played in Myrtle Beach.

7 Q. ---Myrtle Beach?

8 A. I played at Myrtle Beach High, yes.

9 MR. HIXSON: I just have to get myself acquainted also.

10 Q. Now, we talked a little bit about -- I think your
11 defense counsel said something about -- what kind of an active
12 sentence did you serve on that conspiracy charge?

13 A. How many years did I serve?

14 Q. Yes.

15 A. I served sixty months.

16 Q. Okay. Did you have any supervised release after that?

17 A. Yes.

18 Q. Now I notice -- of course you had an opportunity to
19 talk to Ms. Brisbon back there. I heard you say something
20 about, she's my fiance as of now. Isn't that true you said
21 that?

22 A. Yes.

23 Q. So as of now means -- does that mean that she wasn't
24 just prior to trial?

25 A. No. I meant she wasn't during the time that I got

1 arrested.

2 Q. Okay. Well, when did you guys break up?

3 A. Ain't never broke up.

4 Q. Never broke up?

5 A. No.

6 Q. So when she said that she did, was she lying then?

7 A. No, she wasn't.

8 Q. You also said something about the contents of the black
9 bag. You said -- isn't it true you said that you had
10 cosmetics, toiletries, you know, things like that; isn't that
11 correct?

12 A. Yes.

13 Q. Personal items?

14 A. Did I have personal items in the bag?

15 Q. Yes. Isn't that what you said -- cell phone?

16 A. Yes. Toothpaste -- so yes. No, the cell phone was not
17 in the bag.

18 Q. It wasn't in the bag?

19 A. No. It was on my person. They put it in the bag, the
20 officers did.

21 Q. Okay. Okay. And I'm sure it's a kind of a -- is it a
22 shocking event to be arrested like that?

23 A. Was it shocking ---

24 Q. Yes.

25 A. ---To be arrested like ---

1 Q. Yes, you are riding ---

2 A. I was caught with an open container. It wasn't
3 shocking for what I was doing. I was drinking the open
4 container. That was not shocking.

5 Q. Well, isn't it true that you knew when you were
6 arrested you were arrested for open container?

7 A. Yes sir.

8 Q. Okay. And you said -- testified that Officer Williams
9 took you into the back of the car.

10 A. Yes.

11 Q. You testified -- I believe you testified -- isn't it
12 true -- that you didn't see Officer Williams going through
13 your bag?

14 A. I didn't see him going through the bag?

15 Q. Uh huh (indicating positive)

16 A. No, I didn't.

17 Q. Okay. So you didn't see Officer Williams when he
18 opened up the Fritos bag and looked in and saw powder cocaine
19 in that bag?

20 A. No, I didn't.

21 Q. Didn't see that?

22 A. No.

23 Q. Then when the other Officer asked you that, why did you
24 say, that stuff in the bag is not mine? You didn't even know
25 there was drugs in it.

1 A. Because he came and asked me -- because he came and
2 asked me was it my stuff.

3 Q. Right. And you said no?

4 A. Right.

5 Q. But it's just personal items. It's just personal items
6 in the bag.

7 A. He didn't ask me about no personal items. He asked me
8 about some cocaine.

9 Q. So, let me rephrase. Isn't it true that you packed you
10 bag with the overnight stuff?

11 A. Right.

12 Q. With underwear, with cosmetics, with toiletries, with
13 whatever you would need to go over to spend the night at Green
14 Sea on the night before. Isn't that what you testified?

15 A. That's -- yes, correct.

16 Q. Is there anything in there that you wouldn't want to
17 tell a police officer that isn't yours?

18 A. Is anything -- correct that.

19 Q. Would you want to tell the police office -- lie to the
20 police officer and say, that's not my underwear?

21 A. No. If it was my underwear I would tell them it's my
22 underwear.

23 Q. But you didn't see the Officer find the cocaine in the
24 bag.

25 A. No, I didn't.

1 Q. And according to your testimony right here, you didn't
2 know it was in the bag.

3 A. I didn't.

4 Q. So when the Officer asked you if that's your stuff in
5 the bag you go, no, that's not mine.

6 A. I said no, that is not mine -- that the cocaine was not
7 mine.

8 Q. But you hadn't seen the Officer discover it yet.

9 A. The Officer -- other Officer asked me ---

10 MR. LONG: I object. He's confusing him, in that the
11 question -- he's already ---

12 THE COURT: Mr. Long, it's cross-examination. I'm
13 going to allow the question. He may answer it. If he doesn't
14 understand the question he can tell the Solicitor he doesn't
15 understand it, and you certainly have the right to redirect.

