

21846

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN XAVIER MILLER,

APPELLANT

APPELLATE CASE NO. 2013-001860

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

J. BENJAMIN APLIN
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

INDEX

INDEX	i
JURY SELCTION	3
MOTION TO SUPPRESS DRUGS	23
<u>IN CAMERA HEARING TESTIMONY</u>	
JAMES WESTBURY (IN CAMERA)	
Direct examination by Solicitor	24
Cross examination by Defense Counsel	47
SHAUN MCDONALD (IN CAMERA)	
Direct examination by Solicitor	59
Cross examination by Defense Counsel	68
Redirect examination by Solicitor	73
MOTION TO SUPPRESS ARGUMENTS	75
ARGUMENT BY DEFENSE COUNSEL	77
ARGUMENT BY SOLICITOR.....	79
<u>IN CAMERA HEARING TESTIMONY CONTINUED</u>	
CANSANDERA JONES (IN CAMERA)	
Direct examination by Defense Counsel	92
DEFENSE COUNSEL’S MOTION TO SUPPRESS ARGUMENTS	94
COURT’S RULING ON MOTION TO SUPPRESS.....	97
OPENING STATEMENT BY THE COURT	104
OPENING STATEMENT BY SOLICITOR.....	110
OPENING STATEMENT BY DEFENSE COUNSEL	111

TRIAL TESTIMONY

JAMES WESTBURY

Direct examination by Solicitor	114
Cross examination by Defense Counsel	130
Redirect examination by Solicitor	141

SHAUN MCDONALD

Direct examination by Solicitor	142
Cross examination by Defense Counsel	149

BRENDA G. JENKINS

Direct examination by Solicitor	156
---------------------------------------	-----

STATE RESTS.....	163
------------------	-----

DIRECTED VERDICT MOTIONS	164
--------------------------------	-----

RULING OF THE COURT	171
---------------------------	-----

DEFENSE RESTS	172
---------------------	-----

RENEWAL OF ALL MOTIONS BY DEFENSE	172
---	-----

RULING OF THE COURT	173
---------------------------	-----

CLOSING ARGUMENT BY SOLICITOR.....	174
------------------------------------	-----

CLOSING ARGUMENT BY DEFENSE COUNSEL	179
---	-----

CHARGE ON THE LAW.....	185
------------------------	-----

JURY QUESTION.....	196
--------------------	-----

JURY RE-CHARGE ON THE LAW.....	197
--------------------------------	-----

VERDICTS.....	200
---------------	-----

RENEWAL OF DEFENSE MOTIONS	202
----------------------------------	-----

RULING OF THE COURT	202
---------------------------	-----

REVIEW OF PROBATION REVOCATION MATTERS.....	204
---	-----

SENTENCING	210
------------------	-----

STATE'S EXHIBIT # 1 (COLUMBIA POLICE DEPARTMENT POLICY)	211
INDICTMENT	215
CERTIFICATE OF COUNSEL.....	218

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2013-GS-40-04661
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JONATHAN XAVIER MILLER,	)	
	)	
DEFENDANT,	)	

August 26, 27, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE DOYET A. EARLY, III, JUDGE and a jury.

APPEARANCES:

BRENT ARANT, ASSISTANT SOLICITOR
JENNIFER MCKELLAR, ASSISTANT SOLICITOR
Attorneys for the State

LUCAS HAWKS, ASSISTANT PUBLIC DEFENDER
JESSAMINE GRICE, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

JAMES WESTBURY

Direct By Mr. Arant 25

> > > < < <

CERTIFICATE OF REPORTER 42

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	policy	23	37
2	tow inventory	23	39

1 THE BAILIFF: The jury pool is seated, Your Honor.

2 THE COURT: Thank you. You may call your first case.

3 MR. ARANT: State calls Jonathan Xavier Miller.

4 THE COURT: Defense ready to proceed?

5 MR. HAWKS: Yes, Your Honor.

6 THE COURT: All right.

7 Ladies and gentlemen of the jury panel, good morning.

8 My name is Jack Early. I am assigned to hold court here

9 in Richland County this week.

10 Let me tell you what the plans are for today. I'm

11 going to draw a jury for the trial of the first case.

12 It's a criminal case. The defendant has been indicted for

13 possession with intent to distribute crack cocaine.

14 We will conclude that process. It will probably take

15 about 15 or 20 minutes to draw the jury in the first case.

16 We still have business left over from this morning and

17 from yesterday.

18 We have some motions in this case that will take a

19 little while. I don't want you sitting around twiddling

20 your thumbs, so once I draw the jury, I will decide.

21 We'll probably start back about 2:00, 2:30 and try to get

22 way deep into the case today.

23 For those of you who are not drawn on this case, I'll

24 have to get instructions from downstairs. I assume Judge

25 Hill is drawing his juries.

1 Are there any other juries being drawn?

2 THE CLERK: Not today.

3 THE COURT: So they can call back after six.

4 So those of you not drawn, I will release you for the
5 balance of the day, and you'll call back after six on the
6 call instructions. I assume you have got them. They gave
7 them to you when you were in the jury assembly room. If
8 not, we'll get you some instructions.

9 All right. Ladies and gentlemen, we're going to try
10 the case of the the State of South Carolina vs. Jonathan
11 Xavier Miller. Mr. Miller has been indicted by the
12 Richland County grand jury for the offense of possession
13 with intent to distribute crack cocaine.

14 This indictment is simply a charging document by way
15 this case comes into the courtroom. It is not evidence in
16 the case. As I said, it's simply the formal document
17 which sends the case up here for trial.

18 He has pled not guilty to these charges, and by
19 pleading not guilty, he has the congressional presumption
20 of innocence until and unless the State of South Carolina
21 is able to prove his guilt to you beyond a reasonable
22 doubt.

23 I will explain to you the elements of the offense by
24 which he is charged. I'll explain to you the terms beyond
25 a reasonable doubt, presumption of innocence, and other

1 legal terms at the conclusion of the case. The first step
2 in the trial process is obviously drawing and selecting
3 the jury, so I need to ask you a couple of questions or a
4 series of questions.

5 If any of them apply to you, please stand, and we
6 will address those. When you stand, please identify
7 yourself. If you have your number, please tell me that.
8 Once we go through the qualifying situation, questions,
9 then I'll be in a position to select the jury. So without
10 further ado, I'm going to move right forward.

11 Mr. Miller, good morning, sir. Would you please
12 stand and face the jury panel for me?

13 THE DEFENDANT: Certainly.

14 THE COURT: Turn around and face the jury panel.

15 (Complies.)

16 You may be seated.

17 Ladies and gentlemen, any member of the jury panel
18 related by blood or marriage or do you now or have you in
19 the past had a close personal or social relationship with
20 the defendant, Mr. Jonathan Xavier Miller? If so, please
21 stand.

22 (There was no response).

23 I am informed that the potential witnesses in the
24 trial of the case will be as follows. I will read this
25 list. When I conclude the list, I will ask the same

1 question: Are you now or have you in the past been
2 related by blood or marriage, or do you now or have you in
3 the past had a close personal or social relationship with
4 these witnesses. If you are in the courtroom, please
5 stand.

6 Officer James Westbury.

7 Thank you, Officer.

8 Officer Shawn McDonald.

9 Thank you.

10 He is over here.

11 Officer Eric Walker who is not present; Amanda
12 Beckham. She is with the Columbia Police Department?

13 MR. ARANT: Yes, sir.

14 THE COURT: Brenda Jenkins; Tracey Dixon; Jeremy
15 Thompson.

16 Is he in the courtroom?

17 Nakia Berry; Cassandra Jones. Any member of the jury
18 panel -- Ms. Cassandra Jones is way in the back, ladies
19 and gentlemen.

20 Thank you, Ms. Jones.

21 Ladies and gentlemen, is anybody on the jury panel
22 related by blood or marriage, now or in the past, or do
23 you now or have you in the past had a close personal or
24 social relationship with any of the witnesses? If so,
25 please stand.

1 In this case, the State of South Carolina will be
2 represented by members of the Richland County Solicitor's
3 Office: Mr. Brent Arant; Ms. Jennifer McKellar.

4 Thank you.

5 The defendant is being represented by Mr. Lucas
6 Hawks, and -- I am sorry, ma'am.

7 MS. GRICE: Jessamine Grice.

8 THE COURT: I'm sorry, Ms. Grice. Thank you.

9 First question, any member of the jury panel now or
10 in the past have had legal services performed by either or
11 any of the attorneys involved? If so, please stand.

12 (There was no response).

13 Any member of the jury panel related by blood or
14 marriage, or do you now or have you in the past had a
15 close personal or social relationship with any of the
16 attorneys involved? In so, please stand.

17 (There was no response).

18 Ladies and gentlemen, I'm going to read or tell you a
19 little bit about the case. This is simply the allegations
20 contained in the indictment. It is alleged -- these are
21 simply allegations. He has pled not guilty. It is
22 alleged that here in Richland County back in January of
23 this year, January 10, 2013, that Mr. Miller had on his
24 person crack cocaine, which is a controlled substance,
25 with the intent to either distribute it or dispense it or

1 deliver it.

2 This occurred here in Richland County, Mr. Arant?

3 Where did this occur?

4 MR. ARANT: [REDACTED].

5 THE COURT: [REDACTED].

6 MR. ARANT: That's the Rosewood section of town.

7 THE COURT: That's the Rosewood section of town.

8 Does anybody know anything about this case?

9 (There was no response.)

10 Anybody read anything about it, seen anything in the
11 newspaper, internet, radio, TV, word of mouth, know
12 anything at all about the facts of this case?

13 (There was no response).

14 Ladies and gentlemen, one of my biggest goals as a
15 judge, most important goal as a judge, is to make sure
16 that anyone who is accused of a crime, not only a
17 defendant but the State of South Carolina, receive a fair
18 trial.

19 The way the system works is when you come into a
20 courtroom, and you have a jury trial, there are actually
21 two judges involved in the case. My position as the trial
22 judge makes me the judge of the law. I will instruct you
23 and charge you on what the law is in this case.

24 Under your oath, you have agreed to accept the law as
25 I give it to you, so I'm the judge of the law. That's my

1 main responsibility is to inform you as to what the law
2 is, and also, I have to rule on the admissibility of
3 evidence in the trial.

4 Now, the second judge in the trial of the case is the
5 most important judge. The second judge is a judge of the
6 facts, and that is the jury. The 12 of you who are
7 selected acting collectively will become the judge of the
8 facts in the case.

9 Now, I practiced law for 30 years, and I've been on
10 the bench nine years, nine-and-a-half. I have tried
11 literally thousands of cases. I can tell you in just
12 about 99.9 percent of the trials I've had that you will
13 hear different versions of the facts. One witness may say
14 it's daytime; another one may say it's nighttime; one may
15 say it's Tuesday; one may say it's Friday.

16 In other words, they testify differently about the
17 same subject. That's what makes you the most important
18 persons in the case. You are the judges of the facts.
19 The way it works is as long as the lawyers ask questions
20 that comply with our Rules of Evidence, Rules of Criminal
21 Procedure, the testimony will be admitted in the trial of
22 the case.

23 John Doe may say it happened on Tuesday. Mary Jane
24 may say it happened on Friday. Those are proper
25 questions. Who is telling the truth? Which day is it?

1 That's your job. Collectively acting together, you
2 determine what the true facts are. In other words, you
3 have to judge the believability or the credibility of the
4 witnesses who testify in the case. You know how to do
5 that, you deal with husbands, wives, children, employees,
6 employers on a daily basis.

7 You use common sense to determine who is telling the
8 truth. You take those true facts and apply it to the law
9 as I give it to you, and then you're in a position to
10 render a true and just verdict.

11 Now, having said that, do I have any member of the
12 jury panel who is unable to perform that duty of judging
13 the facts of the case, that important civic duty of
14 judging the credibility of the witnesses in the case?

15 Do I have any jurors who for any reason whatsoever
16 cannot do it for political beliefs, religious beliefs, any
17 kind of belief? Can anybody not do that?

18 (There was no response).

19 Anybody on the jury panel know of any reason why he
20 or she cannot serve on the trial of this case with
21 particular emphasis being placed on your ability to be
22 fair to the State and to Mr. Miller? If so, please stand.

23 Any additional questions by the State?

24 MR. ARANT: Nothing further, Your Honor.

25 THE COURT: By the defendant?

1 MR. HAWKS: None, Your Honor.

2 THE COURT: All right. Ten, 12 strikes -- I mean, 12
3 jurors, two alternates. This is a five and five?

4 MR. ARANT: Yes, sir.

5 MS. GRICE: Yes, sir.

6 THE COURT: Ladies and gentlemen, the way we draw a
7 case -- draw juries -- in criminal court, General
8 Sessions, is different than the way Judge Hill is drawing
9 his court over in civil.

10 If we were trying his case, which is an asbestos
11 case, they would put it -- do you have the list for me
12 now? You're going to draw it straight off of that?

13 THE CLERK: Yes, sir. We go straight down.

14 THE COURT: All right. If we were over there, we
15 would put 20 names on a piece of paper and each side would
16 have four strikes leaving us with...

17 (A cell phone rang.)

18 Did you tell everybody to turn their phone off?

19 (Laughter.)

20 I thought I turned it off. It was on vibrate.

21 Who wants to take my phone?

22 (There was no response.)

23 We put 20 names on the paper. The plaintiff will
24 have four. The defendant will have four leaving you with
25 12.

1 In this situation, we randomly select your name. As
2 your name is called, you'll come down here, stand right
3 here. The State has five strikes. The defendant has five
4 strikes. They can strike you for most any reason at all
5 within certain bounds that the lawyers know about.

6 Don't get your feelings hurt if they don't take you.
7 We'll go through that exercise where you have 12 and two
8 alternates. If your name is called, come right down here.
9 If you have a -- any personal belongings, bring those with
10 you in case you're drawn so you can take them right here
11 to the jury box.

12 THE CLERK: Ladies and gentlemen of the jury panel,
13 as the judge said, as I call your name, come down. Bring
14 all your belongings with you. Stand here in front of the
15 microphone facing both the defendant and the State.

16 THE COURT: Now, don't bring all of your belongings.
17 Bring all of the belongings that you have with you.

18 THE CLERK: Yes.

19 THE COURT: We have to have a little fun every now
20 and then.

21 Yes, ma'am.

22 THE CLERK: S.D. Greer.

23 THE COURT: Ms. Greer, right over there for me,
24 please.

25 What says the State?

1 (White female.)

2 PROSPECTIVE JUROR: Number 360, I'm sorry.

3 THE CLERK: Thank you.

4 MR. ARANT: Please strike this juror.

5 THE CLERK: Have a seat in the back of the courtroom,
6 please.

7 THE BAILIFF: Up this way, ma'am.

8 THE COURT: You mean excused, strike?

9 THE BAILIFF: This way, the back of the courtroom.

10 THE CLERK: Number 142, Denise Kehl, and I apologize
11 if I'm mispronouncing any of these names.

12 (White female.)

13 What says the State?

14 MR. ARANT: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. HAWKS: Please excuse this juror.

17 THE CLERK: Have a seat in the back of the courtroom.
18 Number 273, Laura Viohl.

19 (White female.)

20 THE CLERK: What says the State?

21 MR. ARANT: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. HAWKS: Please present this juror.

24 THE CLERK: Have a seat in the jury box for me.

25 THE BAILIFF: Watch your step.

1 THE CLERK: Number 336, Fay Ramirez.
2 (Black female.)
3 What says the State?
4 MR. ARANT: Please present this juror.
5 THE CLERK: What says the defense?
6 MR. HAWKS: Please seat this juror.
7 THE CLERK: Have a seat in the jury box, please.
8 Number 20, William Blackwell.
9 (White male.)
10 What says the State?
11 MR. ARANT: Please present this juror.
12 THE CLERK: What says the defense?
13 MR. HAWKS: Please seat this juror.
14 THE CLERK: Have a seat in the jury box, please.
15 THE BAILIFF: Watch your step.
16 THE CLERK: Number 178, Billy Miller.
17 (Black male.)
18 MR. ARANT: Please present this juror.
19 THE CLERK: What says the defense?
20 MR. HAWKS: Present this juror.
21 THE CLERK: Have a seat in the jury box.
22 Number 86, Zindy Frick.
23 (Asian female.)
24 THE CLERK: What says the State?
25 MR. ARANT: Please present this juror.

1 THE CLERK: What says the defense?

2 MR. HAWKS: Please seat this juror.

3 THE CLERK: Have a seat in the jury box, please.

4 Hope Goodwin, number 96.

5 (Black female.)

6 What says the State?

7 MR. ARANT: Please present this juror.

8 THE CLERK: What says the defense?

9 MR. HAWKS: Please seat this juror.

10 THE CLERK: Have a seat in the jury box, please.

11 Carolyn Phillips, number 210.

12 (White female.)

13 What says the State?

14 MR. ARANT: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. HAWKS: Please excuse this juror.

17 THE CLERK: Have a seat in the back of the courtroom.

18 Number 320, Terry Guase.

19 (White male.)

20 THE CLERK: What says the State?

21 MR. ARANT: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. HAWKS: Please excuse this juror.

24 THE CLERK: Have a seat in the back of the courtroom.

25 Number 92, Mickey Gibson.

1 (Black male.)
2 MR. HAWKS: Would you repeat the number, madam clerk?
3 THE CLERK: Ninety-two.
4 MS. GRICE: Thank you.
5 THE CLERK: What says the State?
6 MR. ARANT: Please present this juror.
7 THE CLERK: What says the defense?
8 MR. HAWKS: Please present this juror.
9 THE CLERK: Have a seat in the jury box, please.
10 Number 239, Sharon Scott.
11 (Black female.)
12 What says the State?
13 MR. ARANT: Please present this juror.
14 THE CLERK: What says the defense?
15 MR. HAWKS: Please present this juror.
16 THE CLERK: Have a seat in the jury box, please.
17 Number 45, Maureen Carter.
18 (White female.)
19 What says the State?
20 MR. ARANT: Please present this juror.
21 THE CLERK: What says the defense?
22 MR. HAWKS: Please seat this juror.
23 THE CLERK: Have a seat in the jury box.
24 Number 230, Jessie Rosenthal.
25 (White female.)

1 What says the State?

2 MR. ARANT: Please excuse this juror.

3 THE CLERK: Have a seat in the back of the courtroom,
4 please.

5 Number 361, Kara Jones.

6 (White female.)

7 What says the State?

8 MR. ARANT: Please excuse this juror.

9 THE CLERK: Have a seat in the back of the courtroom,
10 please.

11 Number 224, Josie Rivera.

12 (Hispanic male.)

13 What says the State?

14 MR. ARANT: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. HAWKS: Please seat this juror.

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

18 Number 352, Kamisha Thomas.

19 (Black female.)

20 What says the State?

21 MR. ARANT: Please seat this -- please present this
22 juror.

23 THE CLERK: What says the defense?

24 MR. HAWKS: Please seat this juror.

25 THE CLERK: Have a seat in the jury box.

1 Number 134 Deborah Murdaugh.

2 (Black female.)

3 What says the State?

4 MR. ARANT: Please excuse this juror.

5 THE CLERK: Have a seat in the back of the courtroom,
6 please.

7 Let me review the strikes with the State. I have
8 four; for the defense three.

9 MR. ARANT: That's correct.

10 THE CLERK: Number 133, Angela Johnson.

11 (Black female.)

12 What says the State?

13 MR. ARANT: Please excuse this juror.

14 THE CLERK: Have a seat in the back of the courtroom,
15 please.

16 Number 157, Michael Lee.

17 (Black male.)

18 Does the State challenge for cause?

19 MR. ARANT: No, ma'am, I do not.

20 THE CLERK: What says the defense?

21 MR. HAWKS: Please seat this juror.

22 THE CLERK: Have a seat in the jury box.

23 All right. For the record, number 92 has informed
24 the bailiff they cannot be here tomorrow, so I'm going to
25 excuse juror 92.

1 THE BAILIFF: Ninety-six.

2 THE COURT: Ninety-six, I'm sorry, 96.

3 Draw me one more regular juror, please, ma'am.

4 Number 96, is it Ninia Wallace?

5 PROSPECTIVE JUROR: Niya.

6 THE CLERK: Niya Wallace.

7 (Black female.)

8 Does the State challenge for cause?

9 MR. ARANT: No, Your Honor.

10 MR. HAWKS: No.

11 THE COURT: All right. Two alternates.

12 THE CLERK: Number 15, John Beard.

13 (Black male.)

14 MR. ARANT: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. HAWKS: Please seat this juror.

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

18 Number 149, Viola Konopka.

19 (White female.)

20 What says the State?

21 MR. ARANT: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. HAWKS: Please excuse this juror.

24 THE CLERK: Have a seat in the back of the courtroom,
25 please.

1 Number 175, Kathy Metts.

2 (White female.)

3 What says the State?

4 MR. ARANT: Please excuse this juror.

5 THE CLERK: Have a seat in the back of the courtroom,
6 please.

7 Number 29, Karen Graham.

8 (White female.)

9 MR. ARANT: Madam clerk, what was her number?

10 THE CLERK: Twenty-nine.

11 Does the State challenge for cause?

12 MR. ARANT: No, ma'am, we do not.

13 THE CLERK: What says the defense?

14 MR. HAWKS: Please seat this juror.

15 THE CLERK: Have a seat in the jury box, please.

16 THE COURT: Any motions by the State or the defendant
17 in connection with the selection of the jury, Mr. Arant?

18 MR. ARANT: None, Your Honor.

19 THE COURT: Mr. Lucas?

20 MR. HAWKS: None from the defense.

21 THE COURT: Thank you.

22 All right. Ladies and gentlemen, those of you who
23 were not drawn, I want to excuse you now for the balance
24 of the day. Please call back after six; is that correct?

25 THE CLERK: Yes, sir.

1 THE COURT: Does everybody have the call in
2 information?

3 THE CLERK: Sheila will give you the information
4 downstairs, but let them know that the judge instructed
5 you. It's a different number.

6 She will give y'all a little slip of paper. Memorize
7 that number. Chew it up, swallow it. Do not lose it,
8 okay. It's an important number. Sheila will tell you all
9 about it.

10 THE COURT: They get to carry it with them.

11 THE CLERK: Yeah, they can take it with them.

12 THE COURT: So they don't have to memorize it.

13 THE CLERK: Well, no.

14 THE COURT: Maybe they're my age, and they can't
15 remember it.

16 THE CLERK: Anyway, let Sheila know that the judge
17 has instructed that you are to call back after
18 six o'clock, okay. All right. Thank you.

19 (Whereupon, the unselected members of the jury left
20 the courtroom.)

21 THE COURT: All right. Ladies and gentlemen, those
22 of you who were drawn, we will start back at 2:15, 2:15.
23 That way it gives me a chance to get through with
24 everything I've got to do. You don't have to sit and wait
25 on us. So be back at 2:15.

1 The bailiff will show you where to return and how to
2 return. Then we will go until about five o'clock this
3 afternoon. Is that an imposition to anybody? Anybody
4 need rides? Everybody okay?

5 (There was no response).

6 I look forward to working with you. When we get
7 back, I'll go over some opening.

8 Please have a seat, sir.

9 (Complies.)

10 Thank you.

11 We'll go over sort of the basis of the trial, what
12 you can expect, where we're going to go with it. I look
13 forward to working with you. 2:15. Thank you.

14 Everybody else remain seated.

15 THE BAILIFF: Okay. Come this way, please.

16 (Whereupon, the jury left the courtroom at 10:36 AM).

17 THE COURT: All right. We're going to conclude
18 everything we've got in the AG's case, and I'll deal with
19 the sentencing. Then we will go do your motion to
20 suppress. Then we will see where it stands.

21 (Other matters not related to this case were heard.)

22 (There was a brief recess.)

23 (WHEREUPON, State's Exhibits Nos. 1, 2 were marked
24 for identification only.)

25 THE COURT: All right. We're back on the record in

1 the State of South Carolina vs. Jonathan Xavier Miller.

2 Indictment 13-GS-40--- the motion to suppress has two
3 indictments. I only have one up here in front of me.

4 Which one is it, sir, Mr. Lucas?

5 MR. HAWKS: To suppress the evidence for both
6 indictments.

7 THE COURT: Well, I only have one indictment. Are we
8 proceeding on two indictments or one?

9 MR. ARANT: No, sir. We're only going forward on the
10 possession with intent to distribute, not the proximity
11 charge.

12 THE COURT: That is 13-GS-40-4661. That is an
13 indictment for possession with intent to distribute crack
14 cocaine; is that correct, sir?

15 MR. HAWKS: Yes, Your Honor.

16 THE COURT: Your motion.

17 MR. HAWKS: Yes, sir. I believe it is the State's
18 burden to prove that this was an inventory exception to
19 the search, so it would be their turn to call a witness.

20 THE COURT: You believe that?

21 MR. HAWKS: Yes, Your Honor.

22 THE COURT: Very well. You may call your first
23 witness.

24 MR. ARANT: Yes, sir.

25 State has -- do you want to have a seat?

1 MR. HAWKS: If I could approach. I apologize.

2 MR. ARANT: The State would call James Westbury.

3 THE COURT: Mr. Westbury, please come around.

4 JAMES WESTBURY, after being duly
5 sworn, testified as follows:

6 THE CLERK: Have a seat in the witness stand, please.

7 THE BAILIFF: Watch your step, please.

8 THE CLERK: State your name for the record.

9 THE WITNESS: Officer James Westbury.

10 DIRECT EXAMINATION:

11 BY MR. ARANT:

12 Q Officer Westbury, can you just spell your name for
13 the record?

14 A James, J-A-M-E-S; Westbury, W-E-S-T-B-U-R-Y.

15 Q Okay. And where are you employed currently?

16 A City of Columbia Police Department.

17 Q And how long have you worked for the City of
18 Columbia?

19 A Two years.

20 Q In what capacity have you worked for the City of
21 Columbia?

22 A As a patrolman.

23 Q Was there a particular region that you were assigned
24 to in Columbia?

25 A In South Region.

1 Q And can you tell the judge what part of town that's
2 in?

3 A That would be in the Five Points, Millwood, Rosewood,
4 out on Garners Ferry.

5 Q And how long have you been in that region?

6 A The whole time in the City of Columbia.

7 Q Are you still currently in that region?

8 A I am.

9 Q Were you assigned that region in January 2013?

10 A Yes, sir.

11 Q January 10th, 2013?

12 A Yes, sir.

13 Q Do you remember that day?

14 A I do.

15 Q Can you tell us what was going on in that area of
16 town?

17 A I was responding to a call in reference on -- it was
18 the 700 block of South Bonham.

19 THE COURT: South where?

20 THE WITNESS: South Bonham in reference to a female
21 claiming an individual had gone into her yard and was
22 stealing items.

23 While at that location, we were advised of the
24 complaint in reference to the apartment across on the 700
25 block. She advised in reference to a silver and green

1 older model vehicle with large rims.

2 THE COURT: Who was doing this, telling you this?

3 THE WITNESS: This would have been an individual at
4 the 700 block of...

5 MR. HAWKS: Objection, Your Honor, hearsay.

6 THE COURT: Sustained.

7 BY MR. ARANT:

8 Q As a result of your inquiry or responding to the
9 initial call, what was the initial call in response for?

10 A In reference to items stolen out of a yard.

11 Q What did you learn as a result of your investigation
12 to a drug complaint?

13 A I learned that there was a vehicle going multiple
14 times throughout the day and night at the known drug
15 location that we've got multiple complaints of.

16 MR. HAWKS: Objection, Your Honor. He is just using
17 the hearsay exception.

18 THE COURT: I agree.

19 MR. ARANT: Your Honor, if I may respond to that
20 argument.

21 THE COURT: You may. You can ask him as a result of
22 what he learned, what did you do.

23 MR. ARANT: I understand also hearsay is allowed in
24 suppression-type hearings. They are generally allowed,
25 and I have case law about that when they are for

1 investigatory purposes while an officer -- in a certain
2 area or while they pull over a certain individual that
3 they are allowed -- I've got case law in State v. Johnson
4 and also -- I think the State v. Johnson and one other
5 case, as well, on that. But if you let me proceed in a
6 different manner, I can.

7 THE COURT: What's your position? What do you want
8 me to do?

9 MR. ARANT: My position is that, you know, I would
10 ask that it be allowed.

11 THE COURT: I sustain the objection.

12 BY MR. ARANT:

13 Q Okay. What, if anything, did you learn?

14 THE COURT: What was that question?

15 MR. ARANT: What, if anything, did he learn.

16 THE COURT: Did you learn? You can't ask that.

17 As a result of what you were told, what did you do?
18 How about that?

19 THE WITNESS: Throughout the day, I was looking for
20 the vehicle that was given as a description near the 800
21 block of South Kilbourne.

22 I did observe the vehicle that was given as a
23 possible use for narcotics which was an older model Chevy,
24 half green, half silver with large rims.

25 MR. HAWKS: Objection, Your Honor. He just referred

1 to narcotics again, the narcotics complaint.

2 MR. ARANT: Can I rephrase the question?

3 THE COURT: You may.

4 BY MR. ARANT:

5 Q What were you looking for?

6 A You're talking about for the first --

7 Q What were you looking for? You mentioned a vehicle.

8 A Correct. It was a complaint. We were wanting to
9 make contact with a person possibly in the vehicle to see
10 if maybe they lived at that location for us to clear out
11 the complaint.