16 Continue on.

17 MR. HIXSON: I'm not trying to confuse you. You may
18 think I am, but I'm not. Let me be as clear as I can be.

19 Q. Isn't it true your testimony was that you packed that
20 duffle bag?

21 A. Correct.

22 Q. Isn't it true your testimony was that you put personal
23 items in that duffle bag?

24 A. Correct.

25 Q. Isn't it true your testimony is that you did not put

1 drugs, and don't know anything about any drugs in the bag?

2 A. Correct.

3 Q. Isn't it true you just testified that you weren't
4 concerned, or worried about an arrest because it was just an
5 open beer?

6 A. I wasn't concerned about just an open container, no, I
7 wasn't.

8 Q. All right. So there is no reason for you to face any
9 kind of concern at that time, other than a misdemeanor offense
10 for open beer -- container of beer?

11 A. I mean, it was still a concern.

12 Q. I'm not -- okay. You testified that you did not see
13 Officer Williams search your bag.

14 A. Correct.

15 Q. You testified you had no idea that there was anything
16 improper in that bag. You didn't know there was anything
17 improper?

18 A. Correct. Right.

19 Q. But when asked if the stuff in the bag was yours -- not
20 if the powder cocaine was yours, not if illegal narcotics was
21 yours -- the stuff in your bag, you denied it?

22 A. No.

23 Q. You just testified you did.

24 A. I did not ---

25 MR. LONG: Your Honor, again I object. There was never

1 any question about the stuff in the bag.

2 THE COURT: All right, Mr. Long -- Mr. Long. Thank
3 you.

4 Solicitor, allow the witness to fully answer his
5 question. Do not interrupt him.

6 Thank you, Your Honor.

7 MR. HIXSON: Thank you, Your Honor.

8 THE COURT: The witness -- you may fully answer the
9 question if you -- or respond if you choose to do so.

10 Continue on.

11 A. The Officer did not ask me about any personal items.
12 He asked me about the drugs that was in the bag.

13 Q. Okay.

14 MR. HIXSON: Well, that's fine. That's fine. That's
15 fine.

16 Q. Also, there was some testimony relating to where you
17 live. You were raised in Booker T. Washington community, I
18 think was your testimony.

19 A. Correct.

20 Q. That your mom is there.

21 A. Right.

22 Q. That -- I think -- isn't it true you said yes, my mom
23 lives there; I live there?

24 A. Right.

25 Q. I believe your driver's license ---

- 1 A. It's [REDACTED] Dunbar Street ---
- 2 Q. ---Which is in evidence ---
- 3 A. It's [REDACTED] Dunbar Street.
- 4 Q. Yes. So that -- Dunbar Street, isn't that kind of
- 5 off -- behind the Convention Center?
- 6 A. It's between 21st Avenue and 10th Avenue.
- 7 A. North?
- 8 A. Yes.
- 9 Q. Okay. The Hess station, isn't that 7th Avenue -- naah,
- 10 7th -- 9th Avenue South -- 13th Avenue South. I apologize. I
- 11 believe -- around the teens of the south avenues?
- 12 A. Yes sir.
- 13 Q. Isn't that right?
- 14 A. Yes sir.
- 15 Q. Didn't you testify that you told -- asked Rodney Smith
- 16 to take you home?
- 17 A. Yes, I did.
- 18 Q. But when you got in the car, isn't it true that you
- 19 went south?
- 20 A. I was living south then.
- 21 Q. You were living south then?
- 22 A. Yes.
- 23 Q. Okay. But your driver's license, at the time, says
- 24 Dunbar Street?
- 25 A. Right.

1 Q. Okay. Isn't it true you said, I'm going home, but you
2 went the other direction?

3 A. I wasn't living there then. I was living in Cape
4 Landing, which is in -- behind the back gate of the Air Force
5 Base, so I was headed home. That's -- that was my residence
6 at that particular time.

7 Q. Okay. But you just testified that you lived with your
8 mom on Dunbar Street.

9 A. I live with her now. As of now I do live with her. I
10 don't live there anymore, which is ---

11 Q. You've got your driver's license at Dunbar Street?

12 A. Yes.

13 Q. So, you indicated -- I think you answered directly that
14 you don't sell drugs.

15 A. No, I don't.

16 Q. During the course of your real estate transactions,
17 dealing with those athletes and stuff like that, to try to get
18 them involved in it, you don't deal anything with those
19 professional athletes or any of those folks you are dealing
20 with?