12 Q So you mentioned you wanted to make contact with that
13 individual?

14 A Correct.

15 Q And what happened after you left this -- left the
16 location that you responded to the suspicious call?

17 A Left that location, went to the 800 block of South
18 Kilbourne where we made contact with a possible subject
19 that was stealing those items. Upon leaving that, I
20 observed vehicle, turned around to try and get a tag on
21 the vehicle at which time I pulled into the Mini Mart at
22 Live Oak and South Kilbourne.

23 Q Where were you at this time when all of that was
24 transpiring?

25 A I was on South Kilbourne heading towards Live Oak.

1 Well, I was actually heading on South Kilbourne towards
2 Rosewood when I passed him going in the opposite
3 direction.

4 Q And what did you observe?

5 A I observed a vehicle. As soon as I turned around, it
6 pulled into the Mini Mart at Live Oak, South Kilbourne.
7 As I passed by within the next block, approximately a
8 minute, maybe two at the most, I observed the vehicle
9 going at what appeared to be a high rate of speed on
10 Hancock.

11 I attempted to catch up to the vehicle, got behind it
12 at Hancock Street -- correction, Hancock at Timberlane. I
13 was behind the vehicle as I pulled into [REDACTED]
14 Drive and made contact as the defendant was getting out of
15 the vehicle.

16 Q And based on your investigation in the complaint of
17 drug activity, what were you looking for?

18 A Just to make contact.

19 MR. HAWKS: Objection to the question, Your Honor.
20 He again referred to the complaint of drug activity which
21 you already ruled.

22 THE COURT: Rephrase the question.

23 BY MR. ARANT:

24 Q Based on your investigation, what were you looking
25 for?

1 A Just to make contact.

2 Q Any particular description of the car?

3 A The description that was given was a --

4 MR. HAWKS: Objection, Your Honor, hearsay.

5 THE COURT: Sustained.

6 BY MR. ARANT:

7 Q I'll stay away.

8 Then what happened once you made contact with this
9 car that you were looking for?

10 A As we made contact with the defendant, as he was
11 getting out of the vehicle, asked for a driver's license
12 at which time he stated he didn't have it on him. He said
13 it was inside of the residence. I advised him that --

14 Q You have to continue, finish your question.

15 A I advised him that we didn't have to have the actual
16 license in hand; that he didn't -- while it was going on,
17 run it through DMV. I asked if he lived at the [REDACTED]
18 [REDACTED] which he stated he didn't.

19 While that was going on, it was run through DMV. He
20 was confirmed that he was driving under suspension which I
21 had observed him on Kilbourne, Hancock, and Timberlane
22 driving on the roadway.

23 Q Now, did you -- did he ever -- can you ever see
24 anyone else driving the vehicle?

25 A No, sir. He was the only individual.

1 Q The person y'all got out with was the only individual
2 you saw driving?

3 A Yes.

4 Q And once you left the Mini Mart, you never lost sight
5 of the car?

6 A Correct.

7 Q When you pulled in behind this car, where was the
8 person, the suspect, the driver of the car?

9 A In the driver's seat.

10 Q Was it -- he was getting out of the vehicle?

11 A Correct. He was opening the door as I pulled up
12 behind him.

13 Q And then you -- then what did you do next?

14 A I made contact with him as he was getting out of the
15 vehicle.

16 Q Okay. And did you ask for anything?

17 A The driver's license which he stated he didn't have.
18 He believed it was in the residence. I advised him that
19 we didn't have to have the driver's license in hand. If
20 we could just run his name, date of birth through the DMV.
21 During that time, confirmed through the DMV that he was
22 driving under suspension.

23 Q Now, as this was all going down, did you ever
24 activate your blue lights?

25 A I did not.

1 Q Did you ever draw your gun?

2 A No, sir.

3 Q Was there are another officer in the vicinity?

4 A There was.

5 Q Who was that?

6 A Officer McDonald.

7 Q And you approached this individual first?

8 A Correct.

9 Q No guns drawn?

10 A No.

11 Q No handcuffs out?

12 A No, sir.

13 Q You said he gave you his name. He didn't want to
14 talk to y'all. Could he have just left?

15 A Correct.

16 Q Is there anything y'all could have done at that
17 point?

18 A No, sir. There wasn't.

19 Q What was the reason for y'all making contact with
20 him?

21 A To make contact to find out if he possibly lived on
22 South Bonham or if he possibly lived on Timberlane.

23 THE COURT: I thought you made contact with him
24 because he was speeding down the road.

25 THE WITNESS: I observed him going at a high rate of

1 speed.

2 THE COURT: Well, is that why you stopped him? Isn't
3 that why you pulled in there?

4 THE WITNESS: It was in reference to a complaint.

5 THE COURT: So if he just kept on going, you're
6 saying he could have been driving fast?

7 THE WITNESS: Oh yes, sir. I mean, it would have
8 been -- it's both things combined that drew my attention
9 to him, but it was the complaint that caught my attention
10 at first, and then I also saw him going at high rate of
11 speed down Hancock.

12 THE COURT: Okay.

13 BY MR. ARANT:

14 Q And we'll just clarify for a second. Your car, is it
15 equipped with radar?

16 A No, sir.

17 Q Okay. So you're interpreting visual speed --

18 A Correct.

19 Q -- than you were accustomed to this area?

20 A Correct.

21 Q And you're familiar with the speed limits in this
22 area?

23 A Yes, sir.

24 Q And can you tell the difference between the speeds?

25 A Yes, sir.

1 Q Substantial?

2 A To the best of my ability, yes, sir.

3 Q Now, let's get back to -- once this -- once he gave
4 the name, gave his name, you were saying somebody ran it
5 or something?

6 A Yes, sir. Officer McDonald ran it through DMV. At
7 that time, it was confirmed he was driving under
8 suspension.

9 Q And what did you do after that?

10 A At that time, he was placed under arrest.

11 Q Then what happened?

12 A At that time, we then called for the vehicle to be
13 towed. Due to that, we had to do an inventory search of
14 the vehicle. During that time, a small bag containing off
15 white, rock-like substance was located under the driver's
16 seat that did field test positive as crack cocaine, as
17 well as a small scale in his pocket.

18 THE COURT: Why did you have to tow it?

19 THE WITNESS: Due to the fact that he wasn't the
20 vehicle owner, and the owner wasn't on the scene. The
21 vehicle needed to be towed.

22 THE COURT: Not owner, owner not on the scene. All
23 right. Go ahead.

24 BY MR. ARANT:

25 Q And at this time, once he was placed under arrest,

1 you said -- his person was searched?

2 A Correct.

3 Q By you?

4 A Yes, sir.

5 Q What did you find, if anything, on him?

6 A It was a black electronic scale in his pocket.

7 Q What kind of -- you know, what is that scale? What
8 kind of scale is that?

9 A It's just been -- just a black electronic scale.

10 Q How big is it?

11 A Possibly the size of a hand.

12 Q Okay. And then you were talking about you
13 inventoried the car.

14 A Correct.

15 MR. ARANT: May I approach the witness, Your Honor?

16 THE COURT: Where did you inventory it?

17 THE WITNESS: It was inventoried at [REDACTED]

18 Drive.

19 THE COURT: Before the towing?

20 THE WITNESS: Correct, yes, sir.

21 MR. ARANT: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 BY MR. ARANT:

24 Q I'm going to show you this. Can you tell the judge
25 what this is?

1 A It's a policy, procedures for the police department.

2 Q Which police department?

3 A For the City of Columbia Police Department.

4 Q And have you had a chance to -- are you familiar with
5 that?

6 A I am.

7 MR. ARANT: Your Honor, at this time I seek to admit
8 into evidence --

9 THE COURT: Any objection?

10 MR. HAWKS: No, Your Honor.

11 THE COURT: Thank you.

12 MR. ARANT: I can provide him a copy.

13 (WHEREUPON, State Exhibit No. 1 was admitted into
14 evidence.)

15 BY MR. ARANT:

16 Q If you could turn me to page -- page three, and is
17 that -- what does that basically say?

18 A In reference to the vehicle taken in police custody?

19 Q Yes.

20 A It states that any vehicle for which an officer makes
21 an arrest and there is no responsible party to whom it can
22 be turned over, the possession of the vehicle, any vehicle
23 which was reported to be stolen and take --

24 THE COURT: Slow down for me.

25 THE WITNESS: I apologize, Your Honor.

1 It states, "Departmental personnel may also tow the
2 following vehicles: Any vehicle for which an officer
3 makes an arrest and there is no responsible party to whom
4 it can turn over the possession of the vehicle."

5 BY MR. ARANT:

6 Q Is that what you did in this case?

7 A It is.

8 Q Was there a responsible owner on the scene?

9 A There was not.

10 Q Does it say anywhere in that language that you have
11 to notify the owner on the scene.

12 A No, it doesn't.

13 Q Who was the owner?

14 A Cassandra Jones.

15 MR. ARANT: May I approach the witness, Your Honor?

16 THE COURT: Certainly.

17 MR. ARANT: I'm also going to show you this. If you
18 could for the court reporter, identify what that document
19 is.

20 THE WITNESS: It's a record of stored vehicle for
21 when we tow a vehicle, we have to fill out the information
22 as far as the vehicle description, who the driver was, who
23 the vehicle owner is.

24 BY MR. ARANT:

25 Q And is that something that you prepared?

1 A It is.

2 Q By you?

3 A It is.

4 Q Is that your handwriting there?

5 A It is.

6 MR. ARANT: Your Honor, I'd seek to admit this into
7 evidence. I think it's marked as State's Exhibit No. 2.
8 I also have provided a copy of --

9 THE COURT: Any objection?

10 MR. HAWKS: None, Your Honor.

11 (WHEREUPON, State Exhibit No. 2 was admitted into
12 evidence.)

13 BY MR. ARANT:

14 Q If you could just read for me on there who the -- if
15 you could make it out, as best you can, the vehicle owner.

16 A Cassandra Jones.

17 Q And at that time, did you know who Cassandra Jones
18 was?

19 A No, I did not.

20 Q Did the defendant in this case ever tell you he owned
21 the car?

22 A He did not.

23 Q So the owner -- the interpretation at that point in
24 time, there was no owner --

25 A Correct.

1 Q -- on the site?

2 A The owner was not on the scene.

3 Q Is it common for you to tow the vehicle once you make
4 an arrest with the driver of the vehicle?

5 A It is.

6 Q Have you done it before?

7 A Yes, sir.

8 Q Have you done it often?

9 A The majority of the time, the vehicle is towed when a
10 driver is arrested.

11 Q And why is that?

12 A It's per the policy. We are to tow the vehicle when
13 the owner is not on the scene. It's just to cover myself,
14 as well as make sure the vehicle doesn't have damage and
15 nothing is taken from the vehicle.

16 Q And did you eventually make contact with the owner in
17 this case?

18 A The -- the records where the vehicle is sent to the
19 address given.

20 Q And they notify the owner?

21 A Correct.

22 Q Okay. Now, how long -- how long is this when you
23 first encountered the subject to say he was placed under
24 arrest? How long --

25 (The court reporter became ill, and the proceedings

State of South Carolina

Court of General Sessions

County of Richland

2013-GS-40-04661

The State of South Carolina :

:

-VS-

:

TRANSCRIPT OF RECORD

:

Jonathan Xavier Miller :

August 28, 2013

Columbia, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge, and
jury.

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

Brent Arant, Esquire
Jennifer McKellar, Esquire
Attorneys for the State

Lucas Hawks, Esquire
Jessamine Grice, Esquire
Attorneys for the Defendant

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessJames Westbury (in camera)

Direct Examination by Mr. Arant.....	6
Cross-Examination by Mr. Hawks.....	8
Redirect Examination by Mr. Arant.....	18

Shaun McDonald (in camera)

Direct Examination by Ms. McKellar.....	20
Examination by the Court.....	27
Cross-Examination by Mr. Hawks.....	29
Redirect Examination by Ms. McKellar.....	34

Cansandera Jones (in camera)

Direct Examination by Mr. Hawks.....	53
--------------------------------------	----

James Westbury

Direct Examination by Mr. Arant.....	75
Cross-Examination by Ms. Grice.....	91
Redirect Examination by Mr. Arant.....	102

Shaun McDonald

Direct Examination by Ms. McKellar.....	103
Cross-Examination by Ms. Grice.....	110

Brenda G. Jenkins

Direct Examination by Ms. McKellar.....	117
---	-----

I N D E XWitnessJonathan X. Miller (in camera)

Examination by the Court.....133

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
S-1	policy		86
S-2	tow inventory		87
S-3	crack cocaine		123

Opening Statement by Ms. McKellar.....71
Opening Statement by Ms. Grice.....72
Closing argument by Mr. Arant.....142
Closing argument by Mr. Hawks.....147
Court's charge on the law.....153
Verdict.....168

1 (Court reporter's note: The first part of the trial was
2 taken down by court reporter Karen Ambroziak, and the trial
3 transcript that she produced is not attached to this
4 transcript.)

5 **The Court:** All right. Put the witness back on the
6 stand, please. Mr. Westbury, you're still under oath.

7 **Mr. Arant:** Your Honor, if I may, these are the exhibits
8 that were introduced yesterday. I'd like to just maybe have
9 those admitted for identification purposes only as opposed to
10 having---

11 **The Court:** You can admit them for the purposes of the
12 suppression hearing and then obviously go forward in the
13 trial if you need them, however you want to do it.

14 **Mr. Arant:** Okay. That's -- we'll just do that. That's
15 fine. That's correct.

16 **The Court:** Have you finished your direct examination?

17 **Mr. Arant:** Yes, sir. I've just got a few more
18 questions.

19 **The Court:** So you haven't finished.

20 **Mr. Arant:** No, sir.

21 **The Court:** Move forward.

22 James Westbury, having been previously sworn and
23 remaining under oath, testified as follows:
24
25

Direct Examination

By Mr. Arant:

Q. Okay. Officer Westbury, I'm just going to wrap all this back around because during our break we had to take yesterday -- and sum this up. You received a complaint?

A. Correct.

Q. That complaint was a drug complaint?

A. Correct.

Mr. Hawks: Objection, Your Honor.

The Court: Asked and answered. We've already heard all this.

Mr. Arant: Okay.

The Court: If you've got anything new, ask him. If not, I can -- obviously I can remember from yesterday.

Mr. Arant: I understand. Yes, sir.

By Mr. Arant:

Q. Now, whose -- did anyone ever come out of that location where you stopped the defendant in this case?

A. There was a female that came out of---

Q. When did she---

A. ---one of the apartments.

Q. When did she come out?

A. It would have been after he was placed under arrest.

Q. She was not the owner of the vehicle?

A. Correct.

1 Q. I just want you to read briefly as part of Exhibit 1,
2 8.0. Can you just read that? Tell us what that says.

3 A. Appeal process for vehicle removal. It says since
4 questions concerning the appropriation -- appropriateness or
5 legality of the removal of any vehicle will be considered as
6 a complaint against the officer initiating the removal. The
7 complaint will be forwarded to the region command for
8 investigation and action, if any.

9 Q. Thank you. Was there ever a complaint filed against you
10 in this case for the arrest?

11 A. There was not.

12 Q. Was there ever a complaint filed against you for the
13 towing of this vehicle?

14 Mr. Hawks: Objection, Your Honor. I'm not sure this is
15 relevant.

16 The Court: Sir?

17 Mr. Hawks: I'm not sure this is relevant.

18 The Court: Overruled.

19 By Mr. Arant:

20 Q. You can answer the question.

21 A. There was not.

22 Q. There was no complaint filed against you for the arrest
23 or the towing; correct?

24 A. Correct.

25 The Court: Mr. Arant, hand me those exhibits, please.

1 **Mr. Arant:** Okay. And, Your Honor, I don't have any
2 further questions of this witness.

3 **The Court:** Mr. Hawks?

4 **Mr. Hawks:** Thank you, Your Honor. May it please the
5 Court?

6 Cross-Examination

7 By Mr. Hawks:

8 Q. Officer Webster, I'm going to start with some of your
9 testimony yesterday. You testified, excuse me, that you
10 began following the vehicle around the mini mart -- the mini
11 mart?

12 A. I had turned around to try and get behind the vehicle
13 near the mini mart.

14 Q. Okay. And about how far down this Timberlane Drive?
15 Three blocks or so?

16 A. I believe it's going to be two blocks, three at the
17 most.

18 Q. Okay. And you said that you had pulled into the
19 incident location in order to talk to Mr. Miller.

20 A. Correct.

21 Q. Okay. And you didn't have your lights on.

22 A. Correct.

23 Q. And there was another officer with you at the time.

24 A. There was.

25 Q. And was he traveling with you or did he arrive

1 afterwards?

2 A. He would have arrived on the scene afterwards.

3 Q. Okay. So he wasn't behind you or with you?

4 A. I don't know -- remember exactly how close behind me.

5 He was in the area at the same time.

6 Q. Did he -- did you speak to him beforehand?

7 A. Before?

8 Q. Before this incident occurred.

9 A. Yes, sir.

10 Q. Okay. Now, if you're facing the residence, Mr. Miller's

11 car would have been parked in the driveway; correct?

12 A. Correct.

13 Q. Okay. And then you pull up first. So was your car

14 positioned behind Mr. Miller's vehicle?

15 A. It wouldn't have been directly behind him; no, sir.

16 Q. Directly behind him?

17 A. It would not have been directly behind him.

18 Q. Where would it have been?

19 A. It would be more off to the side just because of the way

20 he pulled in straight and how it had---

21 Q. So there wasn't room in the driveway for you to pull up

22 behind him.

23 A. Correct.

24 Q. Okay. So you were out in the street behind him.

25 A. Correct.

1 Q. Okay. And where did the second officer's car pull up?

2 A. I believe it was pulled in behind me, but I'm not a
3 hundred percent certain on that.

4 Q. Okay. Now, when you first got out of your car, what did
5 you say to Mr. Miller? "Stop"?

6 A. I don't remember the exact words. I---

7 Q. But he was walking toward---

8 **The Court:** Sir, let him finish his answer, please.

9 **Mr. Hawks:** I apologize.

10 **The Witness:** I believe it's to the extent of just
11 letting him know who I was. I asked him if I could speak
12 with him for a second.

13 By Mr. Hawks:

14 Q. Okay. And was he walking toward the door?

15 A. He was exiting the vehicle when I made contact with him.

16 Q. And as he acted -- as he exited, was he walking toward
17 the door?

18 A. Correct.

19 Q. Okay. And then did you frisk him?

20 A. I don't remember. I don't believe so.

21 Q. Okay. Okay. And when you first started talking to Mr.
22 Miller, was the other officer present at that time?

23 A. I believe he was; yes, sir.

24 Q. Okay. And you asked Mr. Miller to search his vehicle;
25 correct?

1 A. This would have been after asking for his information.

2 Correct. I asked for consent.

3 Q. Okay. And did he deny that consent?

4 A. He did.

5 Q. Okay. And were you aware of whose property you were on
6 at the time or who was the leaseholder of the residence?

7 A. No, sir.

8 Q. But that would have been the woman you just testified
9 came later, Ms. Nikea Berry? Is that...

10 A. I believe that that was where she lived. I had no
11 information that that was actually her residence.

12 Q. Okay. You testified that she came out of one of the
13 units.

14 A. Correct. Yes, sir.

15 Q. Okay. All right. So at this point you're now both
16 questioning Mr. Miller.

17 A. No, sir, just myself.

18 Q. Okay. Let's clarify when exactly the second officer
19 arrived then.

20 A. Okay. He arrived soon after myself. He was actually
21 running his information while I was talking.

22 Q. How did he get his information if he arrived after you?

23 A. From myself. I had wrote it on a paper and would have
24 handed it to him as he ran it through dispatch.

25 Q. I got you. So he comes up. You give him the paper. He

1 goes back.

2 A. Correct.

3 Q. So you're still questioning Miller alone.

4 A. Yes, sir, I'm talking to him.

5 Q. Would you say Mr. Miller was cooperating with you?

6 A. Yes, sir.

7 Q. Even though he denied consent to search?

8 A. Yes, sir.

9 Q. Was Mr. Miller on the phone when you approached?

10 A. Not that I remember, no, sir.

11 Q. Did he make any phone calls when you were there?

12 A. Not that I remember.

13 Q. Did you speak to Ms. Berry or the woman that arrived
14 later on?

15 A. I believe I spoke to her. After he was arrested, she
16 came out and asked what was going on. I don't believe I
17 spoke to her before then.

18 Q. Okay. And did you ever ask Mr. Miller whose residence
19 this was?

20 A. I asked him -- I believe I asked him if he lived at that
21 residence which I think he stated that he was visiting his
22 child or girlfriend. I can't remember which one.

23 Q. Okay. So he did tell you that it was his girlfriend's
24 residence.

25 A. Correct.

1 Q. Okay. Let's switch gears here a little bit. I'm going
2 to -- do you have your incident report in front of you still?

3 A. Yes, sir.

4 Q. Where in there does it say that you saw the defendant
5 driving at a high rate of speed?

6 A. I don't have it in my incident report.

7 Q. Okay. And when you first approached Mr. Miller, did you
8 ask him anything about that?

9 A. No, sir, not at that time.

10 Q. All right. Now, do you also still have the towing
11 procedures in front of you?

12 A. No, sir, I don't.

13 **Mr. Hawks:** Your Honor, may I approach the witness?

14 **The Court:** Here.

15 **Mr. Hawks:** Thank you, Judge.

16 By Mr. Hawks:

17 Q. (Mr. Hawks hands a document to the witness.) Now, going
18 back to Section 7.2 entitled, "Vehicles taken into police
19 custody" -- and you already read this into the record so...
20 It says, "Any vehicle from which an officer makes an arrest
21 and there's no responsible party to whom the arrestee can
22 turn over possession of the vehicles here..." Now, are you
23 familiar with the code section that is cited after that
24 sentence?

25 A. No, sir, I'm not.

1 Q. Okay.

2 The Court: What is the code section?

3 Mr. Hawks: The code section is 56-5-2520. May I
4 approach the witness with that?

5 The Court: You may. But he can't interpret the law.

6 Mr. Hawks: I understand, Your Honor.

7 The Court: All right.

8 (Mr. Hawks hands a document to the witness.)

9 The Court: Which subsection in 2520 are you referring
10 to?

11 Mr. Hawks: I'm going to refer to section...

12 The Court: There's an A., B. and C.

13 Mr. Hawks: That would be Section C. and all three of
14 the elements there, specifically Subsection 3.

15 By Mr. Hawks:

16 Q. So you've never read this statute before?

17 A. Not that I remember, no, sir.

18 Q. But it is right there in your policy.

19 A. Yes, sir.

20 Q. Okay. And I'm just going to read Subsection C. "Any
21 police officer may remove or cause to be removed to the
22 nearest garage or other place of safety any vehicle found
23 upon a highway." And then Subsection 3: "A person driving
24 or in control of the vehicle is arrested." Now, Mr. Miller's
25 vehicle was not on the road; correct? It was in the

1 driveway. You've already testified to that.

2 A. Correct.

3 Q. Okay. Switch gears again here. Do you have the record
4 of stored vehicle still up there?

5 A. Yes, sir. Yes, sir, I've got it.

6 Q. Okay. Now, on there you did list Ms. Cansandera Jones
7 as the vehicle owner.

8 A. Yes, sir.

9 Q. Okay. And it says you verbally contacted her.

10 A. Yes, sir.

11 Q. Okay. And the time listed up there in the top right
12 corner is 11:33.

13 A. Yes, sir.

14 Q. Okay. And you arrived at the scene of the incident at
15 11:10.

16 A. Yes, sir.

17 Q. Okay. Now, I'm not really sure -- is that the time --
18 the 11:33, is that the time you contacted Ms. Jones or is
19 that the time you filled out this paperwork?

20 A. More than likely it would have been the time that it was
21 actually filled out.

22 Q. Okay. So at the time you filled out the paperwork and
23 said that you notified her, you hadn't actually notified her.

24 A. No, sir. This would have been filled out after her
25 actually being notified.

1 Q. Okay. And after the second officer arrived, other
2 officers arrived.

3 A. Correct.

4 Q. Okay. How many total?

5 A. I believe it was two. I couldn't remember for certain
6 on that.

7 Q. Two plus yourself?

8 A. Two plus myself and the other officer.

9 Q. Okay. Did Investigator Reeves ever arrive?

10 A. He did after he was under arrest.

11 Q. And Investigator Champion?

12 A. I don't believe he actually arrived on the scene; no,
13 sir.

14 Q. Okay. And then there was a canine unit.

15 A. Yes, sir. That was the two other officers, I believe.

16 Q. Okay. So at least four officers.

17 A. Yes, sir.

18 Q. Okay. And how many squad cars?

19 A. There would have been three.

20 Q. Three. Okay. Your squad car?

21 A. Yes, sir.

22 Q. The second officer's squad car?

23 A. Yes, sir.

24 Q. The canine car?

25 A. Yes, sir.

1 Q. And then Reeves.

2 A. Correct, after -- afterwards.

3 Q. Okay. So on the scene total, when all is said and done,
4 there's four squad cars.

5 A. Four. Yes, sir.

6 **Mr. Hawks:** Beg the Court's indulgence.

7 **The Court:** Officer Westbury, he was arrested originally
8 for D.U.S.?

9 **The Witness:** Yes, sir. Yes, Your Honor.

10 **The Court:** If a person is arrested for D.U.S., driving
11 under suspension, are you required to take him before a
12 magistrate or other judicial officer without unnecessary
13 delay? What do you normally do? If you come out there and
14 you pull me over and I'm driving with a suspended driver's
15 license, driving under suspension, do you take me
16 immediately, without unnecessary delay, to the magistrate or
17 other judicial officer? What do you do with me?

18 **The Witness:** If a transport is available to transport
19 the individual, he is transported then. Otherwise, once the
20 paperwork is completed, then I'm able to transport him.

21 **The Court:** Transport where?

22 **The Witness:** To Alvin S. Glenn.

23 **The Court:** To where?

24 **The Witness:** To the jail.

25 **The Court:** Okay. Go ahead.

1 **Mr. Hawks:** Thank you, Your Honor.

2 By Mr. Hawks:

3 Q. And just to clarify a few things before I stop here, you
4 pulled into the incident location to talk to Mr. Miller.

5 A. Correct.

6 Q. And at that time he was not suspected of any actual
7 crime.

8 A. Correct.

9 Q. And you wouldn't have had any knowledge of his license
10 being suspended before you actually spoke to him.

11 A. That's correct.

12 Q. Okay. So this was not a traffic stop.

13 A. Correct.

14 **Mr. Hawks:** Okay. I have nothing further, Your Honor.

15 **Mr. Arant:** Just briefly, if I may.

16 Redirect Examination

17 By Mr. Arant:

18 Q. Officer Westbury, there was some mention of you frisking
19 the defendant in this case. There wasn't any need to frisk
20 him before he was arrested; correct?

21 A. Correct.

22 Q. Let's talk about the high rate of speed in the incident
23 report. There's no way to verify -- you don't have anything
24 in your car to verify the rate they were going.

25 A. That's correct.

1 Q. And what was the main purpose of this field interview?

2 Was it for speeding or what was it for?

3 A. It was just to make contact.

4 Q. Because of why?

5 A. In reference to a complaint.

6 **Mr. Hawks:** Objection, Your Honor. Asked and answered
7 yesterday.

8 **The Court:** Overruled. Overruled.

9 By Mr. Arant:

10 Q. When discerning the responsible party for the car, what
11 type of things do you look at?

12 A. I apologize. I didn't...

13 Q. When discerning the responsible party to leave the car
14 -- possibly leave the car with, what factors do you look at?

15 A. It's -- a lot of times it's going to come up to the
16 actual vehicle owner where the vehicle owner is on the scene
17 or whether it's something to where I'm given information as
18 far as where they want it left.

19 Q. And was Ms. Nikea Berry the registered owner of the car?

20 A. She was not.

21 Q. And these other officers that came after the scene, it
22 was after he had given you his information?

23 A. Correct.

24 Q. And I believe Agent Champion or Agent Reeves that the
25 defense has alluded to, that was after he was arrested;

1 correct?

2 A. That is correct.

3 Q. And there's no -- nothing in your tow policy that says
4 you must contact the owner at the time the vehicle is towed.
5 It's mainly after the vehicle is towed that you notify them;
6 correct?

7 A. That's correct.

8 **Mr. Arant:** I've got no further questions.

9 **The Court:** All right. You may step down. Next
10 witness.

11 **Ms. McKellar:** The State calls Officer McDonald.

12 Shaun McDonald, after being duly sworn, testified
13 as follows in camera:

14 **The Clerk:** Have a seat in the witness stand, please?

15 **Court Reporter:** Will you spell your first name, please?

16 **The Witness:** My first name is Shaun, S-H-A-U-N.

17 Direct Examination

18 By Ms. McKellar:

19 Q. Officer McDaniel (verbatim), where are you currently
20 employed?

21 A. I'm currently employed with the City of Columbia Police
22 Department.

23 Q. And how long have you been so?

24 A. Approximately a year and a half.

25 Q. Okay. Can you explain your duties from the time you

1 started until now?

2 A. I have been a police officer in the South Region.

3 Q. The entire time?

4 A. The entire time.

5 Q. Okay. And that entails doing what briefly?

6 A. Keeping the citizens safe, making traffic stops, taking
7 calls in my area.

8 Q. Okay. Were you employed in that position January 10th
9 of this year?

10 A. Correct, ma'am.

11 Q. How did you -- how were you made aware of your presence
12 being needed at Timberlane Drive?

13 A. I was originally dispatched to a call in the 700 block
14 of South Bonham in reference to a suspicious person. When we
15 circulated the area, we made contact with the complainant and
16 she advised us not only of a suspicious person but---

17 **Mr. Hawks:** Objection, Your Honor. Hearsay.

18 **Ms. McKellar:** I'll rephrase the question, Your Honor.

19 By Ms. McKellar:

20 Q. You made contact with a complainant. Did you then make
21 contact with a second complainant?

22 A. Not with a second complainant, no. She was the only
23 complainant.

24 Q. Did you make contact with a second person while you were
25 over in that area?

1 A. We did.

2 Q. And based on your conversation with that person, what
3 did you then do?

4 A. We had moved over to the South Kilbourne area in
5 reference to the suspicious person and made contact with him.

6 Q. What were you looking for specifically?

7 A. Specifically, we were looking for not only the
8 suspicious person but we were looking for a green-and-silver-
9 in-color vehicle with large rims that looked as if it was---

10 **Mr. Hawks:** Objection, Your Honor. The description of
11 the vehicle is hearsay.

12 **Ms. McKellar:** Your Honor---

13 **The Court:** Overruled.

14 **Ms. McKellar:** Thank you, Your Honor.

15 **The Court:** Go ahead.

16 **The Witness:** A green-and-silver-in-color vehicle with
17 very large rims that looked as if the paint was almost spray-
18 painted on. It was supposedly in and out of the area
19 throughout the past couple of days as well as a suspicious
20 person who was looking in yards.

21 By Ms. McKellar:

22 Q. Do you consider that to be a very specific description?

23 A. It's pretty specific, yeah.

24 Q. So at some point did you come in contact with a car
25 matching this description?

1 A. When we were -- I believe it was the 800 block of South
2 Kilbourne Road we did observe a vehicle matching that
3 description traveling on South Kilbourne towards Live Oak.

4 Q. You said we. Who is we?

5 A. Me and Officer Westbury.

6 Q. Were y'all in the same car?

7 A. Negative. We both had our own vehicles.

8 Q. So did you see the person driving this car as well?

9 A. I did.

10 Q. Do you see that person in the courtroom today?

11 A. I do.

12 Q. So you did see the defendant driving that car.

13 A. Yes.

14 Q. Okay. And how did you originally make contact with the
15 defendant?

16 A. He had pulled into the mini mart and he -- we had -- we
17 were still on the -- at that time it was probably the 700
18 block of South Kilbourne Road. We had observed him pull out
19 of the mini mart and made a right-hand turn onto Live Oak.
20 Officer Westbury was the lead officer; I was behind him. As
21 he turned right onto Hancock, we observed him turn I believe
22 it was right onto Timberlane. As he pulled in the driveway,
23 Officer Westbury made contact with him, and I was maybe at
24 most five seconds behind him.

25 Q. Did Officer Westbury have his gun drawn?

1 A. No.

2 Q. At any point did you see him handcuff the defendant?

3 A. No.

4 Q. Did you have your gun drawn?

5 A. No.

6 Q. Did you handcuff the defendant at any time?

7 A. No.

8 Q. Did you ever speak with the defendant or you just let
9 Officer Westbury handle that?

10 A. I believe I spoke with him briefly after Officer
11 Westbury made contact with him, but I can't remember what it
12 was in reference to.

13 Q. At some point did Officer Westbury give you the
14 defendant's information to run through the D.M.V. database?

15 A. He did.

16 Q. And what did you find in doing that?

17 A. It came back signal 22 which is driving under
18 suspension.

19 Q. And is that an offense you would normally arrest a
20 person for?

21 A. Yes.

22 Q. And take them where once they're arrested?

23 A. Once they're arrested, they're either transported by
24 ourselves or the paddy wagon driver by -- to Alvin S. Glenn.

25 Q. And whose decision was it to tow the car based on that

1 arrest?

2 A. Officer Westbury was the one who filled out the
3 paperwork.

4 Q. Okay. So he's the one who decided to tow the car. Is
5 that normal course of -- is that your normal practice: To
6 tow cars when somebody -- the person driving it is arrested
7 for driving under suspension?

8 A. Yes. When I was trained, I was told that if the person
9 gets arrested, the vehicle gets towed.

10 Q. Okay. Are you familiar with your policy on towing cars,
11 C.P.D.'s policy on---

12 A. I have read it over, yeah.

13 **Ms. McKellar:** Your Honor, may I approach the witness?

14 **The Court:** Yes.

15 **Ms. McKellar:** Thank you.

16 By Ms. McKellar:

17 Q. This is Page 3 of Section 6, Chapter 5 of your policy
18 manual. Can you look at Section 7.2 and tell me if you're
19 familiar with that?

20 A. Yes, ma'am.

21 Q. And that's regarding towing cars, doing an inventory
22 search after that tow?

23 A. Correct.

24 Q. Okay. Did you do an inventory search in this case?

25 A. I was the one who inventoried the vehicle.

1 Q. What were you looking for when you inventoried the
2 vehicle?

3 A. Just valuables. Pretty much we inventory vehicles to
4 make sure that they can't say something was in the vehicle
5 that wasn't so we're not held responsible.

6 Q. Did you find any valuables in this vehicle?

7 A. Not valuables, no.

8 Q. What did you find in the vehicle?

9 A. As I inventoried the vehicle, I found a baggy filled
10 with a white rock-like substance which field-tested positive
11 for crack cocaine.

12 Q. Did you immediately recognize it as crack cocaine?

13 A. Not immediately.

14 Q. Did you do the field test or did Officer Westbury do the
15 field test?

16 A. I believe it was Officer Westbury.

17 Q. But it did come back positive for crack cocaine.

18 A. Correct.

19 Q. But at that time the defendant was already under arrest
20 for driving under suspension; correct?

21 A. Correct.

22 Q. There's been mention made of other officers arriving on
23 the scene, particularly a canine officer, Officer White. Are
24 you familiar with his dog?

25 A. I am.

1 Q. Is his dog drug trained whatsoever?

2 A. I believe the officer you're referring to is Officer
3 Walker.

4 Q. Oh, Officer Walker. I'm sorry.

5 A. Yes, I'm familiar with his dog.

6 Q. And is he drug trained?

7 A. To my knowledge, no, he's just a tracking dog.

8 Q. So he's only trained to track humans, not to smell for
9 drugs.

10 A. To my knowledge, yes.

11 Q. Okay. Do you know why he responded then?

12 A. I believe he was in the area and I believe Officer
13 Westbury called him with a question, and he just stopped by
14 because he was in the area.

15 Q. So the dog never sniffed for drugs at any point.

16 A. No. The dog never left the vehicle.

17 **Ms. McKellar:** Okay. I have no further questions at
18 this time, Your Honor.

19 Examination by the Court

20 Q. Officer McDonald, the vehicle that you ultimately
21 inventoried, where was it parked?

22 A. It was parked in a driveway on Timberlane.

23 Q. Is a driveway part of the highway system?

24 A. No.

25 Q. What authority did you have to -- what authority did you

1 rely upon in removing it from the private driveway?

2 A. Like I said, sir, to my knowledge, it wasn't his
3 residence, and I was trained from day one that if the person
4 gets arrested and it's not their residence that the vehicle
5 gets towed.

6 Q. So if it's out in the middle of a field, anywhere not on
7 the highway, you still tow it?

8 A. Correct.

9 Q. Do you know what authority you're trained on to allow
10 for that?

11 A. What was that, sir?

12 Q. Do you know -- can you cite me the authority that allows
13 you to tow it from places other than a street or highway?

14 A. I don't -- I don't know that offhand. Like I said, I
15 was just trained from day one that if a person gets arrested
16 and they're driving a vehicle, that the vehicle needs to be
17 towed for -- to make sure that nothing happens to the vehicle
18 to cover our end.

19 **The Court:** Thank you, Officer.

20 **Mr. Hawks:** Thank you, Your Honor. May it please the
21 Court?

22 **The Court:** You agree with me it's not on a street or
23 highway.

24 **The Witness:** It wasn't on a street or a highway.

25 **Mr. Hawks:** May I proceed, Your Honor?

1 **The Court:** (Nodded head up and down.)

2 Cross-Examination

3 By Mr. Hawks:

4 Q. Officer McDonald, you talked about some descriptions.

5 Were any of the descriptions about the actual person driving?

6 A. Not of the person driving, no.

7 Q. And you didn't have any knowledge of, let's say,
8 hand-to-hand transactions or anything like that that would
9 suggest criminal activity?

10 A. No.

11 Q. And I know I already asked Officer Westbury this. Did
12 you witness Westbury frisk Mr. Miller?

13 A. No, I did not.

14 Q. And you did not frisk Mr. Miller.

15 A. No, I did not, sir.

16 Q. And I'm going to -- I know you didn't fill out the
17 incident report, but it says y'all arrived at 11:10. Is that
18 about what you remember?

19 A. Honestly, I don't remember the exact time. It sounds
20 about right, yeah.

21 Q. Okay. And you said you were about five seconds behind.

22 A. I was right behind him, yeah.

23 Q. And about how long would you say the whole encounter was
24 before dispatch came back saying his license was suspended?

25 A. You mean from the time I ran it or from the time before

1 I ran it how long---

2 Q. From the time you arrived to the time he was actually
3 arrested and in handcuffs.

4 A. I'd say less than ten minutes.

5 Q. Okay. And when it came back through dispatch, where
6 exactly were you standing?

7 A. I was I believe to the left of the step. I believe this
8 defendant was sitting on a step and I was to the left of him.

9 Q. Okay. And he was sitting down because y'all told him to
10 stay there?

11 A. He wasn't told to stay there. I believe one of us may
12 have said, "Why don't you just have a seat for me?" But
13 that's -- I mean, he wasn't -- he didn't have to sit.

14 Q. Okay. All right. Now, dispatch comes through and says
15 his license is suspended, and then you walk over to the car
16 and begin the inventory search.

17 A. No, not right -- not right away. First, the defendant
18 was arrested and then after that we inventoried the vehicle.

19 Q. Okay.

20 **The Court:** He was arrested for D.U.S.; right?

21 **The Witness:** Correct, sir.

22 **The Court:** But you didn't see any untoward driving
23 behavior. I mean, you didn't observe speeding or anything.
24 You were on the scene.

25 **The Witness:** I can't -- I can't say he was speeding.

1 I'm not radar certified, but he did leave -- when he pulled
2 out of the mini mart, he did leave at a high rate of speed.
3 It took us awhile to catch up to him.

4 **The Court:** Well, but Officer Westbury said y'all didn't
5 pull him over for any type of traffic violation.

6 **The Witness:** We did not pull him over for a traffic
7 violation. Correct, sir.

8 **The Court:** So you've got him pulled over to check his
9 driver's license. He's D.U.S. The car is parked in a
10 private driveway; correct?

11 **The Witness:** It was parked in a private driveway;
12 correct, sir.

13 **The Court:** And as part of your policy then you -- the
14 Columbia Police Department policy, then y'all take control of
15 that vehicle and inventory it before you move it. Is that
16 correct?

17 **The Witness:** Correct.

18 **The Court:** All right.

19 **Mr. Hawks:** Okay. So he's placed under arrest. And who
20 cuffs him?

21 **The Court:** Why is cuffing and all that relevant to the
22 issue? Your argument is is the parked car wasn't on the
23 highway, isn't it?

24 **Mr. Hawks:** Well, I have several arguments but...

25 **The Court:** Well, what's the other one?

1 **Mr. Hawks:** I'll move on.

2 By Mr. Hawks:

3 Q. You said there was nothing of value. Was there anything
4 else in the car, period, that you remember?

5 A. There was. There was a bunch of paper and paperwork and
6 other -- I mean, nothing that we would consider of value.
7 We're usually looking for jewelry, money, stuff like that
8 that people could say that was in the vehicle that wasn't so
9 that we're not responsible for it if it wasn't in the
10 vehicle.

11 Q. Right. So the only thing you removed from the vehicle
12 was the contraband.

13 A. Correct.

14 Q. And did you fill out an actual written inventory of the
15 items?

16 A. I didn't fill out any of the actual paperwork, no.

17 Q. Okay. Does C.P.D. normally fill out an inventory list
18 of what's taken from a car?

19 A. If it's -- if it's inventory, yes, I believe it should
20 be written on an inventory list. Correct.

21 Q. But you're not aware of any such list being created in
22 this case.

23 A. Not to my knowledge, no.

24 Q. So you'd say it is part of your policy to create a list
25 but not this time.

1 A. Correct.

2 Q. Now, I believe Mr. Miller also had some money on his
3 person?

4 A. I don't remember offhand; no, sir. I mean, I didn't
5 search him so...

6 Q. Okay. So you wouldn't know that that money was handed
7 over to Nikea Berry?

8 A. I believe -- I believe money was handed over to the -- I
9 believe it's his girlfriend but I -- like I said, I didn't
10 search him.

11 Q. Okay. But the money was handed over to---

12 A. I believe so. Correct.

13 Q. And that was her house.

14 A. Yes.

15 **Mr. Hawks:** Okay. Beg the Court's indulgence.

16 **The Court:** Officer McDonald, hand the court reporter
17 that police policy and procedure. I think it should be right
18 over there somewhere. Have you got it?

19 **Mr. Hawks:** Your Honor, is that policy in evidence? Has
20 it been admitted?

21 **The Court:** It has.

22 **Mr. Hawks:** Thank you, Your Honor. May I proceed with
23 the witness?

24 **The Court:** You may.

25 By Mr. Hawks:

1 Q. So since you inventoried the car, Officer, did you check
2 to see if there was a responsible party to whom the arrestee
3 can turn over the car to?

4 A. I did not, no.

5 Q. But the policy does state that there must be no
6 responsible party.

7 A. Like I said, I've always towed a vehicle when a subject
8 is arrested.

9 Q. And are you familiar with the code section?

10 A. I have read it over; correct.

11 **Mr. Hawks:** Okay. I have nothing further, Your Honor.

12 **The Court:** Redirect?

13 **Ms. McKellar:** Yes, Your Honor, very briefly.

14 Redirect Examination

15 By Ms. McKellar:

16 Q. This C.P.D. policy we keep referring to, can you read --
17 Your Honor, may I approach the witness?

18 **The Court:** You may.

19 By Ms. McKellar:

20 Q. Can you read the very last sentence of Section 7.2?

21 A. "The officer should identify each item and its storage
22 location on the record of the stored vehicle."

23 Q. Is that referring to valuable items that you find in the
24 car?

25 A. Yes, valuable items.

1 Q. Did you testify earlier that you found no valuable items
2 in the car?

3 A. Correct.

4 Q. So would you have made a list of nothing?

5 A. That's true.

6 Q. And Mr. Hawks asked you about money being turned over.
7 You said you can't remember exactly because you were not the
8 one who arrested the defendant. Had you been the one who
9 arrested him and he did have personal belongings on his
10 person, what is the difference in turning those over to Ms.
11 Nikea Berry as opposed to the car?

12 A. They weren't part of the inventory search.

13 Q. So they were on his person---

14 A. They were on his person---

15 Q. ---that belonged to him?

16 A. Correct.

17 Q. Did the car belong to him?

18 A. No.

19 **Ms. McKellar:** Thank you, Your Honor. I have no further
20 questions.

21 **The Court:** You may step down. Next witness.

22 **Mr. Arant:** The State has no further witnesses.

23 **The Court:** All right. Any motions by the defendant?

24 **Mr. Hawks:** Your Honor, I would like to call a witness,
25 please, briefly.

1 **The Court:** Any motion by the defendant?

2 **Mr. Hawks:** Your Honor, I would make a motion to
3 dismiss. They have failed to meet their burden that this was
4 a stop with reasonable suspicion.

5 **The Court:** Well, I disagree with that.

6 **Mr. Hawks:** Okay. Your Honor, the defense calls
7 Cansandera Jones.

8 **The Court:** Do you want to make any further arguments
9 like it was not on a highway?

10 **Mr. Hawks:** Yes, Your Honor. I thought that would be
11 later, but I can go into that.

12 **The Court:** Well, they're not going to put any other
13 evidence in. Let me just ask the State this. Your policy
14 relies on 56-5-2520, does it not? Either one of you can
15 respond.

16 **Ms. McKellar:** Yes, sir, it does.

17 **The Court:** All right. Now, let's go---

18 **Ms. McKellar:** It does reference that statute.

19 **The Court:** Let's go to 56-5-2520.

20 **Ms. McKellar:** Yes, sir.

21 **The Court:** And Subsection A. requires -- that's
22 regarding a violation of 56-5-2510 which is leaving a vehicle
23 unattended; correct?

24 **Ms. McKellar:** Yes, sir.

25 **The Court:** That's not applicable.

1 **Ms. McKellar:** No, sir.

2 **The Court:** B., that's where a vehicle is obstructing
3 the normal movement of traffic. That's not applicable, is
4 it?

5 **Ms. McKellar:** Yes, sir, it is not.

6 **The Court:** You agree with me.

7 **Ms. McKellar:** I do agree.

8 **The Court:** C., that is what you're relying on. Is that
9 not correct?

10 **Ms. McKellar:** Yes, sir. That is the statute that I did
11 reference.

12 **The Court:** C. And I assume that it is with Subsection
13 3?

14 **Ms. McKellar:** Yes, sir.

15 **The Court:** All right. How do you get around the fact
16 that that statute, 56-5-2520(c) requires the vehicle to be
17 found upon a highway?

18 **Ms. McKellar:** Your Honor, we don't see that it requires
19 that in any way, shape, or form. This statute is not
20 exclusionary in any way. It doesn't say that this is the
21 only incident where an officer may tow a car nor does it say
22 that this is an exhaustive list of times officers may tow
23 cars. It just points to a particular incident in which they
24 may. Nowhere in the statute does it say they cannot tow it
25 from private property and they cannot tow it if it's not on

1 the side of a highway.

2 **The Court:** So that just gives them an example of when
3 they can remove it from a highway, but if it happens to be in
4 a driveway or a field, notwithstanding the statute doesn't
5 allow it, the statute is not all inclusive. Is that...

6 **Ms. McKellar:** That is the State's argument, Your Honor.
7 For example---

8 **The Court:** Okay. Well, Ms. Solicitor, Ms. McKellar, do
9 you happen to have any case law that says that?

10 **Ms. McKellar:** No, sir, and I have not been able to find
11 any case law to the contrary either.

12 **The Court:** All right. Thank you.

13 **Ms. McKellar:** Thank you.

14 **The Court:** Mr. Hawks, have you got any cases to support
15 your position that this is the exclusive place that -- the
16 only place they can remove vehicles is from the highway?

17 **Mr. Hawks:** Your Honor, I didn't find any case law about
18 the statute either, but the plain written language is that
19 any vehicle found upon a highway... I mean, this statute is
20 from the sixties. It hasn't been changed. We can only
21 assume it refers to a public roadway, not a private...

22 **The Court:** Well, it's admitted -- I mean, it's admitted
23 it's not on the highway. The police officer said it was on
24 the driveway; it wasn't part of the highway. So what I've
25 got to decide is that statute -- if I just read it as it says

1 and they can only remove when a car is on the highway under
2 Subsection C(3) or, as Ms. McKellar, says that's just one way
3 you can remove it, but that doesn't mean you can't take it
4 out of private driveways and garages and things of that
5 nature.

6 **Mr. Hawks:** Well, she has no authority that it can.

7 **The Court:** You don't have any authority that it can't.

8 **Mr. Hawks:** Your Honor, I do have -- I do have some---

9 **The Court:** You do have authority, don't you? You've
10 got the statute that says upon a highway.

11 **Mr. Hawks:** Yeah, I do have that and it's pretty clear.
12 I also have some case law to develop the rest of my argument
13 which is the other factors---

14 **The Court:** What's the rest of your argument?

15 **Mr. Hawks:** Well, there are other factors to determine
16 whether or not an inventory search was reasonable. I'd like
17 to cite United States v. Brown specifically. It's a 1986
18 case.

19 **The Court:** Well, let me ask you this. Had it been on
20 the highway and he'd have been stopped for D.U.S. or stopped
21 for whatever reason and if it was determined that he didn't
22 have his license, you agree with me they could have -- they
23 could have transported the car or moved the car and then
24 taken an inventory search.

25 **Mr. Hawks:** I agree that if they would have followed

1 their policy which was to determine if it was a reasonable
2 party, which they made no effort to do, and that this was not
3 simply to find incriminating evidence which all the case law
4 on this subject going back to South Dakota---

5 **The Court:** There's no evidence that that's all they
6 stopped him for. I mean, let's assume that it was a stop.
7 He's on the highway, stopped for D.U.S. Don't you agree with
8 me they can remove the car at that time and do an inventory
9 search?

10 **Mr. Hawks:** At that time on the highway if he was pulled
11 over for driving under suspension, absolutely.

12 **The Court:** Well, I'm left with trying to decide whether
13 or not this 56-5-2520, Subsection C., Subsection 3 --
14 actually Subsection C. It says upon the highway. Can I give
15 it a broader reading to say that's just allowing it upon the
16 highway, but that doesn't mean that they can't do it other
17 places. And you say no, Judge; you've got to read the
18 statute as it says and give it the plain and ordinary
19 meaning.

20 **Mr. Hawks:** And the case law says they have to follow
21 their own procedures which directly reference the statute.

22 **Ms. McKellar:** Your Honor, the State could point out
23 there's not even the word "only" in the entire statute. It
24 doesn't say they can only do it then. I mean, "only" would
25 fall greatly in the defense's favor, but that's not anywhere

1 in this statute either. They can only do it when it's on the
2 side of a highway. It just says they may when it's on the
3 side of a highway. It never -- it never references may not.

4 **The Court:** Well, do you have any statutory construction
5 cases that talk about may as opposed -- giving them other
6 options when they use the word may?

7 **Ms. McKellar:** I can try to find some for you, Your
8 Honor.

9 **The Court:** I would think "may" simply means that if
10 they want to they can. I don't know that "may" means it
11 broadens it out and they can do it in other areas. I've been
12 doing this a long time. I've never had this question come up
13 where the highway says highway -- the statute says highway.
14 Hold on. Let me read the -- let me read the policy. The
15 policy you're relying on is 7.2; is that correct?

16 **Ms. McKellar:** Yes, sir, Your Honor.

17 **The Court:** And may so following the vehicle...

18 (Pause in proceedings while the Court reads.)

19 **The Court:** Which part of 7.2, Ms. McKellar, are you
20 relying on? I assume it is that first dot? Any vehicle from
21 which an officer makes an arrest?

22 **Ms. McKellar:** That's correct, Your Honor, since it's---

23 **The Court:** And it cites 56-5-2520.

24 **Ms. McKellar:** Yes, sir.

25 **The Court:** And you're saying that cite, 56-5-2520,

1 takes me down to C(3)?

2 **Ms. McKellar:** I believe that's what Mr. Hawks is
3 saying, Your Honor. I don't know what the City of Columbia
4 Police Department is referencing that statute for other than
5 maybe citing authority in a particular instance where they
6 can tow a car.

7 **The Court:** Can the policy give them authorization to
8 remove vehicles of a -- a broader scope of removal, i.e.,
9 from driveways, private property than the statute that they
10 cite which says the highway?

11 **Ms. McKellar:** I don't think a policy can broaden the
12 statute, Your Honor, but it's our interpretation of the
13 statute that it does not limit them from towing it from
14 personal property.

15 **The Court:** Okay. So your interpretation then is that
16 the highway is just an example of where they can remove, if
17 they may remove, but that certainly doesn't preclude them
18 from removing from other areas.

19 **Ms. McKellar:** Yes, sir. Short of some statute or some
20 case law that says they cannot tow from private property, I
21 don't see any notation---

22 **The Court:** Of course, the defendant says, well, you
23 know, we say it means highway, and highway means highway.
24 And you don't have any authority -- case law to say otherwise
25 even though he doesn't have any to say -- to support his

1 position. So I've just got to interpret what highway means
2 and---

3 **Ms. McKellar:** Yes, sir. We would point out an example:
4 If the officers pulled him over in a gas station, for
5 example, which is private property, that -- for the same
6 exact fact scenario here except for in a parking lot of a gas
7 station, they would tow the car from the gas station which is
8 private property. It's the same case here where it's not his
9 residence.

10 **The Court:** But the problem you've got with that is it
11 says highway. I mean, I see where it's probably -- they need
12 to be able to tow from other places, but if you're going to
13 rely on this statute and this statute says upon a highway, am
14 I not limited to reading the statute and giving it its
15 ordinary reading? At least removed from a highway. All
16 right. It's a few minutes after 10. Let's all of us -- the
17 jury comes at 11?

18 **Bailiff:** Yes, Your Honor.

19 **The Court:** All right. Let's take about 30 minutes
20 to -- I'm going to try to do some research on it, and
21 likewise I would ask that the two of you -- four of you do
22 some research, and I'll come back out in 30 minutes to
23 receive any additional arguments and make a ruling. Fair
24 enough?

25 **Ms. Grice:** Yes, sir.

1 **Mr. Hawks:** Yes, Your Honor.

2 **The Court:** And I welcome any of the law students, new
3 graduates, just took the bar, 403 applicants, if you want to
4 do some research, I'll be glad to receive the research from
5 you.

6 (Pauses in proceedings.)

7 **The Court:** Thank you. Please be seated. Anybody found
8 any additional cases you want to present to the Court or
9 additional argument?

10 **Ms. McKellar:** Your Honor---

11 **The Court:** Ms. McKellar?

12 **Ms. McKellar:** May it please the Court? I'm sorry?

13 **The Court:** Ms. McKellar?

14 **Ms. McKellar:** May it please the Court, Your Honor? We
15 did find one more statute, State statute 56-5-5635, if I may
16 approach and give you a copy. And it does say,
17 "Notwithstanding any other provision of law, a law
18 enforcement officer who directs the vehicle to be towed for
19 any reason, whether on public or private property, must use
20 the established towing procedure for his jurisdiction." We
21 say that plainly -- plainly read, that gives law enforcement
22 the right to tow from private property.

23 I also have another statute referencing towing from
24 private property, if the car is abandoned for example, and we
25 just point that out to show that there's multiple places in

1 the South Carolina statute where towing cars is referenced,
2 that it was never intended by the legislature for this
3 56-5-2520 to be an exhaustive list of when cars can be towed.

4 **The Court:** Well, 56-5-5635 says notwithstanding that
5 statute that the defendant is relying on, you're allowed to
6 tow on private property.

7 **Ms. McKellar:** Yes, sir.

8 **The Court:** That makes sense. I mean -- but y'all did
9 not present me anything else other than the statute relied
10 upon by the defendant. All right, sir. Mister...

11 **Ms. Grice:** Actually, Your Honor, I'm Jessamine Grice.

12 **The Court:** Ms. Grice.

13 **Ms. Grice:** We collaborated on this. Your Honor, I have
14 two things to pass out.

15 **The Court:** Pass out? Pass up?

16 **Ms. Grice:** Yes, sir. Your Honor, first is one case
17 that deals generally with statutory interpretation. It's a
18 Court of Appeals case from 2002, does not seem to have been
19 contradicted by anything more recent, and the second thing
20 I'm passing up -- it's a copy of fine definitions printed
21 from the same Title 56 motor vehicles that we're dealing with
22 here.

23 I looked in the definition section just to find out if
24 the statute provided some clarity on how to interpret this.
25 The first page just says generally that for the purposes of

1 this chapter or -- excuse me. This is 56-5-110 generally.
2 For the purposes of this chapter, the words, phrases and
3 terms defined in this article shall have the meanings thereby
4 attributed to them, and if you skim through -- I only printed
5 out a sampling of these. There's probably maybe 15 to 20
6 specific definitions, some of which don't apply here:
7 Intersection, railroad crossing, things like that.

8 It defines a street/highway in 56-5-430 which clearly is
9 in the open roadway where a person drives and then a through-
10 highway. The fourth page in this packet is private roadway;
11 driveway. And that's 56-5-450. Every way or place in
12 private ownership, which this driveway clearly was, and used
13 for vehicular travel by the owner and those having express or
14 implied permission from the owner but not by other persons,
15 is a private driveway or roadway.

16 There's no dispute with any of the testimony that this
17 was a private driveway. Mr. Miller's car wasn't jetting out
18 into the roadway. There was no reason that it needed to be
19 moved for---

20 **The Court:** I think everybody agrees with that and I
21 agree, but the police officers agree this is not a highway.
22 It's a private drive.

23 **Ms. Grice:** Yes, sir. And then the case I provided is
24 State v. Leopard---

25 **The Court:** Yes, ma'am.

1 **Ms. Grice:** L-E-O-P-A-R-D. It's a Court of Appeals case
2 and, Your Honor, it says on the -- this is just a four-page
3 appeal. This deals with a criminal domestic violence case,
4 but it's relevant because we're dealing with a criminal
5 issue. And at the bottom of that page it says, "The basic
6 principles of statutory construction as applied to criminal
7 statutes have been clearly and repeatedly set forth by our
8 Supreme Court and by this Court. It is well established that
9 in interpreting the statute, the Court's primary function is
10 to ascertain the intention of the legislature when the terms
11 of the statute are clear and unambiguous," and I would argue
12 that they are because they are defined within Title 56 of the
13 South Carolina statutes regarding motor vehicles. Then the
14 Court must give them, excuse me, must apply them according to
15 their literal meaning.

16 And then specifically with a criminal case, it says,
17 "When a statute is penal in nature, it must be construed
18 strictly against the State and in favor of the defendant."
19 Given the plain and ordinary meaning of this statute, Your
20 Honor, I don't see any way around the fact that Mr. Miller's
21 car was in a driveway, not on a roadway, not on a highway
22 and, furthermore, looking at the Columbia Police Department
23 protocol when it comes to towing a car, there's many
24 different reasons that a car might need to be towed, some
25 that are civil in nature. If this was a repossession or an

1 abandoned vehicle -- no one is arguing that those are
2 applicable here. This was clearly parked in the driveway of
3 a residence where Mr. Miller knew the occupant and was
4 potentially a resident there himself.