21 A. No.

22 Q. You don't supply Rodney Smith?

23 A. No, I don't.

24 Q. Do you know what, I'm straight, means?

25 A. No, I don't know what I'm straight means.

1 Q. You don't know what that means?

2 A. No. I don't use that term.

3 MR. HIXSON: Beg the Court's indulgence, Your Honor.

4 THE COURT: Yes sir.

5 Q. At some point in time you mentioned also, when we
6 talked about your fiance, things like that, like -- Mr. Long
7 was trying to be endearing and asked you when you were going
8 to marry that young lady back there. At some point in time
9 are you going to buy her an engagement ring?

10 A. She has it on as of now.

11 Q. Okay. Is that your mom's?

12 A. Is what my mom's?

13 Q. Is that your mom's? I didn't -- I just didn't know if
14 that was your mom's engagement ring. It's a hand-me-down.

15 MR. LONG: Your Honor, again, I would object to the
16 relevancy ---

17 THE COURT: Sustained.

18 MR. LONG: ---Whose ring ---

19 THE COURT: Sustained.

20 Further questions, Solicitor?

21 MR. HIXSON: Nothing from the State, Your Honor.

22 Thank you.

23 THE COURT: Redirect.

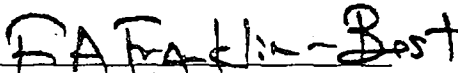
24 MR. LONG: No. sir.

25 Come on down, Danny. Thank you.

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."

March 26th, 2009


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June 14, 2010

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REHEARING? _____

(date due 6/29 _____)

CLOSE? _____

CERT? _____

Re: The State v. Brown, Danny Cortez

Dear Counsel:

Enclosed is the opinion of the Court of Appeals in this case.

Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Horry County after fifteen (15) days, exclusive of the date of filing of this opinion.

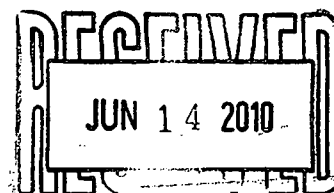
No extension for a petition for rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,

Renee S. Johnson
Administrative Specialist

TAG/rj

cc: John Gregory Hembree, Esquire



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Danny Cortez Brown,

Appellant.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4697
Heard March 2, 2010 – Filed June 14, 2010

REVERSED

Appellate Defender Elizabeth A. Franklin, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Senior Assistant Attorney General Norman Mark
Rapoport, Assistant Attorney General Suzanne H.
White, all of Columbia; and John Gregory Hembree,
of Conway, for Respondent.

SHORT, J.: Danny Brown was charged with trafficking cocaine. Following a jury trial, he was convicted and sentenced to twenty-five years incarceration. He appeals, arguing the trial court erred by denying his motion to suppress the drugs seized after his arrest for an open container violation. We reverse.

FACTS

Officer Daryl Williams was on patrol in Myrtle Beach, South Carolina. While traveling down a road, he observed a 1976 Plymouth next to him and saw a passenger drinking what appeared to be a beer. The passenger, Brown, saw Officer Williams and tucked the beer can between his legs. Officer Williams pulled the car over and noticed a small duffel bag on the floorboard between Brown's legs. Officer Williams testified he was suspicious of the occupants because the driver acted nervous while Brown appeared "artificially laid back."

Initially, Brown denied having a beer, but then he pulled the can up from his lap. Officer Williams removed Brown from the car, recovered the beer can, arrested him for an open container violation, and placed his duffel bag on the sidewalk. He handcuffed Brown and placed him in a patrol car. After securing Brown, Officer Williams returned to the car to make "small talk" with the driver. He returned to the duffel bag, searched it, and found cocaine concealed inside a Fritos bag. Officer Williams stated he closed the duffel bag and resumed conversation with the driver. He ran the driver's license, discovered it was suspended, and placed the driver under arrest for that offense.

During trial, Brown moved to suppress the drugs on a violation of his Fourth Amendment rights. The trial court denied the motion to suppress, finding there was probable cause to stop the car, and Brown's arrest was lawful. The trial court held the search was proper because it was a search incident to a lawful arrest. Brown was found guilty and sentenced to twenty-five years imprisonment. This appeal followed.

STANDARD OF REVIEW

When reviewing a Fourth Amendment search and seizure case, we do not review the trial court's ultimate determination de novo, rather we apply a deferential standard. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459-60 (2002). This court reviews the trial court's ruling like any other factual finding, and we will reverse only if there is clear error. Id. Therefore, we will affirm if any evidence exists to support the trial court's ruling. Id.

LAW/ANALYSIS

On appeal Brown argues the trial court erred by denying his motion to suppress the drugs in violation of his Fourth Amendment rights. We agree.

The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. amend. IV. Any evidence seized in violation of the Fourth Amendment must be excluded. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

It is well established that warrantless searches and seizures by the police are per se unreasonable, unless they fall within one of several recognized exceptions. State v. Weaver, 361 S.C. 73, 80-81, 602 S.E.2d 786, 790 (Ct. App. 2004). These exceptions include: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) plain view doctrine; (6) consent; and (7) abandonment. Id.