5 This was his girlfriend's home. That was established by
6 the City of Columbia police when they made contact with her
7 and gave her some money that he had in his possession. They
8 didn't make an attempt to ask whether he could leave his car
9 there, but their policy says that a responsible party, not
10 necessarily the owner, could take possession of that car and
11 avoid the need to tow it and the hassles that come along with
12 that. This car easily could have been left in that driveway;
13 it was not. It was towed unnecessarily and searched
14 unnecessarily and unconstitutionally, and we would argue,
15 Your Honor, simply that the evidence needs to be suppressed
16 as a consequence of this.

17 **The Court:** Thank you. Anything else?

18 **Ms. McKellar:** Your Honor, just very briefly. Talking
19 about plain construction -- plain language of the law, in no
20 way if you read it plainly in the way -- it's unambiguous on
21 its face. It does not limit in any way... It does not say
22 "only." It does not say this is the only time a car can be
23 towed or that this is an exhaustive list. We say that the
24 plain language supports the State's position that it can be
25 towed from private property and that it should be allowed in.

1 **The Court:** Thank you. All right. I'm going to deny
2 the motion to suppress. I think, even if I construe
3 56-5-2520 to a highway application, obviously police officers
4 can't appropriately rely upon other statutes and other
5 recognized law, and 56-5-5635 is clear on its face that
6 notwithstanding the provision of 56-5-2520 allows the towing
7 as set forth in this case, and I respectfully deny your
8 motion to suppress.

9 All right. The jury will be ready to go in just a few
10 minutes. Y'all ready to start the trial? Anything else,
11 pretrial matters?

12 **Mr. Arant:** I don't believe anything from the State.

13 **The Court:** Anything from the defendant?

14 **Mr. Hawks:** Your Honor, I would just renew my objection,
15 not only that this violates the inventory search policies but
16 also that the officers---

17 **The Court:** Sir---

18 **Mr. Hawks:** ---never---

19 **The Court:** Sir, do you know the rules? Once I have
20 ruled, you cannot continue to argue, so please look at that,
21 rule and comply with it. Thank you.

22 **Mr. Hawks:** Yes, Your Honor.

23 **The Court:** Anything else before we proceed?

24 **Mr. Arant:** Yes, sir. I think there would be one other
25 thing. I have provided the defense -- the defendant and the

1 defense attorneys with a chain of custody within ten days of
2 advance. That will expedite the trial if I don't have to
3 call my custodial people which are in training today. I can
4 -- I have to turn it over to them in advance. If he would
5 like to consent, that would make things simpler.

6 **The Court:** Mr. Hawks, what's your position on that?
7 What's that rule, Mr. Arant?

8 **Mr. Arant:** I don't have the specific rule on me, but I
9 believe it's -- you have to provide it to them in ten days in
10 advance which---

11 **The Court:** Well, I know that, but I'd like to look at
12 the rule.

13 **Mr. Arant:** Yes, sir. I understand.

14 **The Court:** That's Rule 6, chain of custody on chemical
15 analysis. What say the defendant? I don't understand
16 that---

17 **Mr. Hawks:** We have no objection, Your Honor.

18 **The Court:** Thank you. All right. Are you going to
19 rely on the rule and how you proceed in that manner?

20 **Mr. Arant:** Yes, sir.

21 **The Court:** He has no objection. Anything else by the
22 State?

23 **Mr. Arant:** I don't believe we have anything further.

24 **The Court:** By the defendant?

25 **Mr. Hawks:** Your Honor, I know you've ruled and you can

1 characterize this as a motion to reconsider, but we were
2 going to call a witness. We were never allowed to do so. I
3 have a lot of case law---

4 **The Court:** You can call your witness. What's the
5 witness going to testify about?

6 **Mr. Hawks:** That it was his car and that he was the
7 responsible party that -- or he was the arrestee that could
8 have given someone else the responsibility.

9 **The Court:** Let him testify, but please remind him of
10 perjured testimony. He's going to testify it was his car?

11 **Mr. Hawks:** I'm sorry. It's his sister that we're going
12 to call, Cansandera Jones.

13 **The Court:** All right. Call her.

14 **Mr. Hawks:** Your Honor, the defense calls Cansandera
15 Jones.

16 Cansandera Jones, after being duly sworn, testified
17 as follows in camera:

18 **The Clerk:** Have a seat in the witness stand, please.
19 State your name for the record.

20 **The Witness:** Cansandera Jones.

21 **Court Reporter:** Will you spell your first name?

22 **The Witness:** C-A-N-S-A-N-D-E-R-A.

23 **The Court:** Ms. Jones, good morning. How are you?

24 **The Witness:** I'm great. How are you?

25 **The Court:** You have just taken an oath to tell the

1 truth in this courtroom. If you perjure yourself -- do you
2 know what perjure means?

3 **The Witness:** Yes.

4 **The Court:** It means not to tell the truth, to lie.
5 Then you will be subject to criminal prosecution. Do you
6 understand that?

7 **The Witness:** Yes.

8 **The Court:** And you're going to testify that she is the
9 owner of the vehicle? Is that correct?

10 **Mr. Hawks:** I'm going to the -- I would like her to
11 testify that---

12 **The Court:** Well, just tell me what she's going to
13 testify.

14 **Mr. Hawks:** Mr. Miller was also the owner of the
15 vehicle.

16 **The Court:** That she was what?

17 **Mr. Hawks:** Mr. Miller was also an owner of the vehicle.
18 They paid for the vehicle together. She actually cosigned.

19 **The Court:** And I assume you've got the title proving
20 all that.

21 **Mr. Hawks:** I do, Your Honor.

22 **The Court:** Thank you.

23 **Mr. Hawks:** If I can pass that forward.

24 **The Court:** Move on.
25

Direct Examination

By Mr. Hawks:

Q. Ms. Jones, did you purchase this vehicle together with Mr. Miller?

A. I cosigned it, yes.

Q. Okay. And was that because he didn't have enough money?

A. Yes.

Q. Okay. Did you ever drive the car?

A. No.

Q. Was this -- did Mr. Miller drive this car as his sole vehicle for transportation?

A. That was his own. That was his, not mine.

Q. And his name is also on the title.

A. Yes.

Q. And he paid the taxes on the vehicle.

A. He sure did. Uh-huh.

Mr. Hawks: Nothing further, Your Honor.

The Court: Where is the title?

Mr. Hawks: May I approach? (Mr. Hawks hands up a document to the Court.)

The Court: That's certainly not a title.

Mr. Hawks: It's a tax receipt from the D.M.V.

The Court: I asked you where the title was, Mr. Hawks. Don't play games with me. Do you have the title?

Mr. Hawks: I do not have the title.

1 **The Court:** So you brought this witness into the
2 courtroom to say that it's her vehicle, titled in her name,
3 and you don't have the title? Sir, I asked you a question.
4 I'm asking you a question.

5 **Mr. Hawks:** Yes.

6 **The Court:** Yes, you do have the title.

7 **Mr. Hawks:** No, I do not have the title.

8 **The Court:** Well, where is it?

9 **Mr. Hawks:** He sold the vehicle.

10 **The Court:** Oh, he stole the vehicle.

11 **Mr. Hawks:** No, sold the vehicle.

12 **The Court:** Sold the vehicle.

13 **Mr. Hawks:** Right. So I'm assuming the title is with
14 the new owner.

15 **The Court:** Well, I assume you could have gone back and
16 got the title if he had it and owned it.

17 **Mr. Hawks:** Your Honor, that's what we were attempting
18 to do with this receipt from the Department of Motor
19 Vehicles.

20 **The Court:** Thank you. Anything else? Any -- any
21 cross-examination?

22 **Mr. Arant:** No, sir. Nothing further.

23 **The Court:** All right. You may step down. Any
24 additional witnesses by the defendant? Any additional
25 witnesses by the defendant?

1 **Mr. Hawks:** Your Honor, I have no further witnesses, but
2 I would like to argue the other points of law associated with
3 this---

4 **The Court:** You may argue them.

5 **Mr. Hawks:** Okay. Your Honor, the inventory exception
6 to a warrantless search was created by South Dakota v.
7 Opperman which I have printed off and I can give copies to
8 you. In that case they delineate all the reasons why this
9 should happen: The cars are in the roadway, officer safety,
10 the items that may be in the arrestee's car. And the case
11 law from then until now has been pretty similar. I'm going
12 to use State versus -- I'm sorry. Beg the Court's
13 indulgence.

14 Your Honor, I can't find specific place -- language, but
15 I assure you that all the case law suggests that they must
16 meet three requirements: That the vehicle be in custody,
17 that the -- that they use their own procedure, and that under
18 the totality of the circumstances good faith was used by the
19 officers.

20 Your Honor, I do not believe that's the case here. They
21 pulled him over for no reason. It was not a traffic stop;
22 the officer admitted that on the stand. They immediately
23 search the car after he was arrested. They did not follow
24 their own procedures which refer to the statute that we've
25 already talked about and they did so really for no reason. I

1 mean, he was on private property. There was no reason to tow
2 the vehicle. It wasn't jutting out into the roadway or
3 anything like that.

4 None of the legitimate government interests that were
5 laid out in Opperman and created this exception were apparent
6 here. There was simply no reason to tow the vehicle. Your
7 Honor, again I would like to argue that there was no
8 reasonable suspicion to stop Mr. Miller to begin with.

9 **The Court:** You can argue whatever you want. I'm not
10 limiting you.

11 **Mr. Hawks:** I'd like to state State v. Sprinkle. Would
12 you like a copy?

13 **The Court:** That would be nice.

14 **Mr. Hawks:** And I'll pass one to the solicitor. This is
15 a Fourth Circuit case out of South Carolina from 1996. In
16 this case, Your Honor, the officers witnessed two men in a
17 vehicle. Sprinkle was the one who got in second, and the
18 officers witnessed -- basically they were talking sort of in
19 a halted way, and the officer witnessed maybe something
20 exchange between their hands. The officer then initiated a
21 stop based on what he saw. The Court found that that was not
22 enough to be reasonable suspicion.

23 Your Honor, in this case we don't have anything close to
24 that. The officer testified that -- Officer Westbury
25 testified that he saw Mr. Miller leaving the gas station at a

1 high rate of speed, but I have another case I'd like to pass
2 up to Your Honor which is United States v. Sowards and it's
3 fairly long, but I want to get to something real specific.
4 This was a D.U.I. case I believe where the defendant was
5 pulled over for speeding. In that case the officer testified
6 about simply his visual estimate of the speed, and the Court
7 concluded that just the visual estimation in and of itself is
8 not probable cause. And in that case when the officer took
9 the stand - in this case, I'm sorry, in Sowards - he was
10 explaining that he had been trained, that he knew how to do
11 this because of a lot of training he went through, that he
12 was almost basically an expert on visualizing speed and
13 there's a lot of math that went into it as well, but we have
14 no testimony, anything that---

15 **The Court:** But he said he didn't stop him for a traffic
16 stop.

17 **Mr. Hawks:** And again, Your Honor, that means they
18 didn't have reasonable suspicion if it wasn't from the stop
19 -- from the speeding.

20 **The Court:** Well, they had received complaints about the
21 person and that matched the description of the vehicle he was
22 in.

23 **Mr. Hawks:** I believe Your Honor sustained objections.
24 That does not mean that those are in the record. That was
25 not in the record, the tip. And even the tip does not---

1 **The Court:** It's certainly in the record this morning
2 when the questions were asked properly.

3 **Mr. Hawks:** Your Honor, when he pulled into this place
4 he didn't have the lights on. It was not a traffic stop.
5 They boxed his car in. Certainly he could not leave at that
6 point. They told him to stop. They conducted their search
7 all without any reasonably articulable facts that Terry v.
8 Ohio requires. They did not have reasonable suspicion to
9 stop him, and then they did not follow the procedures to
10 conduct the inventory search. Any reasonable person would
11 not feel that they're free to leave when two officers
12 approach a house that they're attempting to enter and
13 essentially block them.

14 **The Court:** Anything else?

15 **Mr. Hawks:** And they could not -- excuse me, Your Honor.
16 The officers could not articulate any reasonable suspicion
17 during their testimony.

18 **The Court:** Anything else?

19 **Mr. Hawks:** Nothing else from the defense.

20 **The Court:** All right. I stand by my ruling, even
21 considering your new arguments. Under the totality of the
22 circumstances, I find the stop and the inventory search falls
23 within the parameters as allowed by the various cases dealing
24 with that, and I deny respectfully your motion. All right.
25 Everybody ready?

1 **Mr. Arant:** Yes, sir. The State is ready to proceed.

2 **The Court:** The defendant ready?

3 **Ms. Grice:** Your Honor---

4 **Bailiff:** The jury is present, Your Honor, in the jury
5 room.

6 **The Court:** Thank you. Thank you.

7 **Ms. Grice:** Your Honor, if we could have maybe a
8 five-minute rest room break if that's...

9 **The Court:** Is that what you want? A rest room break or
10 do you want to talk to your client?

11 **Ms. Grice:** Well, both.

12 **The Court:** Both? All right.

13 **Mr. Hawks:** Thank you, Your Honor.

14 **The Court:** I told the jury we'd start at 11, so we will
15 start at 11.

16 **Ms. Grice:** Thank you.

17 (Whereupon, a short break was taken.)

18 **The Court:** Thank you. All right. State ready to
19 proceed?

20 **Mr. Arant:** Yes, Your Honor, we are.

21 **The Court:** Defense ready to proceed?

22 **Mr. Hawks:** Your Honor, I believe my client is choosing
23 to throw himself to the mercy of the Court and plead straight
24 up to P-WID third charge and if we could talk to you briefly
25 in chambers before... Is that okay?

1 **The Court:** That's fine with me as long as he
2 understands what he's charged with. Where is the probation
3 officer? I need to find the probation officer.

4 **Ms. McKellar:** I'll send my law clerk to go get him,
5 Your Honor.

6 **The Court:** All right.

7 **Mr. Arant:** And I have a sheet that he printed off for
8 us yesterday with the exact -- I have a sheet that he printed
9 off - the probation officer - with the exact specifics of his
10 probation.

11 **The Court:** Let me see it, but I need a sentence sheet,
12 too.

13 **Mr. Arant:** Yes, sir.

14 **The Court:** Ms. Grice?

15 **Ms. Grice:** Yes, sir.

16 **The Court:** It looks like it's ten suspended to four and
17 five years of probation, so he's looking at six years active
18 time.

19 **Ms. Grice:** Yes, sir. That's our understanding as well.

20 **Ms. McKellar:** We confirmed that with probation
21 yesterday, Your Honor.

22 **The Court:** Well, we still need a probation officer.

23 (Pause in proceedings.)

24 **Ms. Grice:** Your Honor, we have one slight request to
25 make of the Court. It's not contradictory to what we just

1 asked. Mr. Miller would like to plead. However, Your Honor,
2 what we were originally going to ask was if he could have the
3 opportunity to come back this afternoon and plead, but I
4 understand that that would not be a reasonable request.

5 Instead, what we would like to request is to give a
6 couple of members of his family an opportunity to come to the
7 courthouse where he will remain for the next couple of hours
8 to say good-bye to him since he's accepting a long prison
9 sentence. That's it, Your Honor, and that he would do the
10 plea this afternoon. We could do---

11 **The Court:** Once he pleads, I don't have any control
12 over him.

13 **Ms. Grice:** Yes, sir, but he has not pled yet. We still
14 need some time to do the paperwork and just if we could have
15 a moment---

16 **The Court:** He's going to have to plead now. I've got
17 the jury waiting, and if he backs out, then the jury is gone.

18 **Ms. Grice:** I understand.

19 **Mr. Hawks:** We're not saying he's going to back out. He
20 doesn't appear to want to back out, just that he could talk
21 to his family.

22 **The Court:** No. I will take his plea, accept guilt, and
23 then I will impose sentence after lunch. How about that?
24 Will that suit?

25 **Ms. Grice:** Yes, sir.

1 **The Court:** We'll let him stay up here for a few hours.

2 **Ms. Grice:** That's fine, Your Honor. That will give us
3 plenty of talk -- we're just talking about a quick phone
4 call.

5 **The Court:** Is that fair?

6 **Mr. Hawks:** Is that fair? He said you can plead guilty
7 now and then come back in the afternoon to talk to your
8 family.

9 **The Court:** I mean, I don't know what -- I don't run the
10 jail up here, so I don't know if they'll allow his family to
11 talk to him. I don't let reunions take place in here. All
12 right. We've either got to bring the jury out or take his
13 plea. I will not sentence him until 2:00. So if he can get
14 his family up here, that's fine.

15 **Ms. Grice:** Yes, sir. We'll arrange that.

16 **Mr. Hawks:** I guess bring the jury out, Your Honor.
17 He's changed his mind again.

18 **The Court:** Son, how old are you?

19 **Mr. Miller:** Twenty-nine. I just wanted to see my mama
20 and---

21 **The Court:** You're going to get to see your mama. I'm
22 going to take your plea. You'll admit your guilt. I won't
23 sentence you until this afternoon. So if you can get your
24 mom -- it's 11:00; it will be three hours. If you can get
25 her up here... But you're going to be in the holding cell

1 and I don't know what their procedures are out there. Listen
2 to me. If they won't let you see your mom, when you come
3 back in here at 2:00, I'll give you a few minutes with your
4 mother right there. Is that fair?

5 **Mr. Miller:** I'll just go forward.

6 **The Court:** Sir?

7 **Mr. Miller:** I'll just go forward.

8 **The Court:** Come here.

9 (Whereupon, a bench conference was held. Following the
10 bench conference, an off-the-record discussion took place
11 between Mr. Hawks, Ms. Grice, and Mr. Miller.)

12 **The Court:** Mr. Miller, you're looking at -- if you're
13 convicted, this will be a third offense. If you're
14 convicted, I have to give you 10 years or up to 30. If you
15 plead guilty, I'm going to give you the minimum sentence. If
16 you're found guilty by the jury -- I give you consideration
17 for accepting responsibility. If you're found guilty, then I
18 have to listen to everything and you may get more, but don't
19 plead guilty unless you are guilty. So we've got the jury
20 ready to go. Tell me what you want to do.

21 **Mr. Miller:** Can I talk to them for a second? I'm
22 trying to understand everything. I don't understand---

23 **The Court:** Ask me a question; I'll tell you.

24 **Mr. Miller:** I was just basically trying to understand
25 as far as -- I really want to talk to them about my chances

1 of actually winning.

2 **The Court:** You're what?

3 **Mr. Miller:** I was trying to talk to them about my
4 actual chances of being found not guilty.

5 **The Court:** I don't know that they can answer that.

6 **Mr. Miller:** I'm saying I just -- because me having --
7 we haven't went really over anything. All we basically
8 focused on was the motion to suppress. So, you know, we
9 haven't really just went over the case, so I don't know
10 what's---

11 **The Court:** Well, y'all have had all night to do that.
12 I've got a jury sitting there waiting to go. I told them to
13 come back at 11:00 this morning. We've either got to go with
14 the trial or you've got to enter the plea of guilty,
15 whichever one you decide to do.

16 (Pause in proceedings.)

17 **The Court:** Mr. Miller, we got to fish or cut bait.

18 **Mr. Hawks:** I believe he now wishes to go forward with
19 the trial.

20 **The Court:** All right. Very well. Let me have order,
21 please. Where is my bailiff? Do you want to bring my jury
22 in, please?

23 **Bailiff:** Yes, Your Honor.

24 (Whereupon, the jury was brought into open court at
25 11:22 a.m.)

1 **The Court:** Thank you. Good morning. I apologize for
2 yesterday. Our court reporter who I've had a number of
3 times, wonderful court reporter, she apparently had fallen
4 over the weekend and I think she may have broken a rib and
5 she had hit her head. Her husband is a doctor. But about 12
6 -- I don't know. After we let y'all go, she just almost --
7 she got woozy and we felt like we just needed to get her some
8 medical attention, and I couldn't find a replacement for
9 yesterday afternoon. I called Court Administration for late
10 notice to try to get a replacement.

11 So we've gotten our replacement this morning, but we
12 still had some things that we had to conclude because we
13 didn't have a court reporter yesterday afternoon. That's why
14 I had you come in at 11, and we had just a couple of other
15 little things that moved us beyond 11, so we're about
16 20 minutes behind, but we've been working since 9:00 this
17 morning on various matters. And so I apologize for you
18 having to wait about 20 minutes.

19 All right. The first thing we have to do in the trial
20 of this case is that you have to be sworn for the trial of
21 this case. So if you would please stand and raise your right
22 hand again. The clerk will swear you in.

23 (Whereupon, the jury was sworn at 11:25 a.m.)

24 **The Court:** Let me make some just brief opening remarks
25 to sort of tell you where and how we're going and what you

1 can expect. Let me start off by reminding you that the fact
2 that Mr. Miller has been indicted and arrested and charged
3 for the offense of possession with intent to distribute crack
4 cocaine, that is not evidence in the case as I told you
5 yesterday. The indictment is simply the formal document by
6 which this case comes into the courtroom. To these charges
7 he has pled not guilty, and by pleading not guilty, obviously
8 that puts the burden on the State of South Carolina to prove
9 his guilt to you beyond a reasonable doubt.

10 Now, if we were across the way with Judge Hill from
11 Spartanburg -- Greenville today, he's trying an asbestos case
12 where people are claiming that they have been injured by
13 inhaling asbestos and have mesothelioma and got right sick
14 from that. In that case the plaintiff is asking for monetary
15 damages from the asbestos manufacturers.

16 So when they start the trial of their case, they come in
17 on equal footing, the plaintiff and the defendant, if this
18 were the scales of justice. And for the plaintiff to prevail
19 or win its case, he or she has to prove their case by what we
20 call the preponderance of the evidence or the greater weight
21 of the evidence. In other words, they have to tip the scales
22 ever so slightly in their favor. If they're able to do that,
23 then they're entitled to a verdict in their favor and to
24 compensation. If after everything is in and the scales
25 remain the same or they tip in favor of the asbestos company,

1 then they would not prevail. They would not be entitled to a
2 verdict.

3 It is different in this type of case. This is a
4 criminal case, and because the defendant has the
5 constitutional protection of being presumed to be innocent
6 unless proven guilty beyond a reasonable doubt, when we come
7 into the courtroom on a criminal case, the scales of justice
8 are balanced in favor of the defendant. He is presumed to be
9 innocent, and for the State to prove his guilt, they have to
10 prove it beyond a reasonable doubt.

11 The burden of proof in a criminal case is greater than
12 that in a civil case, so just keep that in mind. They have
13 to prove their case to you beyond a reasonable doubt.

14 As I told you yesterday when we were drawing the jury,
15 there are two judges in the case. Of course, I'm the judge
16 of the law, so you have taken an oath that you have to accept
17 the law as I give it to you throughout the trial and at the
18 end. If you have some preconceived idea about what the law
19 is or what it should be and it does not agree with what I
20 tell you, please set that aside and accept the law as I
21 charge or instruct you. That's my function, along with
22 ruling on the admissibility of evidence.

23 Obviously the most important judge in the courtroom is
24 the judge of the facts, the twelve of you collectively acting
25 as one, and as I told you yesterday, you will listen to the

1 testimony that comes from the witness stand and you will
2 judge the credibility or the believability of the witnesses
3 who testify. You will make a decision as to what is the true
4 testimony in the case. What are the true facts? Take those
5 true facts, apply it to the law, and then you'll be in a
6 position to render a true and just verdict. So that's your
7 involvement in the case. My involvement is to instruct you
8 on the law.

9 The State will be represented by the solicitor's office.
10 They are -- they are in charge or they have the burden of
11 proving the elements of the crime to you beyond a reasonable
12 doubt. Obviously the defendant is represented by his
13 lawyers, and he has an opportunity to present his case if he
14 chooses. He may exercise his constitutional right to remain
15 silent. I don't know that he does and obviously you're to
16 not hold that against him in any manner whatsoever and you
17 could not discuss that when you deliberated his guilt or
18 innocence. He has the absolute right to remain silent if he
19 chooses to do so.

20 Now, in just a few minutes the lawyers will start off
21 the case by making opening statements. The State goes first
22 because they have the burden of proof, followed by the
23 defendant. The opening statements that they will make, that
24 is not evidence in the case. That is simply what the lawyers
25 contend the issues are. Sort of they'll give you a roadmap

1 as to what they're going to prove, what they're going to say.
2 The defendant will obviously tell you their side of the case.

3 Once we complete the opening statements, the State has
4 the burden of proof. They will present their witnesses
5 first, followed by the defendant. Then the State has the
6 right in some -- if they have anything, to put up reply
7 testimony. Once that is done, then we will have the closing
8 arguments by the lawyers, and then I will charge or instruct
9 you on the law and then you'll be in a position to commence
10 your deliberation.

11 Now, I'm going to ask that you pay close attention, and
12 obviously this is an important case for the defendant as well
13 as the State, and you have to do your job in determining who
14 is telling the truth. I will do all I can to make sure that
15 we do not spin our wheels so you're sitting back there
16 twiddling your thumbs. I try to run an efficient courtroom;
17 I try to run things on time.

18 We're probably going to go 'til about 1:00 today, take a
19 lunch break and come back and go 'til about 5.
20 Notwithstanding the fact that I try to be efficient and try
21 not to have any downtime, I'm not up here trying to run a
22 race either. So if at any time, at any point in the trial,
23 you become uncomfortable or you need to go to the bathroom or
24 you need to have a little drink, a soda or water - sometimes
25 you may need a drink - but, seriously, if you get thirsty or

1 if you just need to stretch or you just need to take a break,
2 don't get uncomfortable. Please raise your hand and I will
3 make sure that your needs are met.

4 I will tell you this also: While the trial is in place,
5 when we do take breaks, whether it be for lunch or bathroom
6 breaks or for the evening, please do not discuss the case
7 with anyone. Please do not start your deliberations. It is
8 not proper to start talking about the case until all the
9 evidence is in, the lawyers have made their final arguments,
10 and I have instructed you on the law.

11 I will also ask that when we take our lunch break today:
12 I need a foreperson from the twelve regular jurors, excluding
13 the alternates. That is simply a person who acts as the
14 spokesman for the jury, brings to my attention any problems
15 that you may be having, and at the end you would head up the
16 deliberations. If you cannot agree on someone between the
17 twelve of you, I'm just going to randomly select somebody.
18 So y'all try to get me a person who would like to serve as
19 the foreperson.

20 So having said all of that, we will get right into the
21 trial of the case. Any objections to my opening remarks by
22 the State?

23 **Mr. Arant:** No, sir. No objections.

24 **The Court:** And by the defendant?

25 **Mr. Hawks:** None from the defense, Your Honor.

1 **The Court:** Thank you. You may make your opening
2 statements, Mr. Solicitor, Ms. Solicitor -- Madam Solicitor.

3 **Ms. McKellar:** Thank you, Your Honor.

4 **The Court:** Yes, sir -- yes, ma'am.

5 **Ms. McKellar:** May it please the Court?

6 **The Court:** Yes, ma'am.

7 **Ms. McKellar:** Ladies and gentlemen, this might be the
8 shortest opening statement I have ever given. Over the
9 weekend I sat around and thought about what I could say to
10 you that would be very gripping, very monumental, and I got
11 nothing. The State -- we feel like our case is that
12 straightforward. I've got nothing exciting for you, no
13 fireworks.

14 What you're going to hear from us is that on
15 January 10th of this year this defendant, Jonathan Miller,
16 had an interaction with the police department, City of
17 Columbia. After a very brief interaction, they found him to
18 be driving under suspension. He was then arrested and his
19 car was towed because of that.

20 As you may or may not know, when your car is towed by
21 the police, they do an inventory. They look to make sure you
22 don't have any valuables that could get lost or damaged
23 during the towing and the storing process.

24 During this search, they found crack cocaine underneath
25 the driver's seat, the driver's seat which Mr. Miller came

1 from who was the only person in the car. It's our contention
2 that was his crack, and we do believe that after we present
3 our case, you'll also believe it's his crack.

4 You heard the judge talk about your job, his job, our
5 job. I'm not going to repeat all of that. But just to
6 address what our duty is: It's to prove to you our case
7 beyond a reasonable doubt, and that's a burden that we take
8 on gladly and we think that we can do that through our
9 witnesses.

10 You'll hear from two police officers with the City of
11 Columbia. You met them yesterday during jury qualification.
12 One is Officer Westbury; one is Officer McDonald. You'll
13 also hear from Brenda Jenkins. She's not yet in the
14 courtroom, but she is the chemist for the City of Columbia
15 Police Department. After hearing from all three of them, we
16 feel like there will be no holes in the case that you need to
17 fill.

18 **Ms. Grice:** Thank you, Your Honor. May it please the
19 Court?

20 **The Court:** Yes, ma'am.

21 **Ms. Grice:** Ladies and gentlemen, good morning. My name
22 is Jessamine Grice, and on behalf of myself and my co-
23 counsel, Mr. Lucas Hawks, we're here today to represent the
24 interests of Jonathan Miller, our client. I also have very
25 simple and straightforward opening comments to make.

1 The solicitor mentioned this is a very straightforward
2 case and that's true. You're going to hear from a short
3 handful of witnesses. There's a good chance we'll be done by
4 the end of the day, but what I want you to keep in mind is
5 this overarching principle: Are they correctly
6 characterizing this case as being straightforward because
7 it's that obvious because Mr. Miller was caught red-handed
8 and it's so clear of his guilt that we don't need to talk
9 about it too much or are they saying it's straightforward
10 because they are improperly connecting the dots and making
11 assumptions?

12 I want you to ask yourself as you hear testimony today
13 from two officers from the City of Columbia and other
14 witnesses: Was there more they could have done? Was there
15 more testing they could have done, more questions they could
16 have asked, pictures they could have taken, research they
17 could have done? How long was this investigation? Is this
18 the way you would expect it to be handled or are you left at
19 the end of today's trial or this week's trial wanting to know
20 more?

21 Your job as jurors is not to jump to conclusions
22 yourself. You are going to hear a set of facts and based on
23 that limited set of facts have to reach a decision as to
24 whether our client, Mr. Miller, is guilty as accused of
25 possession with the intent to distribute crack cocaine.

1 Basically he is being charged as being a drug dealer.

2 Now, I would hedge a bet here that most, if not all of
3 you, have never seen crack cocaine, handled crack cocaine.
4 That's something you're going to have the opportunity to do
5 before this trial is over. There's going to be a witness
6 from the City of Columbia's lab who will be in court with
7 that crack cocaine.

8 You're going to see a small amount of crack cocaine that
9 you'll have an opportunity to examine. We're not disputing
10 what they found was crack cocaine. That's what the lab
11 results will come back, I'm sure, to prove. What we're
12 asking you to do is keep an open mind, and when you hear the
13 testimony throughout today and possibly tomorrow, ask
14 yourself: Are they improperly connecting the dots? Does
15 this circumstantial evidence add up to the fact that Mr.
16 Miller is a drug dealer or is there more information that you
17 need to be able to make this determination? Thank you.

18 **The Court:** You may call your first witness.

19 **Mr. Arant:** Yes, sir. The State would call Officer
20 James Westbury.

21 James Westbury, after being duly sworn, testified
22 as follows:

23 **The Clerk:** Have a seat in the witness stand, please.
24 State your name for the record.

25 **The Witness:** Officer James Westbury.

1 **Mr. Arant:** Good morning, Officer Westbury.

2 **The Court:** Hold on one second. Let me have no more
3 conversations, please. Thank you.

4 Direct Examination

5 By Mr. Arant:

6 Q. Good morning, Officer Westbury. Could you please just
7 spell your name for the court reporter, please?

8 A. It's J-A-M-E-S. Last name Westbury, W-E-S-T-B-U-R-Y.

9 Q. How old are you?

10 A. Twenty-five.

11 Q. Where are you currently employed?

12 A. City of Columbia Police Department.

13 Q. And what's your position with them?

14 A. Patrolman.

15 Q. What are some of the duties you do as a patrolman?

16 A. Responsible for taking calls as well as initiating
17 traffic stops or deterring crime.

18 Q. How long have you been in that position with the City of
19 Columbia?

20 A. Approximately two years.

21 Q. And the way it works, is there a specific region you're
22 assigned to or how does that work?

23 A. I'm assigned to the South Region.

24 Q. And if you could just tell the jury: Where is the South
25 Region? What part of town is that in in Columbia?

1 A. The South Region encompasses Forest Drive, the Five
2 Points area, Rosewood, out on Garners Ferry.

3 Q. And all of those are in the vicinity of the City of
4 Columbia?

5 A. That's correct.

6 Q. Were you employed in that position, working in that
7 position, in January of this year?

8 A. Yes.

9 Q. Specifically on January 10th of this year?

10 A. That's correct.

11 Q. Could you tell us a little bit about that day over in
12 the Rosewood section of town?

13 A. On the -- on that day I was dispatched to a call at the
14 700 block of South Bonham. It was in reference to a
15 suspicious person that was observed by the resident, I
16 believe, possibly stealing items from the yard. While we
17 were there, we were given a description of that person---

18 Q. While you were there -- what were you investigating
19 while you were there the first time?

20 A. I was investigating an individual that was possibly
21 stealing items out of a yard.

22 Q. While you were there, did you speak with someone else
23 involving another complaint?

24 A. Yes, sir.

25 Q. As a result of that conversation, what specifically were

1 you looking for?

2 A. I was looking for the individual that was possibly
3 stealing items out of a yard.

4 Q. As a result of her -- the individual's second complaint,
5 what were you looking for?

6 A. An older model vehicle, silver and green with large
7 rims.

8 Q. And what kind of complaint was this?

9 A. It was a narcotics complaint in reference to apartments
10 across from her residence.

11 Q. And are you familiar with narcotics complaints in that
12 neighborhood?

13 A. I am. I have actually responded to calls at that exact
14 apartment in reference to people possibly buying or selling
15 narcotics.

16 **Mr. Hawks:** Objection to relevance, Your Honor.

17 **The Court:** I think what he's done in the past is not
18 relevant to the trial of this case. I would sustain that.
19 Just disregard that, ladies and gentlemen.

20 **Mr. Arant:** Yes, sir.

21 **The Court:** Stick with this case.

22 By Mr. Arant:

23 Q. After you made contact with this complainant, then what
24 happened?

25 A. After leaving their residence, we went to the 800 block

1 of South Kilbourne, where we believed that individual may
2 have been, to make contact.

3 Q. And which individual are you talking about?

4 A. It was the individual that was believed to be stealing
5 items from the yard.

6 Q. After y'all investigated that, then what did you do
7 next?

8 A. Completed a field interview as far as gathering
9 information from that individual to pass on to
10 investigations.

11 Q. And then did you get in your car and go about your
12 normal...

13 A. That's correct. Excuse me. Got in my patrol vehicle on
14 South Kilbourne heading towards Rosewood at which time I
15 observed a vehicle that was half-silver/half-green with large
16 rims, older model, that was -- matched the description that
17 was given at which time---

18 Q. Where were you -- and I don't mean to cut you off.
19 Where were you when you observed this -- first observed this
20 vehicle?

21 A. I believe it was going to be at the 800 block of South
22 Kilbourne.

23 Q. Okay. And continue where you were going.

24 A. At that time I turned around my vehicle to attempt to
25 get behind the other vehicle as it pulled into a mini market

1 at South Kilbourne and Live Oak.

2 Q. And is this mini mart in the same neighborhood as where
3 the complaint was given and everything? We're in the same
4 vicinity?

5 A. It is.

6 Q. Like we're talking half a block?

7 A. A block. Half a block.

8 Q. Okay. Then what happened at the mini mart?

9 A. The vehicle was there for maybe a minute, two at the
10 most, at which time I observed it leaving the location,
11 turning around at Live Oak with -- and then a right on
12 Hancock which would have appeared to be a high rate of speed.

13 Q. Now, when it left, you could see the vehicle? Could you
14 see the vehicle?

15 A. That's correct.

16 Q. And was it going towards you?

17 A. It would have been going away at first.

18 Q. Okay. And then what happened once the vehicle left that
19 gas station?

20 A. It took a right on Live Oak or a right on Hancock at
21 which time I was able to get behind the vehicle as it took a
22 right onto Timberlane Drive, and at that time I observed the
23 driver getting out of the vehicle as I was getting out and
24 made contact.

25 Q. And you made contact at that address, [REDACTED] ?

1 A. Correct.

2 Q. Do you know the exact address?

3 A. It's [REDACTED].

4 Q. Is that in the City of Columbia?

5 A. That is in the city limits.

6 Q. Your office has jurisdiction there?

7 A. That's correct.

8 Q. At any time from when you left the mini mart to when you
9 pulled in behind the defendant's vehicle, did you ever
10 activate the blue lights?

11 A. I did not.

12 Q. Did you ever activate sirens?

13 A. I did not.

14 Q. And then go ahead and tell us -- you pulled in behind
15 the vehicle and he was getting out?

16 A. I did. It was somewhat to the side just because how the
17 vehicle pulled in. I made contact with him as he was getting
18 out of the vehicle.

19 Q. What was your purpose for making contact?

20 A. It was just to make contact to find out if the
21 individual possibly lived on South Bonham. That could have
22 been why the individual was over there or if it was possibly
23 involved in something---

24 Q. And so you went to get some information?

25 A. That's correct, just to make contact.

1 Q. What kind of -- if he didn't want to give you
2 information, what would you have done?

3 A. There's nothing that I could do.

4 Q. So he's -- back to where you're at. He's getting
5 outside the vehicle. You're making contact with him. Then
6 what happens next?

7 A. As I made contact with him, I asked him for his driver's
8 license which he stated he didn't have it on him, that he
9 believed it was inside the residence at [REDACTED] I
10 advised him I didn't have to have the driver's license in
11 hand. I could just take his name, date of birth, and go from
12 there.

13 Q. Did he give you that?

14 A. He did.

15 Q. And then what did you do with that information?

16 A. At that time Officer McDonald was there. I gave that
17 information to him so he could run it through D.M.V. through
18 dispatch.

19 Q. Now -- and what was the purpose of that, running it
20 through dispatch? What does that -- what does that usually
21 show?

22 A. It's going to confirm whether they have a license and
23 whether it's valid.

24 Q. Will it also show you their address?

25 A. That's correct.

1 Q. And is that part of your investigation in the complaint?

2 A. Yes, sir.

3 Q. Was this a consensual encounter?

4 A. It was.

5 Q. Have you had these consensual encounters before?

6 A. I have; yes, sir.

7 Q. At that point you have his name. You say -- you talked
8 about dispatch. Was it run through dispatch?

9 A. It was, which they run the information through D.M.V.

10 Q. Did you run that through dispatch?

11 A. It was -- not myself.

12 Q. Who ran that?

13 A. Officer McDonald.

14 Q. And was he on the scene with you?

15 A. He was.

16 Q. Did he pull on the scene behind you?

17 A. He did.

18 Q. Did he have his blue lights on?

19 A. No, sir.

20 Q. Did he have his sirens on?

21 A. No, sir.

22 Q. Did he at any point have his gun drawn?

23 A. No, sir.

24 Q. Did you have a gun drawn?

25 A. I did not.

1 Q. Did you ever have any type of weapon drawn?

2 A. No, sir.

3 Q. Once that occurred and you found out he was -- did you
4 find anything out about his license status?

5 A. Yes, sir. After I ran it through the D.M.V., we were
6 able to confirm that his license was suspended through South
7 Carolina.

8 Q. And is that breaking the law in this state? That's an
9 illegal offense?

10 A. It is.

11 Q. Is that an arrestable offense?

12 A. It is.

13 Q. Do you arrest someone for D.U.S.?

14 A. I do.

15 Q. Okay. At any point in this whole -- from seeing the --
16 first seeing the car at the mini mart until pulling into
17 this, you saw the car at all times?

18 A. That's correct.

19 Q. Was there any other person in the vehicle?

20 A. There was not.

21 Q. Did you see any other driver?

22 A. No, sir.

23 Q. Did the driver make any stops?

24 A. No, sir.

25 Q. Did the driver get out of the car?

1 A. No, sir.

2 Q. The guy that got out of the car would be the same driver
3 that you saw---

4 A. That's correct.

5 Q. ---when you first saw the car?

6 A. Yes, sir.

7 Q. At that point what did you do after he was D.U.S.? Did
8 you arrest him at that point?

9 A. At that time he was placed under arrest.

10 Q. He was also the driver of the car?

11 A. That's correct. He was the driver -- the only
12 individual in the vehicle.

13 Q. And what happened after that?

14 A. At that time after he was placed under arrest, I did a
15 search incident to arrest of his person at which time we
16 located a small black electronic scale in his front pocket of
17 his pants.

18 Q. Could you tell the jury how -- the size of the scale?

19 A. At the most about the size of my hand.

20 Q. Then what occurred next?

21 A. At that time I called for a tow of the vehicle.

22 Q. Why did you do that?

23 A. When a driver is arrested in a vehicle and it's obvious
24 the individual is not the -- the vehicle owner is not on the
25 scene, the vehicle has to be towed. Due to that, we also

1 have to do an inventory search of the vehicle which is where
2 we go through the vehicle making sure there's no items in
3 there that could be damaged or stolen, anything like that,
4 while it's being towed or stored. We have to do an inventory
5 search of the vehicle.

6 Q. And you did that in this case?

7 A. Not myself. Officer McDonald.

8 Q. Who did it in this case?

9 A. Officer McDonald.

10 Q. And is there some protocol that says you must do this,
11 that you can do this, tow the vehicles? Is there some
12 protocol that you can do that?

13 A. Correct. By our policy we tow vehicles.

14 Mr. Arant: Your Honor, may I approach the defendant --
15 I mean the officer?

16 The Court: You may.

17 Mr. Arant: I have the stuff we had put into evidence
18 earlier. Can I use that as well?

19 The Court: Sure.

20 Mr. Arant: I don't know where that is.

21 The Court: Do I have it?

22 Mr. Arant: I think you may. If not, I have copies.

23 The Court: Ladies and gentlemen of the jury, this has
24 already been marked as State's Exhibit 1. Any objection?

25 Mr. Hawks: None from the defense.

1 **Mr. Arant:** Thank you. May I approach the witness?

2 **The Court:** You may.

3 (State's Exhibit 1 was received in evidence.)

4 By Mr. Arant:

5 Q. Officer, could you please tell us what this document is?

6 A. This is a copy of the City policy for the police
7 department.

8 Q. And are you familiar with that policy?

9 A. I am.

10 **Mr. Arant:** We would seek to admit it into evidence at
11 this time, and I believe it's already been marked for
12 identification purposes and was already moved in in our
13 suppression hearing.

14 **The Court:** Without objection.

15 By Mr. Arant:

16 Q. Let me hold that. Could you read me 7.2 on Page 3 of
17 that policy, just the first bullet point?

18 A. Okay. "Vehicles taken into police custody." It says,
19 "Departmental personnel may also tow the following vehicles:
20 Any vehicle from which an officer makes an arrest and there's
21 no responsible party to whom the arrestee can turn over the
22 possession of the vehicle."

23 Q. Is that what you did in this case?

24 A. That is correct.

25 Q. Was the owner on site in this case?

1 A. Was not.

2 Q. Who was the owner of this vehicle?

3 A. I believe it was Cansandera Jones.

4 Q. How do you know that? Is that something the D.M.V.
5 would tell you?

6 A. It would be through D.M.V. Was also advised by the
7 driver.

8 Q. Okay. Your Honor, could we have the other piece of
9 evidence that was marked into evidence? Officer Westbury,
10 can you tell the jury what that is, please?

11 A. It's going to be the paper we fill out for a record of
12 stored vehicle.

13 Q. And is that your handwriting? Did you fill that paper
14 out?

15 A. It is.

16 **Mr. Arant:** The State at this time would seek to move
17 that into evidence as well. We're just seeking to admit that
18 in evidence as well.

19 **The Court:** Any objection?

20 **Mr. Hawks:** Without objection.

21 **The Court:** Thank you.

22 (State's Exhibit 2 was received in evidence.)

23 By Mr. Arant:

24 Q. And does it list on there who the owner of the vehicle
25 is in that case?

- 1 A. It does.
- 2 Q. And what does it say?
- 3 A. Cansandera Jones.
- 4 Q. Do you know who Cansandera Jones is at that time?
- 5 A. No, sir.
- 6 Q. Was there a Cansandera Jones on the scene at that time?
- 7 A. There was not.
- 8 Q. Did Mr. -- did the defendant ever tell you that he owned
- 9 the vehicle?
- 10 A. He did not.
- 11 Q. You had no indication that he owned the vehicle?
- 12 A. No, sir.
- 13 Q. And you did tell us it's the policy -- you have -- you
- 14 have the ability to tow the vehicle. Is that correct?
- 15 A. That's correct.
- 16 Q. Is that your understanding? And have you made arrests
- 17 like these before?
- 18 A. I have.
- 19 Q. Have you towed vehicles before?
- 20 A. Yes, sir.
- 21 Q. Is this pretty common for you to tow a vehicle?
- 22 A. Yes, sir.
- 23 Q. And at some point you notified the owner of the vehicle?
- 24 A. Yes, sir. It has on here verbal. I believe I may have
- 25 talked to her over the phone, as well as the record of stored

1 vehicle was also sent to the address of record.

2 Q. Okay. How much time elapsed I guess from the time you
3 first encountered the defendant until he was arrested?

4 A. It was around 10, 15 minutes possibly.

5 Q. Was he free to leave?

6 A. He was at the time.

7 Q. Beg the Court's indulgence. Is the one you arrested --
8 is he in the courtroom today?

9 A. He is.

10 Q. Could you point him out for the jury, please, tell us
11 what he has on?

12 A. A plaid blue shirt. (The witness points to Mr. Miller.)

13 Q. Let's get back to the inventory of the vehicle. What
14 was -- and Officer McDonald did that?

15 A. That's correct.

16 Q. What was discovered in that?

17 A. He discovered a small bag containing an off-white rock-
18 like substance.

19 Q. And did you test that inside?

20 A. I did.

21 Q. And what did it test?

22 A. It field-tested positive as cocaine.

23 Q. He was charged with intent to distribute for that?

24 A. That's correct.

25 Q. Do you know how much it weighed when it first -- when he

1 first got it tested on the site?

2 A. I don't recall how much it was.

3 Q. And then what did you do once you had the crack, the
4 drugs? What did you do with it once you got it from Officer
5 McDonald?

6 A. After I got it from him and it was field-tested, it was
7 placed into a BEST Kit which is a packet that the department
8 has to where we tag that evidence into a lab to where then
9 it's further tested.

10 Q. Could you explain to the jury why it's put into a bag
11 and handled discreetly like that?

12 A. So that there's no question as far as if anything was
13 added, taken away. It actually has to be sealed by myself,
14 signed that I sealed it, to how the bag is actually made up -
15 you can tell if it's been opened up afterwards - to take care
16 of that.

17 **Mr. Arant:** May I approach the witness, Your Honor?

18 **The Court:** You may.

19 By Mr. Arant:

20 Q. Does this look familiar?

21 A. Yes.

22 Q. Is this your handwriting on there for the drugs?

23 A. It is.

24 Q. And what is the date on that?

25 A. 1/10/2013.

1 Q. And when was this arrest made?

2 A. 1/10/2013.

3 **Mr. Arant:** At this time I have nothing further. Please
4 answer any questions the defense may have.

5 **Ms. Grice:** Thank you, Your Honor.

6 Cross-Examination

7 By Ms. Grice:

8 Q. Good morning again, Officer.

9 A. Hey. Good morning.

10 Q. All right, sir. So January 10th of this year, this was
11 approximately 11 in the morning.

12 A. Yes, ma'am.

13 Q. Correct? Okay. And just to clear it up from the
14 beginning so that I'm clear and the jury is clear, there were
15 two separate complaints or incidents that you first started
16 talking about. One person suspected of looking through yards
17 as a possible thief, that was not Mr. Miller; correct?

18 A. Correct.

19 Q. Okay. But it was just the result of your stop at the
20 location you did to investigate that potential theft that you
21 received some information that later on led you to looking
22 for a particular car.

23 A. That's correct.

24 Q. Okay. The information you received though did not
25 contain a particular name; correct?

1 A. That's correct.

2 Q. And did you know whether it was -- whether you were
3 looking for one person or multiple people or was it just the
4 car?

5 A. I don't believe at that time we were given any further
6 information other than just the vehicle.

7 Q. Just a car. Okay. And how much time elapsed from the
8 time where you left that first investigation to when you
9 first spotted this car?

10 A. To the best of my knowledge, maybe five minutes.

11 Q. Okay. And you said the first place that you spotted the
12 car was when you were located on -- was it South Kilbourne?
13 You said at the mini mart?

14 A. Correct. Around the 800 block of South Kilbourne.

15 Q. Okay. So roughly 11 a.m. This was during normal
16 business hours.

17 A. Correct.

18 Q. Correct? And the store was open on that day.

19 A. Yes, ma'am.

20 Q. And you said you saw Mr. Miller pull into the parking
21 lot---

22 A. Yes, ma'am.

23 Q. ---and at some point leave?

24 A. Yes, ma'am.

25 Q. And he traveled, it sounds like, roughly about three

1 blocks before he pulled into the driveway on Timberlane
2 Drive; correct?

3 A. That's correct.

4 Q. He pulled into that driveway. He was not stopped by
5 you; correct?

6 A. That's correct.

7 Q. At no point in time you put your blue lights on.

8 A. That's correct. Yes, ma'am. I didn't initiate blue
9 lights or sirens.

10 Q. Okay. And there was nothing that you observed about his
11 driving behavior that made you concerned.

12 A. That's correct.

13 Q. He was not issued any traffic tickets as a consequence
14 of your interactions with him, well, aside from driving---

15 A. Aside from---

16 Q. ---under suspension.

17 A. Yes, ma'am.

18 Q. No, you know, broken taillights or anything like that.

19 A. That's correct.

20 Q. And you were asked a question by Mr. Arant a minute ago
21 that you simply wanted to talk to Mr. Miller to find out if
22 he lived on South Bonham or in that neighborhood.

23 A. Uh-huh. Yes, ma'am.

24 Q. And you said when you were asked that if Mr. Miller
25 didn't want to interact with you that he didn't have to.

1 There was nothing you could do about it, I think were your
2 words.

3 A. Yes, ma'am.

4 Q. And the phrase we use a lot is: Free to leave.
5 Basically he was free to leave if he wanted to.

6 A. Yes, ma'am.

7 Q. Okay. Despite that, he did stick around and talk to
8 you; correct?

9 A. Yes, ma'am.

10 Q. And I know you asked for his name and his date of birth,
11 and he gave those to you.

12 A. Yes, ma'am.

13 Q. And I imagine that after two years with the City of
14 Columbia you've had a number of people who have given you
15 false information.

16 A. Yes, ma'am. That's correct.

17 Q. But he gave you correct, proper information, and you
18 were able to quickly look him up on the D.M.V.'s website.

19 A. Yes, ma'am.

20 Q. And you were able to determine that he was, in fact,
21 under suspension.

22 A. Yes, ma'am.

23 Q. And you had seen him driving with a suspended license.

24 A. Yes, ma'am.

25 Q. Would you characterize his interaction with you as

1 cooperative?

2 A. Yes, ma'am.

3 Q. Okay. And at some point during your interactions with
4 him you determined that -- this was a house, not an apartment
5 building, but it was a triplex?

6 A. Yes, ma'am. I believe there's, I believe, like three
7 apartments right there.

8 Q. Okay. And he said something to indicate to you that his
9 license or identification might be inside one of those
10 residences?

11 A. That's correct.

12 Q. So did you at that point believe that he might be a
13 resident there or know somebody who was a resident in one of
14 those homes?

15 A. It was a possibility that he either lived there or --
16 well, he had stated that it was, I believe, his girlfriend's
17 apartment---

18 Q. Okay. And---

19 A. ---so that he knew somebody.

20 Q. Okay. And I think at some point later on that morning
21 you actually met her. Does the name Nikea Berry sound
22 familiar?

23 A. Talking about from the apartment?

24 Q. Yes, sir, the girlfriend.

25 A. Yes, ma'am.

1 Q. Okay. So you do recall meeting his girlfriend. I think
2 she might have either shown up later on... She wasn't there
3 at the time when you first stopped Mr. Miller.

4 A. Okay. Yes, ma'am.

5 Q. Okay. So we're talking about a crack case here. There
6 was -- sounds like an obvious question, but there was no
7 indication based on the three blocks that you followed Mr.
8 Miller that there was going to be any crack or anything
9 illegal in the car; correct?

10 A. No, ma'am.

11 Q. You know, I have heard crack has a very distinct kind of
12 smell. You didn't smell crack or anything like that?

13 A. No, ma'am.

14 Q. This was simply just kind of a routine investigation to
15 try to learn some more information and see where it led, I
16 guess.

17 A. That's correct.

18 Q. So once it was discovered that Mr. Miller's license was
19 suspended, that was the point where he was taken into
20 custody.

21 A. That's correct.

22 Q. You did that yourself.

23 A. Yes, ma'am.

24 Q. And he was searched and a scale was found.

25 A. Yes, ma'am.

1 Q. No drugs were found on him; correct?

2 A. No, ma'am, not on his person.

3 Q. Okay. I believe it's mentioned in the incident report
4 which you filled out that about \$75 in cash was found on him?

5 A. That's correct.

6 Q. I believe you initially noted that that was returned to
7 Ms. Berry at that location at that time?

8 A. Yes, ma'am.

9 Q. Okay. But there was nothing that we call contraband
10 located in his pockets.

11 A. That's correct.

12 Q. With regard to the car, the car is the only place that
13 the crack was found.

14 A. Yes, ma'am.

15 Q. And you never asked Mr. Miller if you could search the
16 car.

17 A. I did.

18 Q. What -- and what did he say?

19 A. He said not without a lawyer present.

20 Q. Okay. And at some point it was determined the car was
21 going to be searched for an inventory search.

22 A. After he was arrested, yes, ma'am.

23 Q. Okay. But between the time he was arrested and the time
24 that the car was going to be searched for inventory search,
25 there was still no indication that there was anything

1 incriminating, any contraband, anything in the car.

2 A. That's correct.

3 Q. You have that -- am I correct? Do you have that package
4 with the crack in it still up there with you?

5 A. No, ma'am, I don't, not with me.

6 Q. Okay. Let me ask this: Who made the determination to
7 charge Mr. Miller with possession with the intent to
8 distribute crack cocaine?

9 A. Myself.

10 Q. Okay. And I'm assuming here in the city unfortunately
11 you probably have made a number of drug arrests over the past
12 couple of years that you've been employed here.

13 A. Yes, ma'am.

14 Q. Okay. I will wait until -- one moment. Did you find
15 the crack that was in the car?

16 A. No, ma'am, I didn't.

17 Q. Okay. I'm going to save my questions then for Officer
18 McDonald later on. He was the one that found the crack.

19 A. That's correct.

20 Q. And did you see it at some point in time?

21 A. Yes, ma'am.

22 Q. You were the one that packaged it.

23 A. That's correct.

24 Q. Okay. Beg the Court's indulgence one moment. Sir, you
25 mentioned that you field-tested the crack itself and it came

1 back positive.

2 A. Yes, ma'am.

3 Q. Did you field-test the scale?

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

5 Q. Okay. Is that something that you've done previously or
6 could have done?

7 A. As far as testing the scale?

8 Q. Yes, sir.

9 A. I have never done it before. It is something that could
10 be done. That's correct.

11 Q. And, you know, in terms of charging this as the
12 possession with intent to distribute, basically that charge
13 indicates that this crack was not for Mr. Miller but for
14 other people, that it was going to be sold---

15 A. That's correct.

16 Q. ---with intent to distribute?

17 A. Yes, ma'am.

18 Q. It's my understanding that this crack was in one bag;
19 correct?

20 A. Yes, ma'am.

21 Q. It was not broken up individually into 20 little
22 baggies; correct?

23 A. That's correct.

24 Q. And is that kind of separation and division typical of
25 possessing crack with the intent to distribute?

1 A. Are you talking about it being broken into pieces?

2 Q. Yes, sir. I mean, do you have -- is it frequent that
3 when you arrest somebody for having crack and they are
4 charged with possession with the intent to distribute, it is
5 broken up a number of ways, maybe wrapped in plastic, maybe
6 all separate rocks and in one container.

7 A. It depends on what state they are as far as -- it could
8 be whether the actual cookie has been broken up yet or
9 whether it's still whole.

10 Q. And the total amount of money that was found on Mr.
11 Miller was \$75 and some change. I believe \$75.50.

12 A. Yes, ma'am.

13 Q. And frequently when somebody is alleged to be selling
14 drugs, their money can be seized; correct?

15 A. Yes, ma'am.

16 Q. Their money can be seized. Their car as well?

17 A. Yes, ma'am.

18 Q. In this case though the car was towed, not to be seized
19 as property in the investigation, but simply to get it out of
20 the way; correct?

21 A. That's correct.

22 Q. Okay. And the money that was taken in this case was not
23 seized as well.

24 A. That's correct.

25 Q. That money was returned to his girlfriend.

1 A. Yes, ma'am.

2 Q. Presumably so that he could get it later on.

3 A. Yes, ma'am.

4 Q. Was Mr. Miller present at the time that the crack was
5 discovered or had he already been taken away?

6 A. He was still on the scene.

7 Q. Okay. Was he ever asked any questions about it?

8 A. Not 'til after being Mirandized.

9 Q. And what did he say?

10 A. Um---

11 Q. Did he speak to you after Miranda?

12 A. He did not. He advised that he wanted to speak to a
13 narcotics investigator.

14 Q. To a narcotics investigator or...

15 A. Yes, ma'am.

16 Q. Okay. Did he speak with a narcotics investigator?

17 A. He did.

18 Q. But he made no statements regarding the crack itself and
19 its intent---

20 A. No.

21 Q. ---or his intent---

22 A. No, ma'am, not to myself.

23 Ms. Grice: Okay. Okay. No further questions. Thank
24 you, sir.

25 The Court: Redirect?

1 **Mr. Arant:** Yes, sir, briefly.

2 Redirect Examination

3 By Mr. Arant:

4 Q. Did the D.M.V. have that as his address -- the incident
5 location as his address?

6 A. It did not.

7 Q. This is the crack that I asked you about earlier. May I
8 approach the witness? How many pieces are there relatively?
9 One? Two? Many?

10 A. Multiple.

11 Q. Okay. Officer, where were the drugs found?

12 A. They were found under the driver's seat.

13 Q. Was it found in the car?

14 A. Correct.

15 Q. Where was the money found?

16 A. That would have been in his pocket.

17 Q. His pocket? And did the person that you handed over the
18 money, did she own the car?

19 A. She did not.

20 **Mr. Arant:** No further questions.