A. Search Incident to Arrest¹

Under the search incident to arrest exception, if the arrest is supported by probable cause, police officers may search an arrestee's person and the area within his or her immediate control for weapons and destructible evidence without first obtaining a search warrant. State v. Ferrell, 274 S.C. 401, 405, 266 S.E.2d 869, 871 (1980). However, this doctrine does not allow law enforcement officers to conduct a warrantless search of an arrestee's automobile after the arrestee has been handcuffed or otherwise prevented from regaining access to the car, unless it is reasonable to believe (1) the arrestee might access the vehicle at the time of the search, or (2) that the vehicle contains evidence of the offense of the arrest. Arizona v. Gant, ___ U.S. ___, 129 S.Ct. 1710, 1723-24 (2009) (limiting New York v. Belton, 453 U.S. 454 (1981) and Thornton v. U.S., 541 U.S. 615 (2004)).

The burden of establishing the existence of circumstances constituting an exception to the general prohibition against warrantless searches is upon the State. Weaver, 361 S.C. at 81, 602 S.E.2d at 790.

In the present case, neither of the exceptions stated in Gant apply. Officer Williams testified he had Brown exit the car to be handcuffed and arrested for the offense of open container. He took the duffel bag from the car, placed it on the sidewalk, and then put Brown in the back of his patrol car. After securing Brown, Officer Williams returned to the car and made "small talk" with the driver. He testified:

¹ Initially, the State argues this issue is not preserved for review. We disagree. Trial counsel asked the trial court to suppress the evidence, and the trial court denied this request. This issue was raised to and ruled upon by the trial court and is properly before this court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

I wanted to deal with him later, but I just wanted to get a glance into the bag, so I did unzip the bag, and look in. It was personal items like, perhaps deodorant, undergarments . . . and there was a bag of Fritos potato chips, corn chips, whatever . . . and it was open, so it was kind of crumpled shut, I believe, so I went and just opened it up to get a look into the bag, and then I seen inside that bag a -- what appeared to be a plastic bag with a white powdery substance, which is -- you know, looks -- appears to be cocaine.

It is clear from Officer Williams' testimony that Brown was handcuffed and securely placed in the patrol car prior to Officer Williams searching the duffel bag. During Officer Williams' search, Brown could not have accessed the vehicle or the duffel bag. Thus, it was impossible that Brown could have accessed the vehicle at the time of the search, making the first exception in Gant inapplicable.

As to the second Gant exception, Officer Williams was not looking for evidence for the offense charged. There was no evidence presented that Officer Williams had a reasonable belief that the duffel bag or Frito bag held further evidence of the open container violation. Brown told Officer Williams he did not have any more beer. More to the point, when asked if the beer can was taken into evidence, Officer Williams explained, for this type of charge "we don't take that sort of thing in evidence." We therefore conclude the search incident to arrest exception does not apply in the present case.²

B. The Automobile Exception

Because of its mobility and the lessened expectation of privacy in motor vehicles, a motor vehicle may be searched without a warrant based solely on probable cause. State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570,

² In fairness to the trial court, it did not have the guidance provided to us by the United States Supreme Court in the Gant case.

571-72 (1986). Just like a driver of an automobile, passengers possess a reduced expectation of privacy with regard to the property that they transport in cars. Wyoming v. Houghton, 526 U.S. 295, 303 (1999). The standard for probable cause to make a warrantless search is the same as that for a search with a warrant. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995).

Articulating precisely what probable cause means is not possible. Ornelas v. U.S., 517 U.S. 690, 695-96 (1996). Probable cause is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Id. Probable cause to search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in a particular place. Id. The principal components of the determination of probable cause will be whether the events which occurred leading up to the search, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. Id. The scope of a warrantless search of an automobile is defined by the object of the search and the places in which there is probable cause to believe that the object may be found. State v. Perez, 311 S.C. 542, 546, 430 S.E.2d 503, 505 (1993).

If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. Houghton, 526 U.S. at 301-02. This rule applies to all containers within a car, without qualification as to ownership of a particular container and without a showing of individualized probable cause for each container. Id.

As noted above, Officer Williams placed Brown under arrest for an open container. Officer Williams had already recovered the beer can, which interestingly he did not take into evidence, prior to searching the duffel bag. Based on this, the only evidence Officer Williams could have been searching for was more beer. The bag in question was not a grocery bag where one would expect to find beer. Rather, the bag was a zipped-up duffel bag that would be used to carry clothes. One of the officers stated, "The black duffel