21 **The Court:** All right. You may step down. Next
22 witness.

23 **Ms. McKellar:** Your Honor, the State calls Officer Shaun
24 McDonald.

25 Shaun McDonald, after being duly sworn, testified

1 as follows:

2 **The Clerk:** Have a seat in the witness stand, please.
3 State your name for the record.

4 **The Witness:** My name is Officer Shaun McDonald.

5 Direct Examination

6 By Ms. McKellar:

7 Q. Officer McDonald, I know it seems obvious in your
8 attire, but where are you currently employed?

9 A. City of Columbia Police Department.

10 Q. And how long have you been with them?

11 A. Approximately a year and a half.

12 Q. Have you worked the same location your entire career
13 there?

14 A. Correct, ma'am. South Region.

15 Q. And can you tell me what area of town that is?

16 A. South Region is from Five Points out towards Garners
17 Ferry Road and parts of Forest Drive.

18 Q. On January 10th of this year, were you employed in that
19 position?

20 A. Correct, ma'am.

21 Q. And what area were you patrolling that particular day
22 about 11 a.m.?

23 A. Around 11 a.m. I was patrolling from Kilbourne -- the
24 360 area which is from Kilbourne Road out towards Garners
25 Ferry.

1 Q. So what area of town specifically is that? Can you
2 relay to the jury?

3 A. It's known as the 360's area.

4 Q. Which is the Rosewood Drive area?

5 A. Correct.

6 Q. And did you receive a complaint about somebody peeking
7 into peoples' yards that day?

8 A. Correct, ma'am.

9 Q. And what did you do based on receiving that complaint
10 from dispatch?

11 A. We had circulated the South Bonham area. It came from
12 the 700 block of South Bonham, and upon circulating the area,
13 we made contact with the complainant.

14 Q. And based on that, did you make contact with anyone else
15 in that area?

16 A. Not in the South Bonham area, no.

17 Q. Who did you make contact with next?

18 A. The complainant also advised us of a suspicious vehicle
19 that was in the area throughout the past couple of days that
20 was green and silver in color, older model box-type car. She
21 believed it was a Chevy, but at that time she wasn't sure,
22 with very large rims.

23 Q. Did it have any particular markings on it?

24 A. She just advised that the paint looked as if it was
25 almost spray-painted on.

1 Q. So based on that information that you received, what did
2 you and Officer Westbury do next?

3 A. We had moved over to the 800 block of South Kilbourne
4 Road to try to make contact with the person that we thought
5 was peeking in the yards. At that time we tried to conduct a
6 field interview with that person.

7 Q. But you did not make contact with the defendant at that
8 point; correct?

9 A. No.

10 Q. Did you give up on trying to arrest anyone for peeking
11 in yards?

12 A. Correct. I had conducted a field interview with the
13 person that I thought may have been involved.

14 Q. But no one was arrested; correct?

15 A. Correct.

16 Q. So then you moved on about your normal course of
17 business; right?

18 A. Correct.

19 Q. Were you in the car alone?

20 A. I was.

21 Q. Was there anyone patrolling with you?

22 A. Officer Westbury was with me.

23 Q. In his own car?

24 A. In his own car.

25 Q. So what happened to the two of you next?

1 A. We had observed a vehicle matching the description given
2 by the complainant traveling down South Kilbourne Road and
3 turn into the mini mart which is located at South Kilbourne
4 Road and Live Oak.

5 Q. Were you pretty sure this was the car she had described,
6 given the specificity?

7 A. Correct. I mean, it was -- it was pretty much a match
8 to what she had given us earlier that day.

9 Q. And at what point did you actually make contact with the
10 driver of that car?

11 A. I didn't make contact with the driver of the car until
12 after Officer Westbury made contact with him. I was about
13 five seconds behind him.

14 Q. So where did that contact occur?

15 A. [REDACTED].

16 Q. And is that in the city limits of Columbia?

17 A. Correct.

18 Q. And that defendant you made contact with, is he in the
19 courtroom today?

20 A. He is.

21 Q. And can you please point him out for the jury and the
22 judge?

23 A. He is sitting at that table right there.

24 Q. And at any point did you have your gun drawn?

25 A. No, ma'am.

1 Q. Did anyone on the scene have their gun drawn?

2 A. No.

3 Q. Was the defendant ever handcuffed during your, I mean,
4 initial interaction with him?

5 A. No, not until he was arrested.

6 Q. Did he at any point try to walk away from you guys?

7 A. No. He -- he sat down on the curb or the step of the
8 house.

9 Q. So if he would have said, "I don't want to talk to you;
10 I'm going inside," what would you have done?

11 A. There's not much at that time that we could have done.
12 We were -- I was just trying -- we were trying to conduct
13 what's called a field interview.

14 Q. To gather information?

15 A. Correct.

16 Q. So after the defendant gave his name to Officer
17 Westbury, are you the one who ran that name through the
18 D.M.V. database?

19 A. I did.

20 Q. And what information did you find from it?

21 A. Upon running his information through the D.M.V. data --
22 or through dispatch, dispatch advised me that he was signal
23 22 which is driving under suspension.

24 Q. In your normal course of business, would you arrest
25 someone at that point for driving under suspension?

1 A. Correct.

2 Q. Because you had seen him behind the wheel of a car
3 driving.

4 A. Correct.

5 Q. Okay. Did you actually arrest him or did Officer
6 Westbury arrest him?

7 A. I didn't. Officer Westbury did.

8 Q. Okay. And then at that point who ascertained that the
9 car should be towed?

10 A. Officer Westbury filled out the paperwork, but I
11 inventoried the vehicle.

12 Q. And an inventory search is something that you do
13 whenever you tow a car?

14 A. Correct.

15 Q. Your Honor, may I approach the witness? I have what's
16 been marked State's Exhibit 1. Do you recognize this
17 document? I'm showing you the second page.

18 A. Yes, ma'am.

19 Q. And is that your department's towing policy?

20 A. Correct.

21 Q. Do you always follow this policy when you're
22 inventorying and towing the car?

23 A. I do.

24 Q. And in this case you said you inventoried the car. Were
25 you looking for contraband?

1 A. Not at that time, no.

2 Q. What were you looking for?

3 A. We were looking for valuables, money, anything that we
4 can consider a valuable.

5 Q. Did you find any valuables in the car?

6 A. No, ma'am.

7 Q. What did you find in the car?

8 A. Upon searching the vehicle, I found under the driver's
9 seat a plastic baggy containing a white rock-like substance
10 which later on field-tested positive for crack cocaine.

11 **Ms. McKellar:** Beg the Court's indulgence. Your Honor,
12 may I approach the witness?

13 **The Court:** Yes, ma'am.

14 By Ms. McKellar:

15 Q. Do you recognize the substance here?

16 A. Yes, ma'am.

17 Q. Does that look like what you found under the driver's
18 seat?

19 A. Yes, ma'am.

20 Q. How about that crumpled up bag next to it? What is
21 that?

22 A. That is -- I believe that is what the crack was in.

23 Q. That was the original packaging?

24 A. That was the original packaging.

25 Q. So the bag it's in now is what the officers and the

1 chemist put it in; correct?

2 A. Correct.

3 Q. So was the car towed?

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

5 Q. After your inventory was conducted?

6 A. Correct.

7 Q. And the defendant, Mr. Miller, was taken to jail for
8 driving under suspension; correct?

9 A. Correct.

10 Ms. McKellar: I have no further questions at this time,
11 Your Honor.

12 The Court: Cross? Any questions?

13 Ms. Grice: Yes, sir.

14 Cross-Examination

15 By Ms. Grice:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Officer McDonald, I'm going to try not to be too
19 redundant---

20 A. Sure.

21 Q. ---since I know that you and Officer Westbury arrived at
22 the same time, essentially observed, you know, the same
23 things, worked collaboratively on this.

24 A. Yes, ma'am.

25 Q. Let me ask this: Did you or Officer Westbury make any

1 assumptions based on the type of car and the description that
2 were given?

3 A. No. We were simply following up on the description we
4 were given on a suspicious vehicle. We receive numerous, you
5 know, calls on suspicious vehicles, suspicious persons
6 throughout the day that we have to follow up on.

7 Q. Yes, sir. And all you had was vehicle description.

8 A. Correct.

9 Q. You didn't know whether it was going to be one person or
10 multiple people inside the car.

11 A. Correct.

12 Q. You didn't know the identities or names of any people
13 that you were looking for.

14 A. No, ma'am.

15 Q. And you've never met Mr. Jonathan Miller before that
16 day; correct?

17 A. Correct. To the best of my knowledge, I never had met
18 him.

19 Q. Yes, sir. So he's not somebody that you've previously
20 been on -- that he's been on your radar as a potential
21 troublemaker or a drug dealer---

22 A. No, ma'am.

23 Q. ---or anybody in that area. You located the crack that
24 was found.

25 A. Correct.

1 Q. And it was under the driver's seat.

2 A. It was.

3 Q. Was there anything else that was found under the
4 driver's seat?

5 A. Not that was considered a valuable, no.

6 Q. Okay. Was there anything with identifying information
7 on it under the driver's seat?

8 A. Not that I -- not that I could recall.

9 Q. Okay. And with regard to later towing this car -- and I
10 know we've been through the policy and such. The policy for
11 the City of Columbia is basically: This was towed as an
12 inventory search.

13 A. Correct.

14 Q. Or it was towed for the purposes of safekeeping of the
15 owner of the car's property and I know that there were no
16 valuables found within that car. How did you determine who
17 the owner of that car was?

18 A. I believe -- I didn't run any of the information. I
19 believe Officer Westbury had ran -- was it maybe the V.I.N.
20 number? You'd have to ask him.

21 Q. Okay.

22 A. But at some point it came back through either our M.V.T.
23 computer or dispatch as to who the owner was.

24 Q. Okay. And did you ever personally speak with either --
25 well, did you speak with a resident of that location?

1 A. I never spoke with the resident. I saw her briefly come
2 out.

3 Q. Okay. Maybe perhaps when she spoke with Officer
4 Westbury.

5 A. Correct.

6 Q. Did you ever speak with a woman named Cansandera Jones?

7 A. No, ma'am.

8 Q. Okay. Does that -- do you know that name?

9 A. Just from hearing it through this case but not before
10 that, no.

11 Q. Okay. Now, crack -- I know this sounds silly, but it's
12 called crack because it cracks apart into pieces; correct?

13 A. I don't know, to be honest with you.

14 Q. Okay. Well, it's -- it can be cracked or cracked into
15 pieces; correct?

16 A. Well, I have never -- I don't know. To be honest, I
17 don't know why they call it crack.

18 Q. Well, I know there are several pieces contained within
19 this packaging and I know we'll see that later. Did you
20 count the number of pieces that were in the container in the
21 plastic bag at the time?

22 A. I did not, no. I just -- when I found the rock-like
23 substance, I turned it over to Officer Westbury.

24 Q. Okay. And in your experience, is it possible that it
25 can further crack and break into other pieces during the

1 handling that it goes through and during the testing process?

2 **Ms. McKellar:** Your Honor, I would object. That's not
3 something he can testify to.

4 **The Court:** Well, not a proper question either.
5 Anything is possible. Sustained.

6 By Ms. Grice:

7 Q. You don't know how many pieces of crack were in the bag
8 that you found under the seat.

9 A. Correct. I'm not -- I don't know offhand.

10 **Ms. Grice:** Okay. Beg the Court's indulgence one
11 moment.

12 **The Court:** Yes, ma'am.

13 By Ms. Grice:

14 Q. One further question, Officer McDonald.

15 A. Sure.

16 Q. After Mr. Miller was arrested January 10th of this year,
17 was that the end of your investigation?

18 A. Correct.

19 Q. Okay. So there was no further conversations with Mr.
20 Miller, investigations into him or anything related to his
21 arrest.

22 A. Not by me, no.

23 Q. Yes, sir. Okay. Thank you.

24 A. You're welcome.

25 **The Court:** Any redirect, Ms. McKellar?

1 **Ms. McKellar:** No, sir, Your Honor.

2 **The Court:** Thank you. You may step down.

3 **The Witness:** Thank you, Your Honor.

4 **The Court:** Next witness, please?

5 **Ms. McKellar:** Your Honor, may we approach?

6 **Mr. Arant:** Approach?

7 (Whereupon, a bench conference was held.)

8 **The Court:** Ladies and gentlemen of the jury, we need to
9 take a little short break. We've got another witness who
10 will be here in about ten minutes, so let's just take a leg
11 stretcher and we'll start back and go 'til about 1:00. Don't
12 discuss the case, and if you want to, you can go ahead and
13 get you a foreperson while we're resting. Okay? Everybody
14 else remain seated.

15 (Whereupon, the jury was excused from open court at
16 12:17 p.m.)

17 **The Court:** We'll take a short... The defendant is in
18 custody, sir.

19 (Whereupon, a short break was taken.)

20 **The Court:** Thank you. Please be seated. Anything for
21 the record before we start back?

22 **Mr. Arant:** No, sir. The State is ready to proceed.

23 **Mr. Hawks:** None from the defense.

24 **The Court:** I want to read y'all a letter I received
25 from the jury panel, young lawyers.

1 **Mr. Arant:** Yes, sir.

2 **The Court:** "Please make sure all lawyers speak clearly
3 and loudly and not so fast." True note. True note. Bring
4 the jury panel in, please.

5 **Ms. McKellar:** Constructive criticism.

6 **The Court:** Ma'am?

7 **Ms. McKellar:** Constructive criticism.

8 **The Court:** Not from the bench. I just added a few
9 lines.

10 (Whereupon, the jury was brought into open court at
11 12:36 p.m.)

12 **The Court:** Who won the lucky vote? Juror 273.

13 **Juror 273:** Right here.

14 **The Court:** Is this your first successful election?

15 **Juror 273:** It is.

16 **The Court:** Maybe you'll get into politics now.

17 **Juror 273:** That's correct.

18 **The Court:** I was in Aiken not long ago and I asked them
19 to please select a foreperson. They came back out into the
20 courtroom. A nice lady like your forelady -- she was all
21 frowned-up and I said, "What's wrong?" She said, "I went to
22 the bathroom. When I came back out, they had elected me." I
23 guess there's more ways than one to select a foreperson.

24 All right. We've got one more witness by the State. Is
25 that correct?

1 **Mr. Arant:** Yes, sir. That is correct.

2 **The Court:** But I don't think it will be a very long
3 witness, so we're going to conclude the State's case this
4 morning. Then we'll break for lunch and see where we stand
5 at that time. Juror -- Ms. Thomas, I will address your
6 situation and make sure that you are okay.

7 **Juror Thomas:** Okay.

8 **The Court:** Fair enough?

9 **Juror Thomas:** Uh-huh. Thank you.

10 **The Court:** You may call your next witness.

11 **Ms. McKellar:** Thank you, Your Honor. The State calls
12 Brenda Jenkins.

13 **The Court:** By the way, ladies and gentlemen of the jury
14 panel, I read your note to these young lawyers and I added to
15 it.

16 Brenda G. Jenkins, after being duly sworn,
17 testified as follows:

18 **The Clerk:** Have a seat in the witness stand, please.
19 State your name for the record.

20 **The Witness:** Brenda G. Jenkins.

21 Direct Examination

22 By Ms. McKellar:

23 Q. Ms. Jenkins, it's good to see you this morning. Can you
24 tell me where you're employed and what your current job is
25 there?

1 A. I'm employed with the City of Columbia Police

2 Department. I'm a police chemist.

3 Q. Are you a certified officer?

4 A. Class III officer.

5 Q. Okay. But what is your main duty?

6 A. My main duty is the evidence that the officers collect
7 off of their subjects, I analyze the drugs.

8 Q. Just drugs. You don't do D.N.A. or anything else?

9 A. No D.N.A.

10 Q. How long have you been employed there in that capacity?

11 A. One year and about eight months.

12 Q. And you told me a little bit about your duties. Can you
13 go through your day-to-day duties?

14 A. Day-to-day?

15 Q. Yes, ma'am. Like, do you test all types of drugs?

16 A. I test anything -- cocaine, crack cocaine, meth, heroin,
17 L.S.D.---

18 Q. So what's been referred to in the business as hard
19 drugs?

20 A. Yeah. I also do pills also.

21 Q. Pills? How about marijuana?

22 A. Yes, I do marijuana.

23 Q. Can you tell me what type of training you must have to
24 qualify to act as a chemist for a police department?

25 A. I have a Bachelor of Science degree in chemistry. I

1 have over 20 years of working in a laboratory, and basically
2 -- I think basically you have to have a Bachelor of Science
3 degree in chemistry.

4 Q. And you said you have that. What other training have
5 you received?

6 A. I've done instrumental training on the G.C. Mass Spec,
7 gas chromatograph mass selective detector. F.T.I.R. I don't
8 want to kind of go...

9 Q. A lot of scientific words there.

10 A. Yes.

11 Q. So you've trained on all the different machines and
12 equipment that you use in your lab.

13 A. Yes, I have.

14 Q. And they all have very long names like that.

15 A. Yes.

16 Q. Have you had occasion to chemically analyze substances
17 to determine whether they are narcotic and non-narcotic? Is
18 that something you have done before?

19 A. Yes.

20 Q. In training and in your day-to-day duties?

21 A. Yes, in training and day-to-day.

22 Q. How many times would you say?

23 A. Since I started with the City, I've probably analyzed
24 over 500 cases.

25 Q. And how many times a week do you analyze particular

1 drugs?

2 A. Daily.

3 Q. Every day?

4 A. Yes.

5 Q. So how many cases do you analyze every day?

6 A. I mean, I roughly do between 15 and 20 cases a week.

7 Q. And based on that testing, do you then generate drug
8 analyses that we see in our office?

9 A. Yes, I do.

10 Q. And those analyses, do they say that the drug is or is
11 not positively identified as a controlled substance?

12 A. Yes, they do.

13 Q. Do you also give us a weight for those substances?

14 A. If there's a weight to be obtained, you will have a
15 weight.

16 Q. Have you ever been qualified as an expert in trial
17 before?

18 A. Yes, I have.

19 Q. Where is that?

20 A. I was qualified in Richland County August the 3rd.

21 Q. Your Honor -- did you actually testify -- I'm sorry.
22 Did you actually testify in that trial where you were
23 qualified as an expert?

24 A. Pardon me?

25 Q. Did you actually testify in that trial where you were

1 qualified?

2 A. That was for my certification trial.

3 Q. Okay.

4 A. Mock trial.

5 **Ms. McKellar:** Your Honor, at this time the State moves
6 that Ms. Brenda G. Jenkins be declared an expert in the field
7 of chemistry and analysis of narcotics.

8 **The Court:** Any examination as to her qualifications?

9 **Mr. Hawks:** No, Your Honor.

10 **The Court:** Madam Forelady, ladies and gentlemen of the
11 jury, this witness will be allowed to give opinion testimony
12 in the area that she's been qualified in in drug analysis.
13 Normally witnesses are not allowed to give opinion testimony.
14 However, there's an exception to that rule. If someone,
15 because of training, experience, and education, requires
16 expertise in a field that's not normally within the general
17 knowledge of ordinary people, we allow them to give
18 testimony. So she will be allowed to give her opinion
19 testimony is what I meant to say, and I will tell you at the
20 end what you can -- how you can handle an expert's opinion
21 testimony. Yes, ma'am.

22 **Ms. McKellar:** Your Honor, may I approach the witness?

23 **The Court:** You may.

24 By Ms. McKellar:

25 Q. Ms. Jenkins, I'm showing you what's been labeled State's

1 Exhibit 3. There's a lot of stuff contained within this, but
2 I'm going to ask you specifically about this small bag here.
3 Do you recognize that substance in that bag?

4 A. Yes, I do.

5 Q. Based upon your past experience and your training, do
6 you have an opinion as to what that substance is?

7 A. My analysis determined it to be cocaine crack with a
8 crack base.

9 Q. And when did you test this sample? And can you please
10 tell the Court what you're referencing right now?

11 A. I'm referencing the actual laboratory analysis report.
12 The analysis -- I'll go back to my actual date of analysis
13 which is my worksheet. Okay. The worksheet date of analysis
14 was May 2nd, 2013.

15 Q. So that's the date you tested this crack cocaine?

16 A. Yes, I did.

17 Q. Is that also the day you got the positive analysis back
18 and the weight?

19 A. Yes, I did.

20 **Ms. McKellar:** Your Honor, at this time we would offer
21 State's Exhibit 3 into evidence.

22 **Mr. Hawks:** Objection, Your Honor, based on all my
23 pretrial motions that the search and seizure of my client was
24 unlawful.

25 **The Court:** Thank you. Overruled.

1 (State's Exhibit 3 was received in evidence.)

2 By Ms. McKellar:

3 Q. Now, Ms. Jenkins, what is the weight of that crack
4 cocaine?

5 A. The weight was determined to be 4.99 grams.

6 Q. And you've already given the date that you made that
7 analysis; correct?

8 A. Yes, I did.

9 Q. What tests were specifically done by you on that crack
10 cocaine to determine whether it was or was not...

11 A. I performed -- we call it a chemical spot test, a
12 physical test, gas chromatograph -- gas chromatography, mass
13 spectroscopy, and an infrared petroscopy (verbatim).

14 Q. So did you just name five separate tests?

15 A. Yes, I did.

16 Q. And so through of those five separate tests, in your
17 expert opinion you say that that package does contain
18 4.99 grams of crack cocaine.

19 A. Yes, it does.

20 Ms. McKellar: Your Honor, no further questions for the
21 witness at this time.

22 The Court: Cross-examination?

23 Mr. Hawks: Your Honor, we have no questions for this
24 witness.

25 The Court: Thank you. You may step down. Next

1 witness, please.

2 **Mr. Arant:** At this point the State has no further
3 witnesses. We rest.

4 **The Court:** Madam Forelady, ladies and gentlemen, that
5 means they have concluded all their testimony. I have a
6 couple of matters - I have to deal with them - concerning
7 matters of law which will probably take us up until the 1:00
8 lunch break. Let's just take a -- leave a little bit early.
9 We'll start back at 2:00. Is that an imposition for anyone,
10 2:00? The bailiffs will show you how to get back up and
11 where to go.

12 Please do not discuss the case. Do not start any type
13 of deliberations, and do not let anyone discuss it with you.
14 Thank you. I'll see you back at 2:00.

15 (Whereupon, the jury was excused from open court to go
16 to lunch at 12:45 p.m.)

17 **The Court:** Anything from the State?

18 **Mr. Arant:** Nothing at this point.

19 **The Court:** Anything from the defendant?

20 **Ms. Grice:** Your Honor, at this point we'll be renewing
21 our initial motions to suppress based on our belief that this
22 evidence was obtained -- that the crack was obtained through
23 unlawful procedures.

24 **The Court:** All right. I respectfully deny that motion
25 based upon the reasoning as earlier expressed. Any

1 additional motions?

2 **Mr. Hawks:** Yes, sir. At this point we'd like to make a
3 motion for a directed verdict. Your Honor, at the last break
4 I had asked our law clerk to go print out copies of two cases
5 so I could provide a copy each to the State and yourself. I
6 imagine he's probably right outside the door, if I might go
7 check.

8 **The Court:** You can send...

9 **Ms. Grice:** I'll send Mr. Hawks.

10 (Pause in proceedings.)

11 **Ms. Grice:** Your Honor, if I might approach, I have two
12 cases. I'll be handing you a copy of each one of them---

13 **The Court:** Thank you.

14 **Ms. Grice:** ---and I'll hand a copy to the State. The
15 cases are State v. Odems, O-D-E-M-S, and State v. Jackson.
16 Your Honor, these are the two cases that I'm going to be
17 basing my argument on. Your Honor, this is my motion for a
18 directed verdict.

19 **The Court:** Yes, ma'am.

20 **Ms. Grice:** We're arguing that based on the evidence
21 that we've heard so far from these two officers, we believe
22 that the State has failed. When you take all this evidence
23 in the light most favorable to the State, they have failed to
24 meet their burden to prove that there is adequate evidence to
25 move forward at this point in time.

1 Your Honor, these two cases are South Carolina cases.
2 Both -- State v. Jackson, the cite is 717 Southeast Second
3 609. It's a Court of Appeals case from 2011. And the second
4 case, State v. Odems, O-D-E-M-S, it's a Supreme Court of
5 South Carolina case from December of 2011. The cite there is
6 720 Southeast Second 48. I just realized I need to slow down
7 even if the jury is not here.

8 Your Honor, both of these cases deal directly on point
9 with the evidence that we've heard today. I don't think
10 there's any question that we're dealing with circumstantial
11 evidence. There's no direct evidence. Nothing was found in
12 Mr. Miller's hands, in his pocket. There are no statements
13 of him claiming possession of the crack that was found. This
14 is a case of circumstantial evidence and officers trying to
15 connect the dots to prove that this crack that was found was,
16 in fact, his.

17 It seems to me, based on the testimony that we've heard,
18 that there are two main things that they are relying on and
19 nothing more. One is the fact that he was the driver of the
20 car and the crack was found in the car under the driver's
21 seat. Second is that he had a scale on his person, although
22 we've heard that it was not field-tested and there wasn't any
23 testimony really connecting those two things, but I believe
24 that's what the State would argue as another indication that
25 -- of his knowledge and possession and possession with intent

1 to distribute the crack that was located.

2 The facts -- if I could briefly summarize, in State v.
3 Jackson, this is a constructive possession case and it deals
4 with the issue of mere presence, and in that case you had two
5 men in a car. The petitioner in that case was the front seat
6 passenger in the car, filled with bags of marijuana. The
7 officer -- this was a traffic stop where they were pulled
8 over because of poor driving behavior, that they smelled an
9 odor of marijuana. Then the occupants of the car were
10 separated and gave inconsistent statements about where they
11 were coming from and how they knew each other, and then at
12 some point in time some marijuana was found.

13 Based on that, the Court declined to -- well, it was a
14 Court of Appeals case where basically the Court of Appeals
15 determined that the initial circuit court erred in failing to
16 grant the motion for a directed verdict, and they instruct
17 that the trial Court should grant a directed verdict when the
18 evidence presented merely raises a suspicion of guilt. It
19 takes more than a suspicion, and that's, I believe, what the
20 jury is going to be stuck with here, just a suspicion and
21 lacking more.

22 They initially referred to other cases, and it's helpful
23 that this is on point and involves drugs. They refer to
24 another case within the text, United States v. Blue, from
25 this circuit from 1992 in which the driver was seen making a

1 -- they call it a shoulder dip, kind of a gesture as we
2 frequently hear mentioned, you know, indicating that a person
3 is stuffing something, hiding something, concealing
4 something. That's it. You know, we've had no testimony that
5 -- and there's not going to be any that there was, you know,
6 any statements, anything labeling this, no admission of
7 guilt, nothing connecting Mr. Miller to the crack beside the
8 fact that he was closest to it.

9 The second case that I mentioned and that I provided
10 copies of is State v. Odems, and the main point that this
11 case makes is that when the Court is dealing with
12 circumstantial evidence as opposed to direct evidence, that
13 evidence must be substantial and if I could just point out a
14 couple of things briefly mentioned within there.
15 "Petitioner's overall actions may appear suspicious, but mere
16 suspicion is insufficient to support a guilty verdict. Every
17 circumstance relied upon by the State must be proven beyond a
18 reasonable doubt, and all of the circumstances proven must be
19 consistent with each other and, taken together, must point
20 conclusively to the guilt of the accused to the exclusion of
21 all other reasonable hypotheses."

22 There are absolutely -- this isn't just trying to grasp
23 at straws, you know, looking for reasonable alternative
24 hypotheses. There's some issue about who owns this car. We
25 know that the officers followed Mr. Miller's car for about

1 three blocks, but there's no indication how long that crack
2 had been in the car, who put it in the car. There's
3 obviously no fingerprints, no D.N.A., nothing tying Mr.
4 Miller to the bag that it was contained in. There is no tips
5 or prior information or prior contact with law enforcement
6 that led them to believe that he might be possessing crack
7 with the intent to distribute.

8 Your Honor, based on the evidence that we've heard today
9 and taken in the light most favorable even to the State, we
10 believe that it is insufficient for the jury to be able to
11 make a determination, and I respectfully ask that you grant
12 this motion for a directed verdict in our trial here. Thank
13 you, sir.

14 **The Court:** Response?

15 **Mr. Arant:** Yes, sir. Your Honor, we realize that this
16 is -- part of this is built on circumstantial evidence and
17 that you would direct the jury at a point in time on
18 circumstantial evidence. However, I also read from this case
19 that the trial Court must---

20 **Court Reporter:** I'm sorry.

21 **The Court:** Whoa, whoa, whoa. Slow down.

22 **Mr. Arant:** Yes, sir.

23 **The Court:** Look at the court reporter so she can
24 understand you.

25 **Mr. Arant:** Yes, sir.

1 **The Court:** Not everybody is from Bowman. I say that
2 with all due respect.

3 **Mr. Arant:** Your Honor, in that case cited as well,
4 State v. Fennell, a 2000 cite, the trial Court must submit
5 the case to the jury if direct or substantial circumstantial
6 evidence has been presented and reasonably tends to prove the
7 defendant's guilt or from which guilt may be fairly and
8 logically deduced. With the evidence we've presented, we
9 have more than reasonable suspicion.

10 We have a complaint from a lady who identifies a
11 particular car and they see this particular car. The
12 officers are familiar with the area, familiar with these
13 apartments. They make contact with this individual who
14 matches the exact description, I believe one testified five
15 minutes after they left the first suspicious person.

16 They then find this guy and he is indeed the driver of
17 this car. They see no one else driving the car. It is in
18 his direct control. Not only constructively, but he is
19 physically in possession of that car, that the drugs were
20 found under his seat, not in the passenger seat, not in the
21 back seat, not in the trunk. They're in direct control --
22 direct possession of his control, and we would ask that you
23 respectfully deny their motion.

24 **The Court:** All right. Anything in response to that?

25 **Ms. Grice:** Yes, sir, briefly. Mr. Arant mentions there

1 was a tip about a car, nothing more. The car is not charged;
2 Mr. Miller is charged. So that sounds ridiculous to say that
3 that's all we had from this tip: There was a car. We don't
4 have anything about behavior of individuals around the car,
5 involving the car, just a car.

6 It doesn't matter that the officers know the area. We
7 can't impute guilt on Mr. Miller based on---

8 **The Court:** I agree with all of that.

9 **Ms. Grice:** And, you know, beyond that, looking at this
10 Lollis case now, they determined that there was insufficient
11 evidence at the point of the motion for directed verdict.
12 That case involved -- it was an arson case where a man was
13 accused of burning down the home that he and his common-law
14 wife lived in, and the evidence that they found and then
15 rejected as being adequate was the fact that they were in a
16 married relationship, that the defendant there had financial
17 troubles, that he moved all his personal property the day
18 before the fire from the home, and that his possession -- he
19 had had a room to the key (verbatim) where all that property
20 was on the day of the fire and all of that they found
21 inadequate to assume that he was the one responsible for
22 setting fire to his home for insurance purposes. Your Honor,
23 I just -- I'll stand by my earlier comments as well. Thank
24 you.

25 **The Court:** I'm going to respectfully deny your motion

1 for directed verdict. Obviously when I consider a motion for
2 directed verdict, at this stage of the game I'm only
3 concerned with the existence of the evidence, not its weight,
4 and there is obviously in my opinion sufficient evidence,
5 circumstantial and/or direct, which, if the jury believes,
6 would show that your client was in at least constructive
7 possession of the controlled substance, i.e. crack cocaine,
8 and that the weight would give rise to the inference that it
9 was with the intent to distribute, along with the scales on
10 his person and the money.

11 So at this point of the game or this point of the trial,
12 I find that there is evidence in existence that, if the jury
13 believes, would support a conviction, if they believe it was
14 proved to them beyond a reasonable doubt. Respectfully
15 denied. Anything else?

16 **Ms. Grice:** Nothing further.

17 **Mr. Arant:** Nothing from the State.

18 **The Court:** All right. Tell me how many witnesses y'all
19 intend to call, please.

20 **Mr. Hawks:** I don't believe we intend to call any
21 witnesses.

22 **The Court:** All right. Mr. Miller, if you would please
23 stand for me.

24 Jonathan X. Miller, after being duly sworn,
25 testified as follows in camera:

1 -- and I find that it is admissible for impeachment purposes,
2 those offenses are within---

3 **Mr. Hawks:** The 10-year period.

4 **The Court:** Are allowed by the rules.

5 **Mr. Hawks:** Yes, sir.

6 **The Court:** Thank you. We'll see y'all back at 2:00.

7 Don't be late.

8 **Ms. McKellar:** Your Honor, you said 2:00?

9 **The Court:** 2:00.

10 (Whereupon, a lunch break was taken.)

11 **The Court:** All right. Thank you. Please be seated.

12 Is the State ready to proceed?

13 **Mr. Arant:** Yes, sir, we are ready.

14 **The Court:** The defendant ready to proceed?

15 **Mr. Hawks:** Yes, Your Honor. I do have one brief issue.

16 My client made mention that when he was going through the

17 hallway, perhaps some members of the jury had seen him in

18 shackles. If you could just explain to them that he is not

19 incarcerated and it is only your procedure that he's in cuffs

20 during the trial.

21 **The Court:** All right. You go first. You go second;

22 right? Are you going to put up any witnesses? Correct?

23 **Mr. Hawks:** That's correct, Your Honor, and I guess at

24 this time the defense would rest, and I would renew all my

25 motions from before.

1 **The Court:** Thank you. Respectfully denied.

2 **Mr. Arant:** Yes, sir.

3 (Whereupon, the jury was brought into open court at
4 2:18 p.m.)

5 **The Court:** Madam Forelady, ladies and gentlemen, we
6 have -- all the testimony that's going to be presented has
7 been presented. We're at the stage of the trial now where
8 you'll hear the final arguments. The final argument is like
9 opening statements; that is not evidence in the case.
10 Obviously these lawyers are representing their respective
11 sides, and they'll be arguing the evidence in the light most
12 favorable to their client. But you've heard all the
13 evidence, so you'll make your decision on that. Just please
14 listen carefully to the lawyers make their closing arguments.

15 It has been brought to my attention that perhaps during
16 the lunch break the defendant was being transported down the
17 hall or something and he had on handcuffs. That's just
18 normal protocol. If someone is waiting between and has to go
19 down the hall, it's just for safety purposes. Don't infer
20 anything from the fact that he had on handcuffs, if you saw
21 that. He is -- still has the constitutional presumption of
22 innocence, so don't confer anything on the fact that they
23 were following safety protocols with the cuffs on him, if
24 anybody saw it. I'm not sure if you did. Are you satisfied
25 with that explanation?

1 **Mr. Hawks:** Yes, Your Honor. Thank you.

2 **The Court:** Thank you very much. All right. State, you
3 may proceed.

4 **Mr. Arant:** Yes, sir. May it please the Court?

5 **The Court:** Yes, sir. Mr. Solicitor, remember the note
6 we got from the jury now about...

7 **Mr. Arant:** Yes, sir. Yes, Your Honor. Ladies and
8 gentlemen of the jury, as my co-counsel, Ms. McKellar, told
9 you in her opening statement, this case that we have is a
10 simple straightforward case. I'm not going to rehash and go
11 through everything that the officers said because you were
12 here like I was here and you heard what everyone had to say
13 in this case. You heard the questions that were presented
14 and you heard the evidence that was presented up here. You
15 even saw the evidence in the case, the drugs and so forth and
16 everything that we put into evidence, the tow slip and all
17 that, so I'm not going to necessarily go over all that and
18 bore you to death because we have all that. This case is
19 straightforward.

20 Now, there are certain things that I must cover for you,
21 that I'd like to cover for you. I'll point out this. I'll
22 be brief on our legal argument because when I'm done with my
23 arguments and opposing counsel is done with his arguments,
24 the judge will instruct you on the law, and if what I tell
25 you on the law is different from what he tells you on the

1 law, please go with him because he is the judge of the law.

2 This board represents circumstantial evidence, and this
3 is evidence that is not direct evidence but it is the
4 circumstantial evidence that you must take into consideration
5 and give special weight to. You must determine how that
6 evidence affects this case.

7 What do we have direct evidence of? We have officers
8 who received a complaint. We have officers who find a car
9 that matches that complaint about drug activity. They pull
10 that car over. The defendant is the driver of that car.
11 That's direct evidence. The defendant was driving the car.
12 That is direct evidence. The defendant was in possession of
13 that car, and that is direct evidence.

14 Circumstantial evidence, the defense would like you to
15 believe that there's some circumstantial evidence about the
16 drugs in the car. We would maintain -- the State would
17 maintain that there is no circumstantial evidence of the
18 drugs in the car because that very defendant was the one
19 driving that car and was the one in possession of that car
20 from the time the officers saw him until the time the
21 officers made contact with him.

22 Our officers in this case, Officer Westbury and Officer
23 McDonald, two officers with the Columbia Police Department,
24 they had only been there for two years. They're not
25 narcotics officers. They told you they were road officers.

1 They just ride through the divisions of town they are
2 assigned to which is the South Region which is in the
3 community of Rosewood. Their duties are to respond to any
4 types of accidents - they testified to that - and to
5 investigate any complaints.

6 This case involved investigating a complaint, a job that
7 they're here to do and they did it to the best of their
8 abilities. They approached the defendant to ask him a couple
9 of questions; they testified to that. They wanted to conduct
10 what they call a field interview, and they did that to ensure
11 the safety of the region that they operate in.

12 All they testified to on the stand is they wanted to
13 make sure that he was in -- belonged to that possible area
14 and see if that was where he was supposed to be. Also, I
15 believe Officer McDonald also testified on the stand that he
16 didn't think there were any drugs in the car. It was simple
17 policy that they were inspecting the car, inventorying the
18 car per policy, per their policy, of when an arrest is made
19 on the driver of a car, which was the defendant in this case,
20 to tow that vehicle. The inventory search was mainly just to
21 secure the valuables of that car and to make sure that when
22 the registered owner of that car received that car, that
23 everything that was in that car that day is in that car that
24 later day when they eventually get the car back from the
25 towing department.

1 Now, also I want to touch on one legal part of the
2 statute the defendant is charged under. He's charged with
3 possession with intent to distribute crack cocaine. What
4 this says to you is that possession of one or more grams of
5 methamphetamine or cocaine base, which cocaine as in crack
6 cocaine is what that means, is prima facie evidence of a
7 violation of this subsection.

8 What that says is that one gram of cocaine, just one
9 gram or anything over a gram, is enough to convict the
10 defendant of possession with intent to distribute crack
11 cocaine. Now, prima facie means "on its face without
12 anything else." All the officers needed in this case was one
13 gram, and we have that in this case.

14 The chemical analysis -- chemical analyst testified that
15 there were 4.99 grams found in this case in that car in which
16 the defendant was in possession of. That's five times the
17 amount needed to even make this statute necessary.

18 Now, I'd like to turn your attention to my last piece
19 before I end my presentation, if this will stand up here.
20 I'm going to draw you -- this will be a dot here, a dot here,
21 a dot here, and a dot there. This represents four dots. I'm
22 going to help us connect the dots.

23 First, we received a complaint and like this line
24 connecting the first two dots represents the complaint that
25 we got from a lady about drug activity. The officers went to

1 go make contact with the person specified or the vehicle
2 specified in this complaint. I would like that second line
3 to represent the contact the officers were making.

4 This third line which connects that dot represents:
5 When they ran his driver's license, he came back as driving
6 under suspension which is illegal in the State of South
7 Carolina and gives them the right to tow the vehicle if
8 there's no party, responsible party, to leave the car with
9 which they did. They obeyed their policies and procedures;
10 they did the right thing.

11 The fourth line represents the inventory search which
12 they do further in procedures, and as I told you earlier,
13 they did the inventory search not to find drugs. They did
14 the inventory search to secure any valuables that may have
15 been in the vehicle so that when the owner came in contact
16 with that car after this incident, everything would still be
17 intact.

18 And the fifth line. This line -- this fifth line
19 represents the drugs that were found as a result of this
20 inventory search. As I said earlier, they secured valuables
21 in the car. It wasn't their intent to find drugs, but that
22 is what they discovered under the driver's seat of the car.

23 Now, just like this cup, this may be my worst drawing of
24 a cup, but it is a cup nonetheless. Just like this cup has
25 no holes in it, our case, the State's case, has no holes in

1 it, no leaks. You won't see any water running out of this.

2 Now, I can connect the dots, but I'm going to ask you to
3 do one extra thing. I'm asking you to convict this defendant
4 over here of possession with intent to distribute crack
5 cocaine, and we're confident that you will do that. Thank
6 you.

7 **Mr. Hawks:** Thank you, Your Honor. May it please the
8 Court?

9 **The Court:** Yes, sir.

10 **Mr. Hawks:** Good afternoon, ladies and gentlemen. I
11 know that we haven't had quite a chance to interact yet, but
12 I hope to do that with you now. I'd like to start by going
13 over a few things Mr. Arant said. About the P-WID statute he
14 showed you there, all that means is that they can charge
15 someone with possession with intent to distribute based on
16 the amount of drugs they found. It doesn't mean the person
17 had the intent to distribute those drugs. It just means that
18 under the law they can charge him with that crime. Okay? So
19 that's the first thing I'd like you to keep in mind.

20 And that weight alone is insufficient to find my client
21 guilty for possession with intent to distribute. That is
22 simply an inference, and you need to look beyond that, beyond
23 the weight, at all the circumstances and look for any
24 indication of intent.

25 Now, let's go back to the trial and the testimony we

1 heard. I certainly don't recall any testimony about intent.
2 We heard some testimony that my client didn't make any
3 statements. He didn't admit that the crack was his. They
4 said they found a scale, but there was no testimony as to
5 what that scale was used for. They said they could have
6 tested the scale for any residue of crack that may have been
7 on the scale. They chose not to do that as well.

8 You heard Mr. Arant just say that these officers were
9 not trained in narcotics. That's apparent. They didn't do
10 any investigation after the day in question. This happened
11 at 11:00 in the morning, and that was the end of it. There
12 was nothing else.

13 I'm sure y'all watch some shows on T.V., some cop shows.
14 They do a lot more investigation on those shows. Again,
15 let's talk also about the tip that led to this investigation.
16 Remember, they were looking for a car, not a person, a car,
17 really just a description of a car. And what you don't see
18 in this courtroom today is the person that gave that
19 description. You'll have to ask yourselves why they're not
20 here when you go back and deliberate.

21 What happened was the officers came. They found some
22 crack and they made some assumptions. They jumped to
23 conclusions. Under the statute they were allowed to charge
24 my client with possession with intent to distribute, but they
25 did no further investigation to determine whether or not he

1 actually had that intent, none whatsoever. You didn't see
2 any fingerprint evidence, any D.N.A., anything that could
3 actually connect the crack to my client other than the fact
4 that it was in his car.

5 Ladies and gentlemen, I'm also going to talk to you a
6 little bit about reasonable doubt. What I like to think
7 about reasonable doubt -- this happens to me all the time. I
8 leave the house and I am not quite sure whether I locked that
9 door. I get in my car and I start driving and I think, "Did
10 I lock it? Did I not lock it?" I cannot be sure. I lock it
11 every day. I'm sure I intended to lock it, but today did I
12 lock that door? And to me that is reasonable doubt. I think
13 I locked the door. It sounds right. I normally lock the
14 door, but I'm just not quite sure if I locked the door. That
15 is reasonable doubt.

16 Ladies and gentlemen, I don't think you can be so sure
17 that Mr. Miller had the intent to distribute crack because we
18 have no evidence that that was the case. We didn't hear
19 anything about intent. All we know is that they found some
20 crack and they jumped to conclusions. Y'all don't have to do
21 that. Like the judge said earlier, you are the judge of the
22 facts of this case, and the facts have already been presented
23 and not very many of them suggest that there was any intent
24 on behalf of my client to distribute these drugs.

25 Ladies and gentlemen, Mr. Miller -- this is a very

1 serious day for him. He's facing charges that are extremely
2 serious. I ask that you look at everything piece by piece,
3 look at what's missing, look at what the officers could have
4 done and try to figure out: Are you absolutely positive --
5 is there no way that there could be any other explanation for
6 what went on? Is there no way that he could have had those
7 drugs without the intent to distribute them?

8 The officers came on the scene. They didn't ask any
9 questions about whether my client smoked crack, whether he
10 was addicted to crack, what he planned on doing with the
11 crack. They didn't even ask those questions. I don't think
12 that's much of an investigation to not even ask. Perhaps if
13 he would have answered some of those questions, they never
14 would have charged him with P-WID, but we're never going to
15 know that because those questions were not asked.

16 All I'm asking is that you pay attention to everything.
17 Reread everything you heard today if you can. Go through
18 everything piece by piece because someone's life is on the
19 line here. Everyone else is going to go home, so please give
20 my client what he deserves and I believe that if you follow
21 the standard of reasonable doubt, you will have a doubt and
22 you'll come back with a verdict of not guilty. Thank you.

23 **The Court:** Madam Forelady, ladies and gentlemen, I've
24 got to take about five minutes with the lawyers before I
25 charge you. My charge is about ten minutes. So y'all step

1 out for five minutes. We'll get right back with you and
2 we'll argue, and then you'll have the case to start your
3 deliberations. Thank you.

4 (Whereupon, the jury was excused from open court at
5 2:35 p.m.)

6 **The Court:** All right. On behalf of the State, any
7 particular charge you request?

8 **Mr. Arant:** No, sir. Your standards are fine.

9 **Mr. Hawks:** Your Honor, we have a few charges we'd like
10 you to look over, and I have a copy for the State as well.

11 **The Court:** I'll look at them. (The Court reads the
12 proposed charges.) All right. Your one on mere possession
13 and control, that's included in my general charge.
14 Possession with intent to distribute, your second charge, is
15 my general charge. Your third charge is redundant, another
16 mere possession. I've got it in my general charge. And
17 possession, I have it in my general charge. All right. How
18 about the verdict form? State?

19 **Mr. Arant:** Yes, sir.

20 **The Court:** I'm asking specifically: Lesser included
21 offense of possession of crack cocaine?

22 **Mr. Arant:** Yes, sir. That's correct.

23 **The Court:** Thank you. Any objection?

24 **Mr. Hawks:** No. That's why we passed that up. We just
25 wanted to make sure that was done.

1 **The Court:** Why you passed what up?

2 **Mr. Hawks:** Those instructions.

3 **The Court:** All right. The verdict form will be: We
4 find the defendant not guilty or guilty of possession with
5 intent to distribute crack cocaine. If you find him not
6 guilty of possession with intent to distribute crack cocaine,
7 then you must decide whether or not he, in fact, had
8 possession of crack cocaine without intent to distribute,
9 something to that effect, not guilty or guilty. Fair enough?
10 State?

11 **Mr. Arant:** Yes, sir, that's fair.

12 **Mr. Hawks:** Yes, Your Honor.

13 **The Court:** It reads as follows, gentlemen, ladies: If
14 you find that the State has failed to prove beyond a
15 reasonable doubt that the defendant is guilty of the offense
16 of possession with intent to distribute crack cocaine, then
17 you must consider whether the State has proved beyond a
18 reasonable doubt -- not must -- has proved beyond a
19 reasonable doubt that the defendant is guilty of simple
20 possession of crack cocaine. Guilty or not guilty. Not
21 guilty or guilty. Any objection?

22 **Mr. Arant:** None, Your Honor.

23 **Mr. Hawks:** None from the defense.

24 **The Court:** All right.

25 (Pause in proceedings. Whereupon, the jury was brought

1 into open court at 2:42 p.m.)

2 **The Court:** Madam Forelady, ladies and gentlemen of the
3 jury, let me remind you once again that in this case Mr.
4 Jonathan Miller has been charged with possession with intent
5 to distribute crack cocaine. Let me remind you the fact that
6 he was arrested, charged, and indicted in the case is not
7 evidence in the case and cannot be considered by you as
8 evidence of guilt in this case nor does it create any
9 presumption or inference of guilt.

10 The indictment is simply the document, the formal
11 written instrument, which contains the charges against the
12 defendant. It's the formal way this case comes into the
13 courtroom. So the fact that he was indicted, please do not
14 infer anything from that. It is not evidence in the case.

15 The defendant has pled not guilty to the indictment, and
16 a plea of not guilty puts the burden on the State of South
17 Carolina to prove the defendant guilty beyond a reasonable
18 doubt. A person charged with committing a criminal offense
19 in South Carolina is never required to prove himself
20 innocent. I charge and instruct you that it is an important
21 rule of law that the defendant in a criminal trial, no matter
22 how serious the charges may be, will always be presumed to be
23 innocent of the crime for which he was indicted unless guilt
24 has been proven by evidence satisfying you of that guilt
25 beyond a reasonable doubt.

1 The presumption of innocence does not end when you begin
2 your deliberations, but it stays with the defendant
3 throughout the trial until you reach a verdict of guilt based
4 on evidence satisfying you of that guilt beyond a reasonable
5 doubt. The presumption of innocence is not a mere legal
6 theory or a legal phrase. It is a substantial,
7 constitutional right to which every defendant is entitled
8 unless you, the jury, find the defendant guilty beyond a
9 reasonable doubt.

10 Now, what is a reasonable doubt? I told you when we
11 started that the defendant is presumed innocent. The scales
12 of justice are tilted in his favor. To prove him guilty, the
13 State must prove it beyond a reasonable doubt. Our courts,
14 our appellate courts, have defined a reasonable doubt very
15 simply: It is the kind of doubt that would cause a
16 reasonable person to hesitate to act. It is the kind of
17 doubt that would cause a reasonable person to hesitate to
18 act.

19 Proof beyond a reasonable doubt is also said to be the
20 type of proof that leaves you firmly convinced of the
21 defendant's guilt. As we know, there are very few things in
22 this world that we know with absolute certainty, and in
23 criminal cases the law does not require proof that overcomes
24 every possible doubt. If, based on your consideration of the
25 evidence, you are firmly convinced that the defendant is

1 guilty, then you must find him guilty. However, if on the
2 other hand, you think there's a real possibility that he is
3 not guilty, then you must give him the benefit of the doubt
4 and find him not guilty.

5 As I told you when we started, you and I have distinct
6 jobs to perform. My job in the case: I'm the judge of the
7 law. I instruct you on the law, and I rule on the
8 admissibility of evidence in the case. You are the finders
9 of the facts in the case. You judge the -- what the true
10 facts are and apply it to the law as I have given it to you.

11 So if there is any time during the trial of this case
12 that I have done anything up here that makes you believe that
13 I have an opinion about the facts, disregard that. If I
14 yawn, smile, frown, raise my glasses or did something that
15 you thought I had an opinion about the facts, disregard it.
16 The law does not allow me to have any opinion whatsoever
17 about the facts in the case. You are the sole judges of the
18 facts. So please don't infer anything from what I may or may
19 not have done while presiding over the trial.

20 And because you are the finders of the facts,
21 necessarily you must determine the credibility of the
22 witnesses who have testified in this case. Credibility
23 simply means believability. It becomes your duty as jurors
24 to analyze and to evaluate the evidence and determine which
25 evidence convinces you of its truth.

1 In determining the believability or credibility of the
2 witnesses who have testified in the case, you may believe one
3 witness over several, several over one. You can disbelieve
4 everything a witness says. You can believe everything he
5 says -- he or she. You can believe a little bit and
6 disbelieve the rest. So use your ordinary common sense on
7 how you tell when people are telling the truth to determine
8 the credibility of the witnesses who have testified in this
9 case. You may consider whether any witness has exhibited to
10 you any interest, bias, prejudice, or other motive in this
11 case, and you may also consider the appearance and manner of
12 a witness while on the witness stand.

13 In this case we had one witness who testified as an
14 expert. She was qualified based on her training and
15 experience, and she was allowed to testify and give an
16 opinion. The fact that she has testified as an expert, do
17 not give that any greater weight than you would any other
18 witness. You should consider an expert opinion like any
19 other evidence. Give it the weight you think it deserves.

20 If you think or decide that the opinion of the expert is
21 not based on sufficient education -- education, training or
22 experience or if you conclude that the reasons given in
23 support of her opinion were not sound or that the opinion is
24 outweighed by other evidence, you may disregard the opinion
25 entirely. An expert witness's testimony is to be given no

1 greater weight than that of any other witness simply because
2 he or she is an expert, and you're not required to accept an
3 expert's opinion even though it is not contradicted.

4 Let me instruct and charge you another important
5 constitutional rule of law. I charge you and emphasize that
6 the fact that the defendant did not testify in this case is
7 not a factor to be considered by you in any way whatsoever in
8 your deliberations and in your consideration on the question
9 of the guilt or innocence of the defendant. It must not be
10 considered by you in any manner whatsoever. A defendant has
11 the constitutional right to remain silent, and the assertion
12 of that right must not be considered by you in your
13 deliberations.

14 I repeat to you: Under your oath, please do not draw
15 any conclusions whatsoever from the fact that the defendant
16 did not testify in this case. The fact that he did not
17 testify should not even be discussed in the jury room. As I
18 have said, the burden of proof is on the State. The
19 defendant is not required to prove his innocence. The burden
20 of proof remains on the State to prove his guilt beyond a
21 reasonable doubt. So please do not discuss or consider the
22 fact that he did not testify in deliberating this case.

23 There are two types of evidence which are generally
24 presented during a trial: Direct evidence and circumstantial
25 evidence. It's pretty simple. Direct evidence is something

1 that somebody sees. I saw the car going down the road; it
2 was green. That's direct evidence. I saw it.

3 Circumstantial evidence is the proof of a chain of facts
4 and circumstances indicating the existence of a fact. It is
5 evidence which immediately establishes collateral facts from
6 which the main fact may be inferred. You go outside. It's
7 cloudy. There's mud puddles everywhere. There's water
8 everywhere. You didn't see it rain, but you can testify
9 about the cloud and the mud puddles and that's circumstantial
10 evidence that it did, in fact, rain. And the law really has
11 no -- they treat both types of evidence the same, whether it
12 be circumstantial or direct evidence.

13 Now, Madam Forelady and ladies and gentlemen, that's
14 sort of general propositions of law that we charge in all
15 criminal cases. Let's turn to the case at hand, the one that
16 we're trying here today. In this case the defendant is
17 charged with possession with intent to distribute crack
18 cocaine. The State must prove beyond a reasonable doubt that
19 the defendant possessed crack cocaine with the intent to
20 distribute it.

21 Now, to prove possession, that he had it in his
22 possession, the State must prove beyond a reasonable doubt
23 that the defendant had both the power and the intent to
24 control the disposition or use of the crack cocaine.
25 Possession may be what we call either actual possession or

1 constructive possession.

2 Actual possession means that the cocaine was in the
3 actual physical custody of the defendant. Constructive
4 possession means that the defendant had dominion and control
5 or the right to exercise dominion and control over the crack
6 cocaine itself or on the property which the crack cocaine was
7 found. However, mere presence at the scene where the drugs
8 were found is not enough to prove possession.

9 Actual possession of the presence of the crack cocaine
10 is strong evidence of the defendant's intent to control its
11 disposition or use. The defendant's knowledge and possession
12 may be inferred when a substance is found on property under
13 the defendant's control. However, this inference is simply
14 an evidentiary fact to be taken into consideration by you
15 along with the other evidence in the case and to be given the
16 weight, if any, you decide it should have.

17 So the State has to prove to you beyond a reasonable
18 doubt that he had possession. Possession can be actual or
19 constructive. And then the second thing they must prove to
20 you beyond a reasonable doubt is that the defendant intended
21 to distribute the crack cocaine.

22 Distribute or distribution means to deliver other than
23 by administering or dispensing a drug. The intent to
24 distribute may be shown by acts and conduct of the defendant
25 and other circumstances from which you may naturally and

1 reasonably infer intent.

2 In determining whether the defendant had the intent to
3 distribute the crack cocaine, you may consider the
4 circumstances surrounding the defendant's alleged possession.
5 You may consider the amount of the substance alleged to have
6 been possessed, the manner in which it was allegedly
7 possessed, the place where it was allegedly possessed, and
8 other factors which you consider to be important. You must
9 find that the defendant did not intend to have the crack
10 cocaine solely for his own use.

11 I charge you further that possession of one or more
12 grams of crack cocaine creates an inference that the
13 defendant possessed the crack cocaine with intent to
14 distribute it. This inference does not relieve the State
15 from proving beyond a reasonable doubt that the defendant had
16 the intent to distribute. It is simply an evidentiary fact
17 to be taken into consideration by you along with the other
18 evidence in the case and to be given the weight, if any, that
19 you decide it should have.

20 Now, if you find that the State has failed to prove
21 beyond a reasonable doubt that the defendant is guilty of
22 possession with intent to distribute crack cocaine, then you
23 may consider whether the State has proved to you beyond a
24 reasonable doubt that the defendant is guilty of simple
25 possession of crack cocaine. Simple possession does not

1 require an intent to distribute the crack cocaine. It is --
2 simply just has to have it in his possession. So if you
3 decide that he -- that he was not guilty of possession with
4 intent to distribute, then you have to decide whether or not
5 he's guilty of simple possession of crack cocaine. That
6 simply means that he had it in his possession, either
7 constructively or actual construction.

8 Now, Madam Forelady, you will have in the jury room with
9 you a verdict form which is very easy to follow. As I said,
10 you first consider whether or not the State has proven to you
11 beyond a reasonable doubt that he had possession with intent
12 to distribute crack cocaine. If you find him guilty of that,
13 then that's the end of it. If you find him not guilty of
14 that, then you would consider what we call the lesser
15 included offense of simple possession of crack cocaine,
16 whether or not they have proved to you beyond a reasonable
17 doubt that he had possession of the crack cocaine without the
18 intent to distribute it.

19 Your verdict must be unanimous as to -- as to your
20 verdict. All 12 of you must agree. Your duty is to go back
21 and analyze the evidence that you've heard and apply it to
22 the law as I've given it to you and to render a true and just
23 verdict in the case. We're not here to punish any enemies or
24 reward any friends. We're here to conduct a very serious
25 civic duty and determine the facts and apply it to the law as

1 I give it to you.

2 If during your deliberations you have a question, please
3 send it out to me like you did before, or any concern.
4 Sometimes I can answer it and sometimes I can't, just
5 depending on what the question may or may not be.

6 When you've reached a final verdict, please put guilty
7 or not guilty or not guilty or guilty as to where you are.
8 Sign it. Knock on the door, and we'll receive you back into
9 the courtroom. I'm going to ask you now return to your jury
10 room. Do not start your deliberations as of yet. I have to
11 ask the lawyers if I have left anything out of the charge.
12 Then we have to gather up a couple of pieces of evidence and
13 I'll send it back to the jury room with you along with the
14 verdict form, and then you may start your deliberations.
15 Thank you. Mr. Bailiff, make sure you segregate---

16 **Bailiff:** Yes, sir.

17 **The Court:** ---my two alternates.

18 (Whereupon, the jury was excused from open court at
19 2:58 p.m.)

20 **The Court:** Any objections, requested deletions or
21 additions to the charge by the State?

22 **Mr. Arant:** None, Your Honor.

23 **The Court:** By the defendant?

24 **Mr. Hawks:** No objections to the charges, Your Honor.

25 **The Court:** Very well. Please look at the verdict form.

1 Please review the evidence so I can turn it over to the jury.

2 Mr. Hawks: Your Honor, I just have a brief concern. I
3 don't believe my client has eaten today. I tried to get him
4 some---

5 The Court: Well, that's not -- we'll address that in
6 just a few minutes.

7 Mr. Hawks: Thank you, Judge.

8 The Court: I asked you to come up here and do
9 something.

10 Mr. Hawks: Oh, I'm sorry.

11 The Court: Pay attention.

12 (The attorneys review the verdict form.)

13 The Court: Look at the evidence and make sure we have
14 it all. All right. Gentlemen, have y'all reviewed all the
15 evidence?

16 Mr. Hawks: Yes, Your Honor.

17 Mr. Arant: Yes, Your Honor.

18 The Court: Have you reviewed the verdict form?

19 Mr. Hawks: Yes, Your Honor.

20 Mr. Arant: Yes, Your Honor.

21 The Court: And are you in agreement that we have
22 everything in order?

23 Mr. Hawks: Yes, Your Honor.

24 Mr. Arant: Yes, Your Honor, we do.

25 The Court: Thank you. All right. Turn it over to the

1 jury and tell them they may start deliberating. It's 2:55.
2 Mr. Bailiff, make sure the alternates have been separated
3 out.

4 **Bailiff:** Yes, Your Honor, they have.

5 **The Court:** Thank you.

6 (Whereupon, the jury began deliberating at 2:56 p.m.)

7 **The Court:** Everybody be patient. This will not take
8 long. We're back on the record in the State versus Miller.
9 Bring the jury in for me, please. I received a note. It
10 says, "Please define constructive possession." So I'm going
11 to recharge them on constructive possession. Any objection
12 by the State?

13 **Mr. Arant:** None, Your Honor.

14 **The Court:** By the defense?

15 **Mr. Hawks:** None from the defense, Your Honor.

16 (Whereupon, the jury was brought into open court at
17 3:55 p.m.)

18 **The Court:** Madam Forelady, ladies and gentlemen of the
19 jury, I have a note asking me to define constructive
20 possession. Is that correct?

21 **Forelady:** (Nodded head up and down.)

22 **The Court:** Let me just recharge you what I did before.
23 Is that sufficient?

24 **Forelady:** (Nodded head up and down.)

25 **The Court:** All right. In this case the defendant is

1 charged with possession with intent to distribute crack
2 cocaine. The State must prove beyond a reasonable doubt that
3 the defendant possessed, had the drug, crack cocaine, with
4 intent to distribute it, but let's talk about the possession.
5 Okay? To prove possession, the State must prove beyond a
6 reasonable doubt that the defendant had both the power and
7 the intent to control the disposition or use of the crack
8 cocaine. In other words, that's what possession means. He
9 had both the power and the intent to control the disposition
10 - that means getting rid of it - or the use of it.

11 Now, there are two types of possession. One is called
12 actual possession. That means that the crack cocaine was in
13 the actual, physical custody of the defendant. In other
14 words, I have actual possession of this pen. It's in my
15 actual physical custody. Okay?

16 The other kind of possession is constructive possession.
17 That means that the defendant had the dominion and control or
18 the right to exercise dominion or control over the crack
19 cocaine itself or the property in which the crack cocaine was
20 found, i.e. in this case the vehicle. So I've got actual
21 possession of my pen. My iPad is in my office, a place that
22 I have the right to control. I have constructive possession
23 of my iPad in my chambers because I have the right to
24 exercise dominion or control over it or had dominion and
25 control over it. I've had it with me today. That's

1 constructive possession. I don't actually have it.

2 Now, actual knowledge of the presence of the crack
3 cocaine is strong evidence of the defendant's intent to
4 control its disposition or use. The defendant's knowledge
5 and possession may be inferred when a substance is found on
6 the property under the defendant's control. Inferred means,
7 like I told you earlier, if there's mud puddles out there and
8 you don't see the rain, you can infer that it just rained.
9 That's an inference. However, an inference is simply an
10 evidentiary fact to be taken into consideration by you, along
11 with all the evidence in the case, and to be given the weight
12 you decide it should have.

13 Now, that's -- you have to have possession. There are
14 two types of possession: Actual and constructive. Do you
15 need anything further?

16 **Forelady:** (Shook head from side to side.)

17 (Whereupon, the jury was excused from open court to
18 continue deliberating at 3:59 p.m.)

19 **The Court:** Any objection to the recharge by the State?

20 **Mr. Arant:** None, Your Honor. None from the State.

21 **The Court:** By the defendant?

22 **Mr. Hawks:** Beg the Court's indulgence. Your Honor, I
23 do have an...

24 **The Court:** Ms. Grice, why don't you make it since
25 you're telling him what to do?

1 **Ms. Grice:** Yes, Your Honor. I apologize, Your Honor.

2 **The Court:** That's all right.

3 **Ms. Grice:** We would simply object, especially to the --
4 the recharge of the jury is complete on the issue of
5 constructive possession that it infers -- simply because --
6 okay. I appreciate that the pen that's in your hand, that
7 that's actual possession, but your iPad -- an iPad being in
8 your office we wouldn't necessarily infer -- we can infer
9 that that was yours, but it's not concrete conclusive proof
10 of such, and other factors go into that. We would object
11 just in the sense that including facts from the specific case
12 might confuse the jury as to what constructive possession
13 means with regard to these facts.

14 **The Court:** Thank you. You're protected under the law.
15 I stand by my charge. I think it cleared it up more than
16 anything. All right. Let's let Mr. Miller stay with us over
17 here in the jury box. Is that -- is that breaking protocol?

18 **Ms. McKellar:** Your Honor, I would ask that he be kept
19 in D. cell which is right at the end of the hallway. It's
20 much more efficient. It's like a one-minute walk there and
21 back, if that's okay.

22 **The Court:** That's fine. Instead of the basement? But
23 y'all run the show, so however y'all deem necessary.

24 (Pause in proceedings while the jury continues to
25 deliberate.)

1 **The Court:** State ready to receive the verdict?

2 **Mr. Arant:** Yes, the State is ready, Your Honor.

3 **The Court:** Is the defendant ready to receive the
4 verdict?

5 **Mr. Hawks:** Yes.

6 **Ms. Grice:** Yes, Your Honor, we're ready. Thank you.

7 **The Court:** Where is my bailiff?

8 **The Clerk:** I'll get him, Judge. Are you ready for him?

9 **The Court:** Yes, ma'am. He's just doing his job.

10 (Whereupon, the jury returned to open court with a
11 verdict at 4:04 p.m.)

12 **The Court:** Madam Forelady, have you reached a verdict?

13 **Forelady:** We have.

14 **The Court:** If you would hand it to the bailiff and pass
15 it up, please. All right. Madam Clerk, you may publish it.

16 **The Clerk:** Thank you, Your Honor. In the Court of
17 General Sessions for the Fifth Judicial Circuit, the matter
18 of indictment number 2013-GS-40-04661, the State of South
19 Carolina, in the County of Richland, versus Jonathan Xavier
20 Miller. As to the offense of possession with the intent to
21 distribute crack cocaine, we, the jury, find the defendant
22 not guilty, signed by the foreperson and dated August 28,
23 2013.

24 As to the offense of simple possession of crack cocaine,
25 we, the jury, find the defendant guilty. We unanimously

1 agree, signed by the foreperson and dated August 28th, 2013.
2 Madam Forelady, is this your verdict and the verdict of the
3 entire jury?

4 **Forelady:** Yes, ma'am.

5 **The Clerk:** Thank you.

6 **The Court:** Anything left of the jury by the State?

7 **Mr. Arant:** None, Your Honor.

8 **The Court:** By the defendant?

9 **Mr. Hawks:** No.

10 **The Court:** Madam Forelady, ladies and gentlemen, thank
11 you so very much. Y'all have paid wonderful attention,
12 notwithstanding the fact that it was a short trial. It was
13 obviously important to everyone involved, and I thank you for
14 your service. You did a great job.

15 (Whereupon, the jury was excused from the trial at
16 4:06 p.m.)

17 **The Court:** Ms. McKellar, if you'll get me a sentence
18 sheet and we need probation up here.

19 **Ms. McKellar:** Yes, sir.

20 (Pause in proceedings.)

21 **Ms. McKellar:** We're ready to proceed with our
22 sentencing, Your Honor.

23 **The Court:** Yes, sir.

24 **Mr. Hawks:** Your Honor, I have a brief matter of law
25 before we get into sentencing, just for the record.

1 **The Court:** Yes, sir.

2 **Mr. Hawks:** Your Honor, I'd like to renew all my
3 pretrial motions, specifically my motions to suppress based
4 on unlawful seizure and search of my client and his car. I
5 would also respectfully move for a mistrial. I'm arguing
6 that you violated South Carolina Constitution Article 5,
7 Section 21, by instructing the jury on the facts of the case.
8 I believe you mentioned the car and the drugs when you were
9 correcting the instructions, rather than the law. This was
10 highly prejudicial to Mr. Miller. Clearly they came -- went
11 back and came right back in with a verdict. And I would also
12 make a motion for a new trial based on both of those.

13 **The Court:** Respectfully denied. Thank you.

14 **Mr. Hawks:** Thank you, Your Honor.

15 **The Court:** What's Mr. Miller's record?

16 **Mr. Arant:** Yes, sir. Your Honor, he has a 2001 strong
17 arm robbery. Also in 2001 he has a criminal sexual conduct
18 in the second degree. He is a registered sex offender
19 because of that. In 2007 he has a parole revocation. In
20 2008 he has a criminal domestic violence, C.D.V. first. Also
21 in 2008 he has a C.D.V. -- a possession of cocaine conviction
22 and that is in 2008. In 2010 he has a violation of probation
23 for that very charge, and in 2012 he has a conviction for
24 criminal domestic violence of a high and aggravated nature
25 along with a conviction for trafficking cocaine along with a

1 criminal domestic violence second offense. That is the
2 extent of his record, Your Honor, and if we may address you
3 towards him at the appropriate time, we would like to state
4 our position.

5 **The Court:** Mr. Probation Officer?

6 **Probation Agent:** Yes, sir.

7 **The Court:** He is currently on probation?

8 **Probation Agent:** Yes, sir.

9 **The Court:** Please tell me.

10 **Probation Agent:** He's on probation for criminal
11 domestic violence. He had a ten-year sentence suspended upon
12 -- ten years upon four years with five years probation. He
13 served a four-year sentence. He has six years remaining on
14 his sentence. We were unable to contact the victim to let
15 them know of the---

16 **The Court:** That's on the C.D.V.?

17 **Probation Agent:** C.D.V. HAN.

18 **The Court:** C.D.V. HAN. Is that on the latter or is
19 that the trafficking cocaine?

20 **Probation Agent:** No, that's -- he didn't -- no
21 probation for the C.D.V. -- trafficking. We just got him on
22 the C.D.V. high and aggravated nature.

23 **The Court:** What was the sentence on the trafficking?

24 **Ms. McKellar:** Four years, Your Honor. That's what---

25 **The Court:** It's to run concurrent?

1 **Mr. Arant:** Yes, sir. Correct.

2 **The Court:** So in 2012 he had -- do you know the date of
3 the offense on that trafficking?

4 **Mr. Arant:** Your Honor, I believe -- it's not listed on
5 his rap sheet, but through my research I think it was 2008 or
6 2009 to be exact because it was four years with credit for
7 time served. And so he got out very recently after being
8 sentenced and that's what my records indicate. I don't want
9 to---

10 **The Court:** No problem.

11 **Mr. Arant:** ---mislead at any point, but it was sometime
12 in '09, '08, I believe.

13 **The Court:** Thank you. Now, do you need to serve him on
14 the probation violation?

15 **Probation Agent:** I cannot serve him, Your Honor. He --
16 there's a victim in this case, in the C.D.V. HAN case, and we
17 didn't have time to contact her, so we cannot address the
18 violation right now.

19 **The Court:** Well, can we address it tomorrow morning?

20 **Probation Agent:** If I can get in contact with the
21 victim, Your Honor.

22 **The Court:** Where is the victim?

23 **Probation Agent:** We didn't know this was -- the trial
24 was going on right now.

25 **The Court:** What do you mean? It's been going on all

1 day.

2 **Probation Agent:** He's -- the supervising agent was --
3 is not here. I'm just the court agent, and I didn't know
4 that it was going to come to a verdict today.

5 **The Court:** I want you to notify the victim that we will
6 sentence him tomorrow morning.

7 **Probation Agent:** Yes, sir.

8 **The Court:** By lunch time. All right, sir. Or I can
9 sentence him this afternoon. Then we'll deal with the
10 probation violation tomorrow.

11 **Mr. Arant:** Your Honor, that's -- that's what the State
12 would prefer.

13 **The Court:** Sure. Let's do that, but I would like to
14 get the probation revocation out of the way while I'm here
15 since I'm familiar with everything.

16 **Probation Agent:** Yes, sir.

17 **The Court:** But if you can't get the victim served -- I
18 assume the statute requires that?

19 **Probation Agent:** Yes, sir. Yes, sir, ten days from...

20 **The Court:** Well, see if you can contact her and see if
21 she'll waive the ten days and come on in tomorrow.

22 **Probation Agent:** Okay. I'll try to make contact with
23 her first thing in the morning.

24 **The Court:** And we'll deal with the probation violation
25 tomorrow.

1 **Probation Agent:** Yes, sir.

2 **The Court:** All right. Mr. Hawks, anything you want to
3 tell me?

4 **Mr. Hawks:** Yes, Your Honor. Thank you. May it please
5 the Court? My client is 29 years old. He has a three-year-
6 old son, a four-year-old girl that he also cares for. He's
7 lived in Columbia his whole life. He has a high school
8 degree and some college. He actually owns two businesses.
9 One is an entertainment company that promotes nightclubs in
10 the area. He also has a---

11 **The Court:** Promotes what?

12 **Mr. Hawks:** I'm sorry?

13 **The Court:** Promotes what?

14 **Mr. Hawks:** Nightclubs in the area or dance clubs. He
15 also paints cars. The car that was the subject of the case,
16 he painted that. He buys cars, paints them, and sells them.
17 That company is called P.D. Body Shop.

18 He also takes care of his mother who is 62 years old.
19 We've tried every single day to get her in here if we could,
20 but she just was not able to make it. She's disabled and
21 also cares for the children, although, as you notice, his
22 sister and his girlfriend have been here every single day.

23 I've spoken to the actual -- his agent on probation,
24 Ashley Graham. I know we can't do the violation today, but
25 she has had nothing but good things to say about him. He

1 always shows up for his appointments on time. He's never
2 been behind on his fees, and she actually thinks he's a good
3 candidate for probation. I'd also like to make the Court
4 aware that he did three days in Alvin S. Glenn when he was
5 arrested.

6 Your Honor, we're asking obviously for the shortest
7 sentence possible. We want it to be run concurrent with
8 probation; I know we can't do that today. Possibly if we
9 could do some weekend time so he could still be a productive
10 member of society...

11 **The Court:** How can you -- how can you in good faith sit
12 there and ask me for weekend time for somebody with a strong
13 arm robbery, C.S.C., parole violation, C.D.V., possession of
14 coke, trafficking in coke, C.D.V. HAN? You want me to give
15 him weekend time? Is that what you're asking me?

16 **Mr. Hawks:** Your Honor, I'm just expressing my client's
17 wishes. I understand that that's probably not going to
18 happen but...

19 **The Court:** You're right about that; that's not going to
20 happen. When did he get out of jail after serving that four
21 years?

22 **Mr. Hawks:** June 29th of 2012.

23 **The Court:** June 29th. So you made it from June 29 to
24 January 10 and caught with four grams of crack cocaine.

25 **Mr. Miller:** Yes, sir.

1 **The Court:** Anything you want to tell me?

2 **Mr. Miller:** Well, Your Honor, you already read my
3 record. You know I have a record from those charges. Some
4 of those charges you just named - the C.S.C., the strong arm
5 robbery - is when I was 16. Your Honor, I've been in and out
6 of prison my whole life. That's -- and I really, really, you
7 know, just want to do right thing. I'm working. You know,
8 I'm trying to get everything together.

9 My son -- I'm trying to take care of my son, like that's
10 my only child, but I take care of my girlfriend's daughter
11 also. My son lives all the way in West Virginia with his
12 mother, and that's why I was trying to let you know that the
13 victim -- she was the victim in... She lives in another
14 state, so... But, anyway, I'm just asking you, you know, for
15 whatever you can do for me.

16 You see what I just went through, what I was facing,
17 and, you know, I'm relieved at that, you know, but my whole
18 thing is, Your Honor, I'm just trying to do the right thing;
19 I really am.

20 **The Court:** Well, you were facing 30 years, but I told
21 you right there I'd give you the minimum sentence which was
22 10.

23 **Mr. Miller:** It's -- I'm---

24 **The Court:** I'm still good to my word.

25 **Mr. Miller:** I understand that and I'm just asking for,

1 you know, the least amount of time. Like he said, I'm on
2 probation. I don't do nothing other than I'm supposed to do.
3 I'm just---

4 **The Court:** Well, whoa, whoa. What do you mean you
5 don't do other than what you're supposed to do? January 10,
6 2013, you had four grams of crack on you.

7 **Mr. Miller:** That's what I was just about to say. I --
8 I accept that, Your Honor.

9 **The Court:** All right. Anything by the State?

10 **Mr. Arant:** Yes, sir, Your Honor. The State opposes
11 running anything concurrent. We would argue that---

12 **The Court:** I'm not doing probation.

13 **Mr. Arant:** Yes, sir, I understand. I'll place that on
14 the record tomorrow. We also disagree with anything less
15 than the 10 years in this case. Our reason behind that is we
16 view these as two separate incidents, unrelated incidents, in
17 the nature that he was six or seven months -- once he got out
18 on these charges is when he committed this offense we're here
19 for today.

20 **The Court:** When you look at what two separate offenses?

21 **Mr. Arant:** The probation violation and this charge we
22 are here on today.

23 **The Court:** I'm not dealing with the probation
24 violation.

25 **Mr. Arant:** Yes, sir. I'll make those arguments --

1 prior arguments tomorrow in relation to that, but the State
2 would be against anything like that---

3 **Mr. Hawks:** The State has no say in probation. I just
4 want to make that clear.

5 **The Court:** I will ask you to address me when -- you
6 know, you've just -- you need to learn some courtroom
7 decorum, son. I don't mean that ugly, but to be a lawyer you
8 need to learn some courtroom decorum. If somebody else is
9 speaking, don't interrupt them. Now, do you have anything
10 you want to tell me?

11 **Mr. Hawks:** No. That's it, Your Honor.

12 **The Court:** Thank you. Gracious. Anything else?

13 **Mr. Arant:** Nothing further, Your Honor.

14 **The Court:** All right. I'm considering your substantial
15 past record, considering the fact that you just had gotten
16 out from doing a four-year sentence and seven months. You
17 had a significant amount of crack cocaine on you.

18 Sentence of the Court is you be committed to the State
19 department of corrections for nine years. Good luck to you.

20 (Whereupon, the proceedings were concluded.)
21
22
23
24
25

SECTION 06
CHAPTER 05
AUXILIARY TRAFFIC SERVICES

1.0 DIRECTIVE

The Columbia Police Department recognizes the responsibility for the safety of the public using the roads and highways within the City of Columbia. The Department recognizes the responsibility to assist motorists in non-emergency and emergency situations that may develop on the city's streets and highways. This includes providing information and directions whenever possible upon citizen request.

2.0 DISABLED MOTORISTS

When an officer observes a stranded or disabled motorist, the officer shall render assistance, if possible.

An officer may render the following types of assistance:

1. Calling for wrecker service that the vehicle operator has requested. If no particular service is identified, then the wrecker service designated for that area shall be dispatched.
2. Gasoline will only be transported if an approved safety container is used and will only be transported in the trunk of the police vehicle with the mobile radio turned off.
3. Transporting motorists to the nearest service station for mechanical assistance or to shelter until they can contact further assistance, after approval from the shift supervisor.

An officer may attempt to make mechanical repairs, jump start, or change a tire on a disabled vehicle only under exigent circumstances with the approval of a supervisor. Under no circumstances shall an officer use a Departmental vehicle to push, pull or tow a disabled vehicle.

If an officer observes a disabled vehicle while en route to a call, the officer should make an attempt to advise the motorist that Communications will be notified of the vehicle's location and assistance will be dispatched. If the vehicle is in a particularly hazardous location the officer will stop to render assistance if not en route to a crime in progress call and shall notify Communications of the delay.

3.0 EMERGENCY ASSISTANCE

In situations where assistance rendered to a stranded or disabled motorist is of an emergency nature, the officer shall contact the Columbia-Richland Communications Center and request assistance from the appropriate agencies.

In emergency situations officers may render first aid and/or utilize fire suppression equipment in an attempt to alleviate the situation.

4.0 HAZARDOUS ROADWAY CONDITIONS

While on duty, officers shall be alert to the existence of potential hazards such as:

- Debris in the roadway;
- Defects in the road itself;
- Lack of, or defects in, highway safety features;
- Lack of, improper, visually obstructed, or down or damaged mechanical traffic control signals;

- Lack of, or improper traffic control or informational signs;
- Defective roadway lighting systems; and
- Any other situation that may be hazardous to pedestrians or motorists.

When an officer observes any of the above hazardous situations, he shall immediately notify the Columbia-Richland Communications Center of the nature of the problem and location. The Columbia-Richland Communications Center shall notify the appropriate agency. If necessary, the officer will protect the scene, and bystanders, and direct traffic or take any action deemed necessary to correct the situation.

5.0 ABANDONED AND DERELICT VEHICLES

An abandoned vehicle is defined as a motor vehicle that is inoperable or is left unattended on public property for more than seventy-two (72) hours, or a motor vehicle that has remained illegally on private or public property for a period of more than seven (7) days without the consent of the owner or person in control of the property (§56-5-5810 S.C. Code).

A derelict vehicle is defined as a motor vehicle that meets one of the following criteria (§56-5-5810 S.C. Code):

- Whose certificate of registration has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the Highway Department
- Whose major parts have been removed so as to render the motor vehicle inoperable
- Manufacturer's serial plates, motor vehicle identification numbers, license number plates and any other means of identification have been removed so as to nullify efforts to locate or identify the registered and legal owner
- Whose registered and legal owner of record disclaims ownership or releases his rights thereto
- Which is more than seven (7) years old and does not bear a current license as required by the Highway Department.

Motor vehicles meeting any of the criteria for abandoned or derelict vehicles may be towed by members of the department in accordance with the procedures set forth in this directive.

6.0 TOWING OF ABANDONED OR DERELICT VEHICLES

When any motor vehicle is abandoned or derelict, an orange abandoned vehicle tag will be completed and placed on the vehicle windshield.

The abandoned vehicle tag will serve the only notice required, that if the vehicle is not removed within seven (7) days from the placing of the tag, the vehicle will be removed by a member of the Department.

In all cases of abandoned or derelict vehicles an officer may, before towing the vehicle and if circumstances permit, attempt to contact the owner to allow him an opportunity to retrieve the vehicle.

In all instances where an abandoned or derelict vehicle is towed, the officer initiating the tow will complete a "Record of Stored Vehicle" form that will be filed and maintained by the Records Unit.

The officer initiating the tow will be responsible for completing a "Letter of Notification of Towed Vehicle" and mailing the form to the registered owner of the vehicle. The officer will ensure that the return address on the envelope is the Records Unit.

If the registered owner's information is not readily available, the officer will exhaust all avenues to obtain the owner's information.

In the event the owner's information cannot be obtained, the officer will notify the Records Unit detailing the means that used to locate the owner's information. The records clerk will document this information on the top margin of the original "Record of Stored Vehicle".

7.0 OPERATIONAL VEHICLES REQUIRING TOWING

7.1 Improperly Stopped, Standing or Parked Vehicles

Members of the Department may tow a vehicle meeting the following criteria:

- Any unattended vehicle outside a business or residential area parked on a paved or main traveled part of the highway, when it is practical to stop, park or leave the vehicle off the roadway (§56-5-2510 S.C. Code).
- Any vehicle left so as to prevent an unobstructed width of highway opposite the vehicle for other vehicles to pass (§56-5-2510 S.C. Code).
- Any vehicle left so that it cannot be seen clearly from a distance of two hundred (200) feet in both directions (§56-5-2510 S.C. Code).
- Any unattended vehicle illegally left standing upon any highway, bridge, causeway or in any tunnel in such a position or under such circumstances as to obstruct the normal movement of traffic (§56-5-2520 S.C. Code).
- Any vehicle left unattended in a metered parking space for a period of twenty-four (24) hours will be considered a public nuisance and will be subject to towing (12-52 City Code).

7.2 Vehicles Taken Into Police Custody

Departmental personnel may also tow the following vehicles:

- Any vehicle from which an officer makes an arrest and there is no responsible party to whom the arrestee can turn over the possession of the vehicle (§56-5-2520 S.C. Code).
- Any vehicle on which a report has been made that the vehicle has been stolen or taken without the consent of the owner (§56-5-2520 S.C. Code).

Any officer towing a vehicle according to any provision in Sections 7.1 or 7.2 will complete a "Record of Stored Vehicle" and a "Letter of Notification of Towed Vehicle" if the owner cannot be notified by telephone or verbally.

The officer shall ensure the security of all items of value obtained in the passenger compartment of the vehicle. If possible, the officer shall store all items of value in the trunk of the vehicle. The vehicle's trunk key will be stored in the Property Room under the owner's name. If the vehicle does not have separate ignition and trunk keys, all items of value shall be stored in the Property Room under the owner's name. The officer should identify each item and its storage location on the "Record of Stored Vehicle".

8.0 APPEAL PROCESS FOR VEHICLE REMOVAL

Citizen questions concerning the appropriateness or legality of the removal of any vehicle will be considered as a complaint against the officer initiating the removal. The complaint will be forwarded to the Region Commander for investigation and action (if any).

9.0 ESCORT SERVICES

9.1 Law Enforcement Escorts

Officers assigned to the Traffic Unit will engage in police escorts on a limited basis per unit SOP. These escorts will be approved through the Traffic Unit's chain of command or the Chief of Police.

9.2 Escort of Civilian Vehicles in Medical Emergencies

The emergency escort of a private vehicle is extremely hazardous and will not be allowed, except under exigent circumstances.

10.0 TRAFFIC SAFETY EDUCATIONAL MATERIALS

The Traffic Unit will obtain brochures that pertain to traffic safety issues of public concern, such as Driving Under the Influence of alcohol/drugs, Safety Belt Usage, and Child Restraint Laws. The brochures will be made available to the community at Police Headquarters, during presentations and other organized events.

This directive is effective upon receipt.

A handwritten signature in black ink, reading "Tandy P. Carter", written over a horizontal line.

Tandy P. Carter, Chief of Police
City of Columbia, SC Police Department

215

WITNESSES

(S) James E. Westbury
– Columbia Police Department

ARREST WARRANT NUMBER

2013A4021600159

ACTION OF GRAND JURY

TRUE BILL

Valencia Martin

Foreperson of Grand Jury

Date:

AUG 16 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-40-04661

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

255

THE STATE

vs.

Jonathan Xavier Miller

Indictment for
PWID CRACK COCAINE
3rd OFFENSE

SC Code: 44-53-0375(B)(3)

CDR Code: 3039

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 14, 2013, the
Grand Jurors of Richland County present upon their oath:

PWID CRACK COCAINE – 3rd OFFENSE

That Jonathan Xavier Miller did in Richland County on or about
January 10, 2013, possess with intent to distribute, dispense or deliver, or
did aid, abet, attempt or conspire to distribute, dispense or deliver a
quantity of Crack Cocaine, a controlled substance under the provisions of
Section 44-53-110, et.seq., S.C. Code of Laws, (1976, as amended), such
distribution not having been authorized by law, and based upon his prior
drug convictions being his third or subsequent offense, being in violation of
Section 44-53-375(B), S.C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

0-10

217

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

RICHLAND

INDICTMENT/CASE#:

13

-GS-

40 - 4661

Jonathan Xavier Miller

AW#:

2013A40200159

Date of Offense:

2/10/13

S.C. Code §:

44-53-375(A)

CDR Code #:

3016

AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ * SID# _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Poss of Crack Cocaine 3rd

In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3016

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor 100535 Defendant Jonathan Miller Attorney for Defendant 100632
 SC Bar # _____ SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine: \$ _____
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 §47.12 (Public Def/Prob) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ _____
 §14-1-213 (Drug Court Surcharge) \$100 \$ _____
 §50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 §90.7(SCCJA Surcharge) \$5 \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk
 Court Reporter:

Jeannette McBride
D. Helms

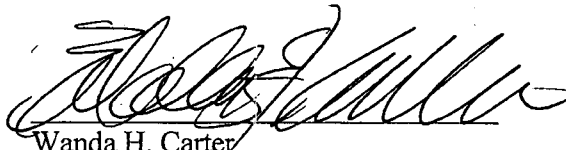
Presiding Judge
 Judge Code:
 Sentence Date

178
07-36
Aug 28, 2013

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 14th, 2015

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT