

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
R. Scott Sprouse, Circuit Court Judge

RECEIVED
MAY 18 2016
SC SUPREME COURT

JEFFREY B. FALLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001935

APPENDIX

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 JEFFREY BERNARD FALLS,)
8 DEFENDANT.)
9

TRANSCRIPT
OF
RECORD
2007-GS-42-2111

10 August 10th - 12th, 2011
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

15
16 A P P E A R A N C E S:

17 RYAN MCCARTY and TRAVIS MOORE
18 Assistant Solicitors
Attorneys for the State

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20 CHRIS THOMPSON
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21 Attorney for the Defendant

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Circuit Court Reporter
25 Seventh Judicial Circuit

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THE COURT: All right. Is the state ready for jury selection?

State ready?

SOLICITOR McCARTY: State's ready, Your Honor

THE COURT: Defense ready?

MR. THOMPSON: Yes, Your Honor.

THE COURT: All right. Let's bring the jury pool around.

Mr. Thompson, while they're doing that, I note that your client is before me on an indictment for trafficking in cocaine. That's Case Number 2007-GS-42-2111.

Has he been arraigned on that charge?

MR. THOMPSON: As far as I know, Your Honor, he has.

THE COURT: And, so, he is still pleading not guilty?

MR. THOMPSON: As far as I know, yes, Your Honor.

THE COURT: And does he still demand trial by jury?

MR. THOMPSON: Yes, Your Honor.

THE COURT: Okay. Thank you very much. You can be seated.

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: Good morning, ladies and gentlemen. It's still barely morning.

1 We're about to begin the trial of another case. This
2 is the case of the State of South Carolina versus Jeffrey
3 Bernard Falls. The indictment in this case, and I will go
4 over it with you so that you can more fully answer the
5 questions that I'm about to ask, the indictment is in Case
6 Number 07-GS-42-2111. The indictment is for the offense of
7 trafficking in cocaine. I'm going to read the indictment to
8 you.

9 The body states that Jeffrey Bernard Falls did, in
10 Spartanburg County, on or about February 20th of 2007,
11 knowingly sell, manufacture, cultivate, deliver, purchase,
12 or bring into the state or did provide financial assistance
13 or did otherwise aid, abet, attempt, or conspire to sell,
14 manufacture, cultivate, deliver, purchase, or bring into the
15 state or did knowingly, actually or constructively, possess
16 or did knowingly attempt to become in actual or constructive
17 possession of more than 200 grams of cocaine, a Schedule II
18 controlled substance, in violation of Section 44-53-370 of
19 the Code of Laws of South Carolina, 1976 as amended, against
20 the peace and dignity of the State and contrary to the
21 statute in such case made and provided.

22 Now, ladies and gentlemen, that is the indictment in
23 the case, and as I've explained to you earlier, that is
24 simply the charge that brings the case before the Court.
25 That document can not be used by a jury in any fashion in

1 determining whether or not a person is guilty or not guilty
2 of the offense charged in the indictment. To the indictment
3 this defendant has pled not guilty. That places this case
4 before this Court for trial.

5 Now, before I begin my questioning, again, it is
6 necessary that you be sworn in each case to respond
7 truthfully to the questions that I'm about to ask.

8 Madam Clerk, please swear the jury panel for me.

9 (WHEREUPON, the jury panel was placed under oath at
10 this time.)

11 THE COURT: Now, as I usually ask, if there was any
12 member of the jury panel who either failed or refused to
13 take the oath just administered by the clerk, please stand.

14 (No response.)

15 THE COURT: The record will reflect that all jurors
16 have now been sworn for purposes of my questioning.

17 Also, before I begin the questioning, I'm going to ask
18 that the attorneys who will be trying the case that they
19 introduce themselves to you, and in the case of the defense,
20 if you would introduce the defendant to the jury panel.

21 For the State.

22 SOLICITOR MCCARTY: Thank you.

23 May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 SOLICITOR MCCARTY: Good morning. As Your Honor said,

1 my name is Ryan McCarty. I'm an assistant solicitor. I'll
2 be prosecuting the case along with Travis Moore. He's also
3 an assistant solicitor here in the Solicitor's Office.
4 Thank you.

5 THE COURT: For the defense.

6 MR. THOMPSON: Please the Court.

7 THE COURT: Yes, sir.

8 MR. THOMPSON: Hello. My name is Chris Thompson, and
9 I'm an attorney here in Spartanburg, and I will be defending
10 Mr. Jeffrey Falls --

11 THE COURT: Mr. Falls, if you'll stand up please, face
12 the panel for me.

13 (Defendant complies.)

14 THE COURT: Thank you.

15 MR. THOMPSON: -- in this matter today for service---

16 THE COURT: Thank you. You can be seated.

17 (Defendant complies.)

18 THE COURT: Now, we'll follow the same procedure that
19 we have followed in the past. Ladies and gentlemen, if you
20 have a response to my questions, please stand. I will need
21 to place your name and juror number on the record before we
22 discuss your response.

23 Now, the first question that I have, is there any
24 member of the jury panel who is ever been related by
25 marriage or are you related by blood or have you had a close

1 personal or a social relationship with the defendant,
2 Jeffrey Bernard Falls, if that's true, please stand.

3 (No response.)

4 THE COURT: Now, has any member of the jury panel ever
5 been represented by either of the attorneys that are
6 involved in this case or have any of them ever appeared on
7 the other side of a legal matter from you, if that's true,
8 please stand.

9 (No response.)

10 THE COURT: Has any member of this, member of this jury
11 panel ever been related by marriage or are you related by
12 blood or have you had a close personal or social
13 relationship with any of the attorneys that might be
14 involved in the trial of this case, please stand.

15 (Juror responds.)

16 THE COURT: Ma'am, name and number?

17 JUROR: 58. I know Chris Thompson.

18 THE COURT: All right. And can you tell me in, in what
19 respect or---

20 JUROR: From the Spartanburg Athletic Club. I was
21 pretty -- I use to be pretty good friends with his wife
22 Jackie.

23 THE COURT: I see. Now, ma'am, the fact that you have
24 that, you know him in that fashion, would that affect your
25 ability to be fair and impartial in this trial?

1 JUROR: Don't think so.

2 THE COURT: Okay. Thank you, ma'am. You can be
3 seated.

4 Anyone else?

5 (No response.)

6 THE COURT: Now, I'm going to go over a list of
7 potential witnesses in the case. I don't know if any of
8 them are present. I don't think they are at this time, and
9 I'll, I'll have some questions concerning the list. It's
10 relatively short.

11 The potential witnesses are Trooper D.G. Wilson. He is
12 with the South Carolina Highway Patrol.

13 Trooper A. English. He is also with the South Carolina
14 Highway Patrol.

15 And Lieutenant Beth Stuart with the Spartanburg County
16 Sheriff's Office.

17 Now, as to those potential witnesses, has any member of
18 the jury panel ever been related by marriage or are you
19 related by blood or have you had a close personal or social
20 relationship with any of the individuals I identified as
21 potential witnesses, if that's true, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel or a
24 member of your immediate family or a close personal friend
25 of yours ever been prosecuted by the Seventh Circuit

1 solicitor's office, if that's true, please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel, panel or
4 a member of your immediate family ever been arrested for,
5 charged with, or convicted of any crime involving or
6 relating to illegal drugs, if that's true, please stand.

7 (Jurors respond.)

8 THE COURT: Your name and number please, ma'am.

9 JUROR: Cheryl Dawson, 100.

10 THE COURT: Yes, ma'am.

11 JUROR: I have cousins, stepbrothers, various family
12 members, that have been, and I don't know what drugs or
13 anything, but I know that they have served some time.

14 THE COURT: All right. Would that, would that fact
15 affect your ability to be fair and impartial in the matters
16 involved in this trial?

17 JUROR: No, sir.

18 THE COURT: Thank you.

19 Name and number please, sir.

20 JUROR: Michael Weaver, 162.

21 THE COURT: Yes, sir.

22 JUROR: Stepson arrested for possession, 1980's.

23 THE COURT: All right. Would that affect your
24 impartiality in this trial?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir.

2 Name and number please.

3 JUROR: Dennis Thorstep, 152.

4 THE COURT: Yes, sir.

5 JUROR: I have a nephew currently serving time for
6 distribution of controlled substances.

7 THE COURT: All right. Would that affect your
8 impartiality in this trial?

9 JUROR: No.

10 THE COURT: Thank you.

11 Over here on my left, name please and number.

12 JUROR: Joan Durham, Juror 42. I have a son whose
13 served on drugs charges.

14 THE COURT: All right. Would that affect your
15 impartiality in this case, ma'am?

16 JUROR: No.

17 THE COURT: Thank you.

18 Name and number please, ma'am.

19 JUROR: Tanya Parks, 109.

20 THE COURT: Yes, ma'am.

21 JUROR: I have a nephew that's serving on drug charges.

22 THE COURT: Would that affect your impartiality?

23 JUROR: I don't think so.

24 THE COURT: Well, now you have to tell me whether
25 you -- if it, if it will affect it I need to know that.

1 JUROR: I think it would.

2 THE COURT: You think it would?

3 JUROR: Yes.

4 THE COURT: Then I'm gonna excuse you from the trial of
5 this case. But please be seated.

6 Name and number please, sir.

7 JUROR: Richard Doss, 57. I have two uncles that have
8 been arrested numerous times for drugs.

9 THE COURT: All right. Would that affect your
10 impartiality in this case?

11 JUROR: No, sir.

12 THE COURT: Thank you.

13 Ma'am, name and number.

14 JUROR: Angela Simmons, 137. I work as a pharmacy
15 technician and received a fraudulent, fraudulent
16 prescription from a customer of mine that I knew for various
17 number of years and they obtained narcotics.

18 THE COURT: Oh, I understand, ma'am. Would that affect
19 your impartiality in this trial?

20 JUROR: It would, yes, sir.

21 THE COURT: All right, ma'am. I'm going to ask, excuse
22 you and ask you to be seated.

23 Has any member of this jury panel ever had any kind of
24 experience with a police officer or state trooper, a federal
25 agent, a state or federal law enforcement agency that might

1 affect your ability to be fair and impartial in this case,
2 if that's true, please stand.

3 (No response.)

4 THE COURT: Does any member of the jury panel have any
5 opinions concerning the use of illegal drugs such as
6 marijuana, cocaine, methamphetamine, heroin, such that it
7 might affect your ability to be fair and impartial to both
8 the State and the defense in this case, if that's true,
9 please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel gathered
12 any information outside of this courtroom such that it may
13 have caused you to express or form an opinion concerning the
14 issues that might be involved in this case, if that's true,
15 please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 is aware of any bias or prejudice you might have either for
19 or against the State or the defense in this case, if that's
20 true, please stand.

21 (No response.)

22 THE COURT: Is there any member of this jury panel who
23 may have been a member of the Grand Jury that issued the
24 indictment in this case, it was indicted on May 17th of
25 2007, if that's true, please stand.

1 (No response.)

2 THE COURT: Is there any member of the jury panel who
3 was a member of or contributor to any group which has as its
4 primary concern the promotion of law enforcement or victims
5 rights?

6 These groups would include, but not be limited to such
7 groups as Mothers Against Drunk Driving, Students Against
8 Drunk Driving, Citizens Against Violent Crime, the South
9 Carolina Troopers Association, the South Carolina Sheriff's
10 Association, or other similarly oriented organizations.

11 If that's true, please stand.

12 (No response.)

13 THE COURT: Does any member of this jury panel know of
14 any reason whatsoever why he or she should not serve as a
15 juror in this case with particular emphasis being placed on
16 your ability to be both fair and impartial to the State and
17 the defense, if that's true, please stand.

18 (No response.)

19 THE COURT: Are there additional questions from the
20 State at this time?

21 SOLICITOR McCARTY: None from the State, Your Honor.

22 THE COURT: Any additional questions from the defense?

23 MR. THOMPSON: Just ask if anyone is related to law
24 enforcement by blood or marriage.

25 THE COURT: All right. Is there any member of this

1 jury panel who is, who is, who has, member of the jury
2 panel, if you've served as a member of law enforcement or if
3 any member of your immediate family has served as a member
4 of law enforcement, if that's true, please stand.

5 (Jurors respond.)

6 THE COURT: Ma'am, I'll start with you, name and
7 number.

8 JUROR: Renee Huskey, 76. My son-in-law was worked as
9 a correctional officer for about twelve years and now he's a
10 state trooper in Camden County.

11 THE COURT: All right. Would that affect your
12 impartiality in the trial?

13 JUROR: No.

14 THE COURT: Thank you, ma'am.
15 Sir, name and number?

16 JUROR: Isaac Sims, 139. I have uncles and cousins who
17 have served with Spartanburg County Sheriff's Department.

18 THE COURT: Would that affect your impartiality, sir?

19 JUROR: No, sir.

20 THE COURT: You can seated. Thank you.

21 Ma'am, name and number.

22 JUROR: Juror Number 35, Julie Ray Creek. Married for
23 28 years to William Michael Creek, lieutenant at the
24 Spartanburg County Sheriff's Office.

25 THE COURT: Would that affect your impartiality, ma'am?

1 JUROR: No, sir.

2 THE COURT: Thank you. You can be seated.

3 Sir, name and number?

4 JUROR: William Young, Juror 173. I have a nephew that
5 works at the federal prison in Edgefield County.

6 THE COURT: Would that affect your impartiality in this
7 case?

8 JUROR: No, sir.

9 THE COURT: Thank you.

10 Name and number please, sir.

11 JUROR: Richard Doss, 52. I have -- my dad is a
12 retired game warden. Two brothers were highway patrolmen.

13 THE COURT: All right. Would that affect your
14 impartiality in the case, sir?

15 JUROR: No, sir.

16 THE COURT: Thank you.

17 Name and number please, sir.

18 JUROR: Kenneth Roam, 128. I have a cousin that's a
19 detective with the West Monroe Police Department in Monroe.

20 THE COURT: Would that affect your impartiality, sir?

21 JUROR: No, sir.

22 THE COURT: Thank you.

23 Ma'am, name and number.

24 JUROR: 100, Cheryl Dawson. I have a cousin that's a
25 police officer in Camden County.

1 THE COURT: would that affect your impartiality?

2 JUROR: No, sir.

3 THE COURT: Thank you.

4 Sir, name and number.

5 JUROR: Number 16, Ray Bobo. My nephew served for a
6 number of years as a city police officer in New Mexico.

7 THE COURT: All right. would that affect your
8 impartiality?

9 JUROR: No, sir.

10 THE COURT: Thank you, sir.

11 Any others?

12 (No response.)

13 THE COURT: Any other questions from the defense to
14 follow-up?

15 MR. THOMPSON: Can we approach?

16 THE COURT: You may.

17 (WHEREUPON, a bench conference was held out of the
18 hearing of the jury at this time.)

19 THE COURT: All right. Other than the issue you raised
20 at the bench, are there any other questions from the
21 defense?

22 MR. THOMPSON: None, Your Honor.

23 THE COURT: Thank you.

24 All right. I'm gonna instruct then the clerk to
25 prepare a list of potential jurors in this case, and, as

1 usual, once that's completed, she'll begin to call the
2 names. Please bring your personal belongings with you if
3 you're selected. You'll be having a seat in the jury box to
4 my left.

5 (Pause.)

6 THE COURT: All right. Madam Clerk, you can begin the
7 jury selection process.

8 strikes are five and five. we'll pick one alternate.

9 (WHEREUPON, a jury panel was selected at this time.)

10 THE COURT: We are now selecting the alternate.

11 (WHEREUPON, an alternate juror was selected at this
12 time.)

13 THE COURT: I'll ask the attorneys to approach briefly.

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: All right. Any objection to the jury
17 selection process from the State?

18 SOLICITOR McCARTY: None from the State, Your Honor.

19 THE COURT: Any from the defense?

20 MR. THOMPSON: None, Your Honor.

21 THE COURT: All right.

22 (Pause.)

23 THE COURT: All right. Ladies and gentlemen, you've
24 been selected to serve as the jury in this case. There are
25 some pretrial matters I'll be taking up with the attorneys

1 and also I'm aware of the fact that we're past noon. So,
2 you have a lunch that you probably would like to take, take
3 care of.

4 So, I'm going to excuse you. I'll ask you to be back
5 in the jury room that will be in use for this trial and I'll
6 ask you to be there by 2:30. So, that will give us time to
7 hopefully get the pretrial matters taken care of and be in a
8 position to begin the trial of the case.

9 When you return to the courthouse you'll be taking an
10 oath concerning your duties, and your oath will state that
11 you will decide the case solely based upon the law and the
12 evidence that will be presented during the trial. Now, the
13 only evidence that is presented during a case is witness'
14 testimony who are sworn to tell the truth who'll be
15 testifying from this witness stand and whatever documents or
16 other evidence comes into the record through that testimony.

17 For that reason it would be a violation of your oath to
18 try to gather any information concerning this case from any
19 other source. That includes such sources as news reports,
20 media records, Internet, or any other source that you might
21 seek to gather information. So, I'll caution you it would
22 be a violation of your oath to try to gather information
23 about this case on your own from any source other than the
24 information provided during the trial in this courtroom.

25 Also I will caution you not to begin to discuss the

1 case with anyone even among yourselves. You've been
2 selected as fair and impartial jurors. You have an open
3 mind concerning this case, and I want you to keep that open
4 mind even through the trial and all the way to the point
5 that I tell you to begin your deliberations, and only then
6 should you begin to try to make up your mind. I hope you
7 realize that even the most innocent conversation that you
8 might have, even among yourselves, in spite of the fact that
9 you know very little about this case, those discussions, if
10 it's about the nature of the charges or what's involved in
11 the case, it might begin to color your ultimate decision.
12 It might cause you to begin to make up your mind and at this
13 point in time you've heard none of the evidence and have
14 received none of the information that you need in order to
15 make a fair and an impartial decision in this case.

16 So, don't discuss this case with anyone. It's okay to
17 tell family or friends that you're serving on a jury and
18 that when it's over you'll decide if you want to talk about
19 it because you're under no obligation to talk about it with
20 anyone. But I will caution you don't discuss it with
21 anyone. Don't begin discussions about any matters involving
22 this case until I've asked you to do so.

23 I will caution you as well that jury tampering is a
24 crime. It's a felony in this state. And if anyone calls
25 you or contacts you about your service on this jury at

1 anytime during the trial, especially at this time, report
2 that to the Court. I can assure you I'll see that the
3 appropriate investigations are begun. I take jury tampering
4 very seriously. If it occurs, I'll see that we follow-up on
5 it in the appropriate fashion.

6 Again, I want you to be back in the jury room that will
7 be in use for this trial. We'll need to give them an
8 alternate room cause we have a jury out deliberating. The
9 bailiff will show you where to report back. Be there at
10 2:30 this afternoon.

11 Thank you very much. You're free to go at this time.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. In this case you indicated you
15 have a suppression hearing you'd like for me to consider.

16 MR. THOMPSON: I would, Your Honor.

17 THE COURT: I don't know if all your witnesses are here
18 yet.

19 Are they?

20 SOLICITOR MCCARTY: I believe Trooper Wilson is here,
21 and I think we went to see if Trooper English is here.
22 Trooper Wilson will be the crux of the matter. He's the
23 initial officer who makes the stop and conducts the course
24 of the roadside. Trooper English is involved in it. He's a
25 K-9 handler, and once the K-9 is involved in this, actually

1 does the hand search of the vehicle finding the powder
2 cocaine, Your Honor.

3 THE COURT: All right. Can, can we proceed with just
4 the one?

5 MR. THOMPSON: We should be able to, Your Honor. I
6 don't---

7 THE COURT: Okay. All right. Yes, sir.

8 SOLICITOR MCCARTY: Mr. Thompson filed this on our
9 office. We received it August the 4th. I'm assuming these
10 are the matters which he wishes to take up from the Court.
11 I'll hand a copy up.

12 THE COURT: Is that correct?

13 MR. THOMPSON: At this point, yes.

14 THE COURT: All right. Pass it up.

15 SOLICITOR MCCARTY: Your Honor, may we approach the
16 breach just briefly?

17 (WHEREUPON, a bench conference was held at this time.)

18 THE COURT: All right. Mr. Thompson, I have received,
19 in written form, a motion to suppress filed August 4th of
20 this year. I assume these are the grounds that you're
21 proceeding on, is that correct?

22 MR. THOMPSON: Your Honor, it is. I think I need to
23 make a phone call to Officer, Captain Hollifield at the
24 Sheriff's Office to get him here on the first matter as
25 concerning Subsection 23-1-210 and 215. I know there's a

1 statewide jurisdiction granted to the Highway Patrol --

2 THE COURT: Yes, sir.

3 MR. THOMPSON: -- and I, I would like to get some
4 clarification on exactly how those highway patrolmen wind up
5 here in Spartanburg County under any agreement that's out
6 here.

7 THE COURT: Well, now I've, I've reviewed those
8 agreements in the past. Now, my understanding of those
9 statutes have to do with the sharing of law enforcement
10 officers from other jurisdictions in this jurisdiction.

11 MR. THOMPSON: Right.

12 THE COURT: Now, state highway patrolmen I think have
13 stateside jurisdiction.

14 SOLICITOR MCCARTY: If I can, Your Honor, I know Mr.
15 Thompson referenced anything involving this is an operation
16 type, Rolling Thunder, multi-jurisdictional task force type
17 of thing.

18 THE COURT: Yes.

19 SOLICITOR MCCARTY: I'll hand up a copy of a previous
20 order you previously issued in the case, case of the State
21 of South Carolina versus Eldor Ramirez Gonzales. It's
22 Indictment Number 2009-GS-42-1020. This is an order that
23 came from your office dated January I believe it's 28th of
24 2010. I just ask you to take a look at that.

25 THE COURT: Yes, sir, that's what I was referring to.

1 SOLICITOR MCCARTY: Yes, sir.

2 THE COURT: That particular issue has been in front of
3 me before.

4 Now, there does have to be, my understanding, has to be
5 an agreement between agencies.

6 SOLICITOR MCCARTY: Well, this situation here, Your
7 Honor, I believe we're dealing with the Highway Patrol.
8 They have the jurisdiction to patrol wherever they can with
9 the county. I think there was an invitation to them, but
10 not necessarily an agreement because they don't come under
11 the payroll of the Spartanburg County Sheriff's Office.
12 They're still an independent agency. They're just invited
13 here to---

14 THE COURT: Participate.

15 SOLICITOR MCCARTY: ---participate or to at least
16 patrol.

17 THE COURT: That's what I was mentioning to Mr.
18 Thompson. I'm not sure their participation is governed by
19 those statutes because they are within their jurisdiction if
20 they're here.

21 MR. THOMPSON: I understand that, but at the same time
22 they're here based upon an agreement to be here with the
23 county.

24 THE COURT: I'm not sure they are. Let's find out.

25 SOLICITOR MCCARTY: Yes, sir.

1 THE COURT: I guess maybe that's the question.

2 MR. THOMPSON: And, like I say, that, that would be
3 my -- I subpoenaed the officer and I really can't say what
4 he told me over the phone. But it's my belief there's
5 nothing out there that, that warrants any type of an
6 agreement between, a written agreement between the county
7 sheriff and the Highway Patrol, and in this case---

8 THE COURT: Well, I---

9 MR. THOMPSON: And I, and I need to get clarification
10 that this is, in fact, a Rolling Thunder seizure.

11 THE COURT: I understand what you're saying. I'm
12 just -- and I'll let you put up whatever you want to put up
13 on it.

14 MR. THOMPSON: And I just ask the Court to look at the
15 plain, plain language, plain meaning of the statute that---

16 THE COURT: Well, I've looked at them before and my
17 understanding of those statutes are that it involves
18 situations where officers are taken from other
19 jurisdictions.

20 MR. THOMPSON: Right.

21 THE COURT: Other jurisdictional areas.

22 MR. THOMPSON: City, city/county or county/county.

23 THE COURT: It's sharing, it's sharing of resources.

24 There's one that has to do with specific investigations and
25 one that has to do with general investigations. And -- but

1 in this case, you've got officers who are within their
2 jurisdictional area.

3 MR. THOMPSON: Right.

4 THE COURT: So, I'm not sure that there has to be an
5 agreement for them. I mean if they -- they're here they're
6 here. If I see a highway patrolman rolling down the highway
7 and he pulls me over, he's within the State of South
8 Carolina, he's within his jurisdiction.

9 MR. THOMPSON: I understand that, Your Honor, but my
10 argument's gonna be that the whole Rolling Thunder task
11 force is organized in an effort to seize drugs and money. I
12 want to see if the, if the Highway Patrol shares in that
13 money, then my opinion that, that they would come under that
14 statute as an agency and there would need to be a written
15 agreement in place. For example, my client had over \$1,300
16 in his pocket. It was seized.

17 well, does the -- does the Highway Patrol get a portion
18 of these proceeds once this case is disposed of and if
19 there's a guilty verdict?

20 That, that would my question to the Highway Patrol.

21 SOLICITOR McCARTY: I think they would, Your Honor. I
22 believe that they are entitled to -- any arresting agency,
23 and just regardless of being a part of this week of
24 Operation Rolling Thunder back in February of 2007, would
25 be, in effect, as if they had made the arrest in any other

1 county within the state. They're entitled to an amount of
2 the proceeds as set forth by statute or an amount of
3 forfeiture rather as set forth by statute just like any
4 other arresting agency would be.

5 I think what the concern here, with regard to these
6 multi-jurisdictional agreements is how they're paid for,
7 does it come under the county funds to pay for these types
8 of---

9 THE COURT: Well, that was one of the issues that came
10 up before, and in that particular case I was informed that
11 there were no county funds expended in the case.

12 SOLICITOR MCCARTY: And there's not for that, Your
13 Honor, and I think it comes to the fact of do we have to go
14 to another authority, County Council, to authorize the
15 payment of these types of funds, and since we're not, we're
16 just allowing the sheriff to, as chief law enforcement
17 officer and Constitutional officer---

18 THE COURT: My understanding in that case is the money
19 was taken out of his general budget and he has the authority
20 to spend whatever they give him to spend.

21 SOLICITOR MCCARTY: Yes, sir.

22 THE COURT: Anyway.

23 MR. THOMPSON: Anyway, you know, I'm privy to some of
24 the correspondents between the jurisdictions, and that's
25 where the sharing of---

1 THE COURT: Oh, the jurisdictions involved in this
2 case?

3 MR. THOMPSON: No, Your Honor. Others. Like I said, I
4 subpoenaed from '07, what I have is from '08, and I wanted
5 to compare those two and see if anything existed between the
6 Highway Patrol from, from another jurisdiction and the
7 county sheriff.

8 THE COURT: Well, I'll let you inquire into it. I'm
9 not sure where we're going.

10 MR. THOMPSON: All right. But my argument is, like I
11 say, the plain meaning of the statute, if there's an
12 agreement to share those proceeds, like he said, the Highway
13 Patrol's paid from the state fund. So, it's not come -- the
14 county doesn't pay them to be here, but at the same time,
15 they do share in proceeds they, they pull off the street
16 here. They turned in everything to the Spartanburg County
17 Sheriff's Office. Not -- and didn't maintain it in a
18 Highway Patrol locker or anything like that.

19 THE COURT: I'm not sure I understand what the
20 importance---

21 MR. THOMPSON: And another, another concern---

22 THE COURT: I'm not sure I understand what the
23 importance of that is.

24 MR. THOMPSON: Well, I just think, in my opinion,
25 you've got a statute that plainly states there needs to be a

1 written agreement between these agencies, and these officers
2 will testify they're not, they're not here in Spartanburg
3 County. You look at the Spartanburg County---

4 THE COURT: Well, you can go ahead and call your first
5 witness on this if you'd like.

6 MR. THOMPSON: Okay, Your Honor. I would call D.G.
7 Wilson.

8 THE COURT: All right. Come forward. Come on up and
9 be sworn.

10 D.G. WILSON, having been first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat please and state your name once
13 you're seated.

14 WITNESS: Darren G. Wilson.

15 THE COURT: Your witness, Mr. Thompson.

16 MR. THOMPSON: Please, please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. THOMPSON: And, also, if I could get an opportunity
19 to call Captain Hollifield at the county in, in the event
20 you -- this testimony may take us to where I want it to go.
21 If it doesn't, then I understand and it's my motion.

22 THE COURT: Well, if you need to put Mr. Hollifield on
23 notice, could somebody call him and tell him to get on over
24 here?

25 We'll get one of these gentlemen to do that for you.

D.G. Wilson - Direct examination
by Mr. Thompson

1 MR. THOMPSON: Okay.

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. THOMPSON:

5 Q Officer Wilson, where, where do you -- what county do
6 you work out of?

7 A I have no specific county. I'm assigned to
8 headquarters in Blythewood.

9 Q Okay. What post is that?

10 A Headquarters.

11 Q Okay. Is it -- does it have a number?

12 A No, sir.

13 Q Okay. So, in Blythewood, where do you normally patrol?

14 A I'm assigned to work all over the state. I have three
15 teams spread throughout the state, upstate, mid-state, And
16 lower state.

17 Q What kind of teams are those?

18 A Aggressive Criminal Enforcement Teams.

19 Q Okay. What do those, what do those teams do?

20 A Our primary responsibility is to reduce fatalities on
21 the roadway through enforcement of traffic laws, and also to
22 curtail the flow of illegal drugs, contraband, weapons,
23 fugitives, terrorists, things of that nature, traveling in
24 our state.

25 Q Okay. And you had an opportunity to patrol in

D.G. Wilson - Direct examination
by Mr. Thompson

1 Spartanburg County in February of 2007, is that correct?

2 A Yes, sir.

3 Q And how did you come to be in Spartanburg?

4 A During Operation Rolling Thunder.

5 Q Okay. And does the Highway Patrol initiate that, that
6 multi-jurisdictional task force?

7 A We do not.

8 Q Who does?

9 A Spartanburg County Sheriff's Department.

10 Q Okay. And are you aware of any contact that you -- did
11 you personally have contact with Spartanburg County?

12 A No, sir.

13 Q Okay. Who, who would of been contacted by -- would
14 Spartanburg County have contacted your agency?

15 Do you know that?

16 A That's correct.

17 Q Okay. And do you -- are you privy to what would be
18 requested?

19 A No, sir, at that time I was not.

20 Q Okay. So, who, who would instruct you to be here in
21 Spartanburg on, in February of '07?

22 A That would be through our chain of command --

23 Q Okay.

24 A -- starting with the captain.

25 Q Okay. And how many times, prior to -- in, in 2007,

D.G. Wilson - Direct examination
by Mr. Thompson

1 prior to February, the week of February 19th, 20th, around
2 in there, when you pulled over Mr. Foster, how many times
3 had you been assigned to Spartanburg County in 2007?

4 A I wouldn't say I was assigned. I probably worked here
5 probably three or four times maybe. I hadn't been with the
6 A.C.E. Team that long at that point.

7 Q Okay. What's the A.C.E. Team, the team you mentioned?

8 A Aggressive Criminal Enforcement Team.

9 Q Okay. And the -- but you can't recall specifically the
10 dates you were here?

11 A No, sir.

12 Q Okay. Was that part of a task force?

13 A No, sir, like I said, we have teams that's assigned
14 this area or this region.

15 Q Okay. After February 20th, that week, the week of
16 the 20th in '07, did you have occasion to work in South
17 Carolina, in Spartanburg again?

18 A Immediately preceding the time did you say?

19 Q At anytime during 2007.

20 A I'm sure I've been back up a couple times since then.

21 Q Okay.

22 A Not---

23 Q What about during that year?

24 A During that year?

25 Q In '07?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A Yes, sir.

2 Q Okay. And was that part of the task force or just
3 routine patrol?

4 A Routine patrol.

5 Q Okay. So, when you come up here on routine patrol, do
6 you come up here and you stay overnight?

7 A Yes, sir, I have.

8 Q Okay. During your routine patrol?

9 A Yes, sir.

10 Q Okay. And then -- but -- so, can you explain to the
11 Court, is there any difference in you being in Spartanburg
12 on a routine patrol and your being in Spartanburg for a
13 Rolling Thunder task force?

14 A My enforcement is the same.

15 Q Okay. And is your assignment the same?

16 A Yes, sir.

17 Q It is.

18 Okay. So, your captain -- you basically tells you to
19 do the same thing on your standard patrol or it would be the
20 same as your Rolling Thunder experience, right?

21 A The mission is the same, yes, sir.

22 Q Okay. And what exactly is your mission, the same as
23 the -- you said you weren't a member of that team when
24 you're on routine patrol, right?

25 You weren't a member of the team in '07, February,

D.G. Wilson - Direct examination
by Mr. Thompson

1 correct?

2 A Yes, I was.

3 Q You were a member of the A.C.E. Team?

4 A Yes.

5 Q I thought you just said you weren't in '07?

6 A I guess I misunderstood your question.

7 Q Okay. So, were you here on routine patrol as a member
8 of the A.C.E. Team?

9 A Yes, sir.

10 Q And then were you here as a member of Rolling Thunder
11 as a member of the A.C.E. Team?

12 A Yes.

13 Q Okay. And, so, you -- are you telling the Court, when
14 you came up here from Blythewood, you didn't know if you
15 were doing routine patrol or if you were doing Rolling
16 Thunder?

17 A Let me backtrack just a second just to make sure I
18 understand you. In 2007 I was assigned to the low state
19 A.C.E. Team.

20 Q Okay.

21 A I was a senior trooper at that time.

22 Q All right. And when the low -- can you explain to me
23 what the low state means?

24 A Just the low part of the state, the entire region from
25 95, from Dillon County to the North Carolina line, to the

D.G. Wilson - Direct examination
by Mr. Thompson

1 Georgia line, all the way to the coast.

2 Q Okay. So, the, the PeeDee region, beach area, that---

3 A Yes, sir.

4 Q ---down that way?

5 Okay. So, now, if you're assigned down there, then
6 it's probably more likely that you didn't patrol in
7 Spartanburg County in '07?

8 A All the teams will get together at sometimes and work
9 together. Like I said, three teams spread throughout the
10 state.

11 Q Okay. And, so, you're a hundred percent you been in
12 Spartanburg in '07 prior to the Rolling Thunder?

13 A To best of my recollection, yes, sir.

14 Q Okay. And you think you might of been up here after
15 that some too, right?

16 A Yes, sir.

17 Q Okay. Now, I'm gonna go back to that other question.
18 When you received your assignment to come here on let's
19 say routine patrol, would it be any different than the
20 assignment you received that you're coming up here for
21 Rolling Thunder?

22 A The mission is the same.

23 Q It's the same?

24 A Yes, sir.

25 Q And you don't know -- you really don't know if you're

D.G. Wilson - Direct examination
by Mr. Thompson

1 coming up here to be mixed in with other jurisdictions and,
2 and Spartanburg County and working on a multi-jurisdictional
3 task force?

4 A Oh, yes, sir, I know that.

5 Q You know that?

6 A Again, the mission is the same, yes, sir.

7 Q Okay. Are you saying there was more than one Rolling
8 Thunder in 2007?

9 A No, sir.

10 Q Okay. So, that's the only one you're aware of, right?

11 A Yes, sir.

12 Q Okay. And when you received your assignment, how do
13 you receive it, email, just from your captain?

14 A Through my supervisor at the time.

15 Q Okay.

16 A He would advise us.

17 Q And, and what manner would he, would he let you know
18 you're going to Spartanburg?

19 A Through email. We get an email from Spartanburg County
20 telling us the hotel location, meeting place, things of that
21 nature.

22 Q Okay. So, you got an email from Spartanburg County.
23 You didn't, but your captain did?

24 A My supervisor, yes, sir.

25 Q Okay. Your supervisor got an email and it said what?

D.G. Wilson - Direct examination
by Mr. Thompson

1 Are you, are you -- were you privy to the email or you
2 just got word of mouth through your captain?

3 A I had a copy of the email. I don't have it now.

4 Q Okay. And what did it say about a motel room?

5 A I don't remember which one we stayed at in 2007.

6 Q Okay. But you didn't -- you're not -- you weren't
7 privy to a letter sent out by the county, right?

8 A What type?

9 I'm not sure.

10 Q A letter inviting multi-jurisdictions to come and join
11 them.

12 A I don't recall one, no, sir.

13 Q Okay. And you probably -- you're encouraged to room up
14 with somebody during Rolling Thunder?

15 A I think I did have a roommate at the, at the time.

16 Q Okay. And where would you of gotten that order from?

17 Just---

18 A Supervisor.

19 Q Okay.

20 A He would make the schedule.

21 Q Okay. So, when you received your orders, does he put
22 something in your hand or he just send you an email?

23 A Email, that's correct.

24 Q Okay. And you stated there was an email that came from
25 Spartanburg County, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A Yes, sir.

2 Q That was an invitation, is that what you said?

3 Maybe I said that.

4 A Yeah, maybe you said that.

5 Q Okay. All right. But you weren't privy to the email
6 from Spartanburg County?

7 A I guess it was a forwarded email. I'm -- I can't, I
8 can not recall.

9 Q Okay. And did that email reference Rolling Thunder?

10 A To the best of my recollection.

11 Q Okay. And when you went on normal patrol in
12 Spartanburg, you wouldn't of received an email referencing
13 Rolling Thunder, would you?

14 A I wouldn't have received two emails, no, sir.

15 Q Okay. And, so, basically you were in Spartanburg
16 County for Rolling Thunder on orders, correct?

17 A I was assigned, yes, sir.

18 Q And you were here -- you weren't here investigating a
19 string of crimes, were you?

20 A No, sir.

21 Q You were just on standard patrol, right?

22 A Yes, sir.

23 Q Okay. And then you would, you wouldn't argue with my
24 assessment that your usual patrolling area at that time was
25 the low state, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A That's normally where you would find me, yes, sir.

2 Q Okay. And then you wouldn't argue with me this, if I
3 said that you were up here in Spartanburg on a temporary
4 basis, would you?

5 A That would be a good assumption.

6 Q Okay. And then you wouldn't agree with me that, you
7 know, you're here for the mutual benefit of your agency and
8 the County Sheriff's Office, would you?

9 A I would say that I'm here to help reduce the fatalities
10 here in Spartanburg County.

11 Q Okay. And then you gained some benefit from that too,
12 right?

13 A I'm not sure exactly what you're saying.

14 Q would you, would you be paid overtime?

15 A Oh, no, sir.

16 Q Okay. You did get out on the road though and gain
17 experience, right?

18 A Yes, sir.

19 Q Okay. And to your knowledge, there's no written
20 agreement between your agency and the county sheriff to
21 carry out Rolling Thunder, right?

22 A Not that I'm aware of.

23 MR. THOMPSON: Okay. Your Honor, Your Honor, I'm, I'm
24 gonna need Officer Wilson for the other motions. I don't
25 know that I need to go into those now because I guess you

D.G. Wilson - Direct examination
by Mr. Thompson

1 need to rule on these and then probably I'll need---

2 THE COURT: Well, can you say the -- you say other
3 motion, what are you specifically talking about?

4 MR. THOMPSON: I want to challenge the validity of the
5 stop.

6 THE COURT: Oh, I understand that.

7 MR. THOMPSON: And the---

8 THE COURT: Well, I'll ask him to stand down now.
9 we'll bring him back when we get to those issues.

10 You can step down.

11 WITNESS: Thank you, judge.

12 THE COURT: Do you wish to ask him any questions?

13 Just one second, officer.

14 SOLICITOR MCCARTY: I'm sorry. I'm gonna ask him just
15 a couple. I'm sorry.

16 THE COURT: I'm gonna let the State ask some questions
17 on this, this issue.

18 SOLICITOR MCCARTY: Just briefly, Your Honor.

19 THE COURT: Sure.

20 CROSS-EXAMINATION

21 BY SOLICITOR MCCARTY:

22 Q Sergeant Wilson, did you receive a pay check from the
23 Spartanburg County Sheriff's Office during the week of
24 February for your presence here in Spartanburg County?

25 A I did not.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q Okay. Were you paid at any other time by the
2 Spartanburg County Sheriff's Office for your presence here?

3 A I was not.

4 Q Paid by the Department of Public Safety I'm assuming?

5 A That's correct.

6 Q And you're part of the Aggressive Criminal Enforcement
7 or A.C.E. Team?

8 A Yes.

9 Q Is that a specific unit within the Highway Patrol?

10 A It is a specialized unit, yes, sir.

11 Q You described that there were kind of three zones.

12 You're just assigned to one of those zones, am I
13 correct?

14 A Yes, sir.

15 Q It is uncommon for you to patrol outside of your
16 regularly assigned zone?

17 A No, sir, we're the mostly flexible unit or one of the
18 most flexible units on the Highway Patrol. So, we get calls
19 from different zones.

20 Q Approximately, if you can, how many people are assigned
21 to each zone?

22 How many troopers are on the A.C.E. Team per zone?

23 A Per zone?

24 Q Or at the time that you were there in 2007 if you
25 recall even more.

D.G. Wilson - Cross-examination
by Solicitor McCarty

- 1 A Three to four.
- 2 Q Three to four members per zone?
- 3 A Yes, sir.
- 4 Q And they're all highway patrolmen, am I correct?
- 5 A Yes, sir.
- 6 Q So, we're probably talking somewhere between ten to
- 7 twenty officers max.
- 8 Am I assuming that correctly?
- 9 A More like ten to twelve.
- 10 Q Ten to twelve?
- 11 A Yes, sir.
- 12 Q Not a higher number?
- 13 A No, sir.
- 14 Q Okay. And these ten to twelve officers, they're all on
- 15 the A.C.E. Team, upper state, middle state, and lower state?
- 16 A Yes, sir.
- 17 Q Do you routinely patrol all three of those zones
- 18 together at one time?
- 19 A We do come together at times.
- 20 Q When you do come together, do you find yourselves often
- 21 times outside of your normal zone?
- 22 A Yes, sir.
- 23 Q Have you patrolled in other counties in the upper state
- 24 beyond just Spartanburg County?
- 25 A Yes, sir.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q When you are up here in either Spartanburg County or
2 those other counties, when it comes to lodging, do you find
3 yourself having to stay in hotels?

4 A Hotels or make other arrangements, yes, sir.

5 Q Now, in the situation here, do you recall, and you may
6 not, did you stay in a hotel during the week of
7 February 2007?

8 A Can not recall. I want to say that I possibly stayed
9 with another trooper.

10 Q Okay. A trooper here locally possibly at his house?

11 A Yes, sir.

12 Q Okay. If you had had to stay in a hotel or you stayed
13 in a hotel in the past, is that room and board covered by --
14 do you submit like a voucher back to your, through your
15 chain of command for reimbursements?

16 A Yes, sir.

17 Q Okay. So, it's not something that was immediately
18 provided by the Spartanburg County Sheriff's Office?

19 A Oh, no, sir.

20 Q You could have been here, am I correct in assuming, any
21 other week of the year in the same fashion or form for which
22 you were here during this week in particular in February of
23 2007?

24 A Yes, sir.

25 Q Do you come at the request of either local sheriffs or

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 highway patrol troops or at the request of county sheriffs
2 to help out in the enforcement of traffic in those counties
3 or in those jurisdictions?

4 A We do.

5 Q And let me ask you just this, being a member of an
6 A.C.E. Team like you were at that time or like you are now,
7 does that, in any way, change your jurisdictional mandate as
8 a highway patrolman?

9 A No, sir.

10 Q You just have the same statewide jurisdiction you have
11 being a regular highway patrolmen as you are being a member
12 of the A.C.E. Team?

13 A Absolutely.

14 Q Thank you.

15 Nothing further, Your Honor.

16 MR. THOMPSON: Briefly, Your Honor.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Mr. Wilson, can you -- you say that you turned in a
21 voucher for your motel room you paid for?

22 A We do a travel expense vouchers, yes, sir.

23 Q Who did you turn that into?

24 A It goes to the Department of Public Safety and through
25 admin system, administrative assistant.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Q And your testimony, is that what you did in February of
2 '07 for Rolling Thunder?

3 A Yes, sir.

4 Q Okay. What about a kick off dinner, did you attend
5 that?

6 SOLICITOR MCCARTY: Your Honor, I would just object to
7 the relevancy of whether or not there was any dinner pre or
8 post Rolling Thunder operation and what it has to do with---

9 THE COURT: I'll let him ask it. I'm not sure of the
10 importance of that.

11 But go ahead.

12 A In reference to the kick off, generally I think we call
13 it the safety briefing dinner.

14 Q Did you attend that?

15 A Yes, sir.

16 Q Okay. You normally attend a dinner and a briefing when
17 you're up here on routine patrol.

18 A Yes, sir, we always have a safety briefing.

19 Q All right. Who conducted that, that breakfast and
20 briefing?

21 A It was Spartanburg County.

22 Q Okay. And that's up here -- and when you're up here
23 under your usual jurisdictional, under your usual
24 jurisdiction, and you're up here on, on something other than
25 the multi-jurisdictional task force, does Spartanburg County

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Sheriff's Office also give you a briefing?

2 A No, sir, that would be a supervisor.

3 Q Okay. And did you attend the final I guess -- well,
4 this one was a breakfast buffet and awards banquet?

5 A Yes, sir.

6 Q You did?

7 A Yes, sir.

8 Q Okay. And did you receive any awards?

9 A Don't recall one.

10 Q All right. So, you don't deny you're actively engaged
11 in Rolling Thunder while you were here in February of '07?

12 A Yes, we were on the roadways at the same time, yes,
13 sir.

14 MR. THOMPSON: Okay. Have no further questions, Your
15 Honor, for, on this issue.

16 THE COURT: Anything further?

17 SOLICITOR MCCARTY: No, Your Honor.

18 THE COURT: You may step down.

19 Wish to call any other witnesses on this issue?

20 MR. THOMPSON: I don't know if Captain Hollifield's
21 here or not.

22 SOLICITOR HUNTER: I left a voice mail and I believe
23 another officer texted him while we were outside. I know
24 he's off duty today as the entire I.E.C. team is.

25 THE COURT: Okay. All right. We'll try to get him

1 here. We can move on to something else. I can figure all
2 that out.

3 MR. THOMPSON: All right.

4 SOLICITOR McCARTY: We had an issue with that one. We
5 can hook up a separate DVD player. If you'll allow just a
6 moment, Your Honor.

7 THE COURT: Okay.

8 MR. THOMPSON: I'm on, I'm on my third, third tape.

9 THE COURT: Third what?

10 MR. THOMPSON: Third tape. These is---

11 THE COURT: Oh, they're having problems with their
12 tapes?

13 MR. THOMPSON: It's hard for me to get, hard for me to
14 get one that cooperates.

15 THE COURT: I understand.

16 (Pause.)

17 THE COURT: All right. Next motion.

18 MR. THOMPSON: Your Honor, we call Officer Wilson once
19 more.

20 THE COURT: And what is, is -- what motion are we on?

21 MR. THOMPSON: Your Honor, I'm gonna go with I think
22 number two, that it was an invalid stop of the defendant.

23 THE COURT: All right. You've been already sworn,
24 officer. Take the stand. Thank you, sir.

25 You may proceed.

D.G. Wilson - Direct examination
by Mr. Thompson

1 MR. THOMPSON: May it please the Court, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. THOMPSON:

4 Q Officer Wilson, you have the detailed statement of
5 investigation that you presented?

6 Do you have a copy of that with you?

7 A Yes, sir.

8 Q Okay. You stated that on 2/20/07 around 21:07, is
9 that -- what is that?

10 Is that---

11 A That would be 9:00.

12 Q Nine o'clock?

13 A Yes, sir.

14 Q Okay. And then you were patrolling I-85 in Spartanburg
15 County traveling north on, at the 60-mile marker, is that
16 correct?

17 A Yes, sir.

18 Q You saw a light, a white Lincoln Town Car failing to
19 maintain its lane, is that correct?

20 A Yes, sir.

21 Q Okay. And if I get this to play.

22 Bear with me, Your Honor.

23 All right. This is, this is it right here, correct?

24 Is this---

25 A Yes, sir.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. Now, right here you're starting, you start the
2 stop, correct?

3 A Yes, sir.

4 Q Okay. So, you indicated -- you put in here that that's
5 at the 62-mile marker, correct?

6 A Thereabouts, yes, sir.

7 Q Okay. So, you have followed Mr. Falls in this white
8 Lincoln Town Car for two miles, right?

9 A I would say I followed him. We were traveling in the
10 same direction.

11 Q Okay. And as a matter of fact, you were beside him for
12 a good bit of that way, were you not?

13 A I was in a similar lane, yes, sir.

14 Q Okay. And you determined that he was -- had a, making
15 a fog line?

16 He was going over the fog line, right?

17 A That's correct.

18 Q Okay. And -- well, did you observe that while you were
19 beside him or behind him?

20 A He did it on several occasions. I seen it -- what drew
21 my attention to him was when I was in the center, center
22 lane, he crossed over -- pretty much just as he is right
23 there where you got it paused at.

24 Q Okay. And for that reason you pulled him over,
25 correct?

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 A That's correct.
- 2 Q Okay. And, and these, these big trucks are on the road
- 3 quite often?
- 4 You're a highway patrolman. You see a lot those,
- 5 right?
- 6 A Yes, sir.
- 7 Q Okay. They're tough to drive around, right?
- 8 A I wouldn't say so.
- 9 Q Huh?
- 10 A If they were tough to drive around a lot of people
- 11 wouldn't have been on the road I guess.
- 12 Q Okay. Well, if you had your preference, would you
- 13 rather, rather drive beside one of those or a Volkswagon?
- 14 A Volkswagon.
- 15 SOLICITOR MCCARTY: Your Honor, objection to the
- 16 relevance on that. It also draws an opinion on that matter.
- 17 THE COURT: Well, let's get, let's get to the point --
- 18 MR. THOMPSON: Okay.
- 19 THE COURT: -- Mr. Thompson.
- 20 Q You, you pulled him over for going over this fog line?
- 21 A That's correct.
- 22 Q What statute did he violate?
- 23 A The failure to maintain lane. I want to say that's
- 24 56-5-1900.
- 25 Q 1900, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A Yes.

2 Q That's right.

3 And how many fog line tickets do you write a month?

4 A I generally try to educate people, and, again, I
5 stopped Mr. Falls because he was driving over the fog line.
6 But that's indicative of somebody being fatigued, sleepy,
7 tired, having some type of medical issue.

8 Q Okay. Now, at the point you pulled him over, what do
9 you know about that car right there?

10 A Nothing. It's a Lincoln.

11 Q All right. It's a Lincoln, it's got a North Carolina
12 tag, right?

13 A That's correct.

14 Q Okay. And you probably know there's a black male
15 driver, right?

16 A I wouldn't say that. I didn't know who the driver was.

17 Q Okay. So, did you witness him impede any traffic
18 before you pulled him over?

19 A No, sir.

20 Q Okay. And you were right beside him for a long time,
21 right, or a couple miles almost, right?

22 A Presumably, yes, sir.

23 Q Okay. And you said his tires crossed over the fog
24 line.

25 So, that would mean if he was going off the road he was

D.G. Wilson - Direct examination
by Mr. Thompson

1 going away from any traffic, right?

2 A That's correct.

3 Q Okay. So, he didn't pose a safety risk to you beside
4 him, right?

5 A Well, coming in this morning I saw a number of disabled
6 motor vehicles on this roadway. So, that would be a
7 hazard---

8 Q Okay. Well---

9 A ---to himself.

10 Q ---how many, how many disabled vehicles did you see on
11 the road on this evening?

12 A I don't recall.

13 Q Okay. So, you would agree with my assessment that he
14 pulls over fairly smoothly here, right?

15 A We're in a bad location, but yes, sir.

16 Q And he, and he provided a turn signal before he came
17 off the road, right?

18 A Yes, sir.

19 Q And this is you here, right?

20 A Yes, sir.

21 Q Okay. So, again, is it your opinion that he violated
22 56-1-1900 or whatever the statute was?

23 A He was failing to maintain his lane, yes, sir.

24 Q Okay. But he didn't violate that statute, right?

25 A What, what are you asking me, counsel?

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Did he -- he didn't violate that statute, did he?

2 A Yes, he did.

3 Q He did.

4 Are you familiar with the wording of that statute?

5 A Not verbatim.

6 Q Okay. I may have a copy of it somewhere.

7 would it be something along the lines that a vehicle
8 would be operated as nearly as practical entirely within a
9 single lane and may not be moved from one lane to another
10 until the operator determined the move can be made safely?

11 That sound fairly accurate?

12 A That sounds familiar.

13 Q Okay. So, he's maintained his lane as nearly as
14 practical as possible in that one lane, right?

15 Doesn't really state that he is violating a law if he
16 does sway out of that lane, does he?

17 A He could, you know, like I said, he could be ill,
18 fatigued, under the influence, a number of things.

19 Q So, you're really just pulling him over for what, check
20 on him or---

21 A For---

22 Q ---because he's violating---

23 A Check on him for his safety or other motorist on the
24 roadway.

25 Q Okay. And basically it's your testimony that he did

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 violate the law or didn't?
- 2 A Yes, sir, he did.
- 3 Q He did.
- 4 Cause you -- so, his going over the fog line indicated
- 5 that he was not maintaining his lane---
- 6 A He was outside his lane of travel.
- 7 Q Per the statute?
- 8 A Yes, sir..
- 9 Q Okay. All right. So, you pulled him over and -- okay.
- 10 You indicate he's driving slow?
- 11 A Yes, sir.
- 12 Q All right. All right. Is there a minimum speed posted
- 13 on that road?
- 14 A The interstate's 45.
- 15 Q The interstate's 45. Is it posted I asked.
- 16 A Minimum -- I don't recall -- I don't remember seeing
- 17 it, but I'm sure it's posted somewhere.
- 18 Q Okay. But you remember seeing -- was he going less
- 19 than 45?
- 20 A No, sir.
- 21 Q Okay. So, why did you pull that car over he was
- 22 driving?
- 23 A Like I said, failing to maintain his lane.
- 24 Q Failing to maintain his lane. Not because he's going
- 25 too slow?

D.G. Wilson - Direct examination
by Mr. Thompson

1 He was going over the minimum speed, right?

2 A I was concerned about him being either under the
3 influence, sleepy, fatigued, or having some type of medical
4 issue.

5 Q Okay. And that was your only concern, right?

6 A Public safety.

7 Q Okay. I want to show you -- I'll show you my favorite
8 part of this video, and you take, you take his driver's
9 license and that rental agreement right here, right?

10 A I don't recall.

11 Q Okay. You hear what you said there?

12 A I couldn't make it out.

13 Q All right. Let's try to go back. To you -- all right.
14 Told you he'd been to Atlanta. You asked for the license
15 and registrations.

16 All right. Right there you indicate he's driving slow,
17 right?

18 A That sounds like what I said. I couldn't make it out.

19 Q Okay. But it appeared you said you're driving slow.

20 All right. So, you got -- you have your hand -- you
21 have your license and registration in your hand there,
22 right?

23 A Yes, sir.

24 Q Okay. And you are gonna pull up behind him. Now, I'm
25 gonna run this back and we're gonna look at it, but,

D.G. Wilson - Direct examination
by Mr. Thompson

1 according to my count, you would be number one and there are
2 eight more sirens going on the side of this road within your
3 camera range.

4 would you agree or disagree with that?

5 A I don't recall.

6 Q Nine people pulled over in one camera shot. Let's look
7 at that.

8 All right. Here he goes. Here's flashing lights.
9 Here's flashing lights. Get around the curve, more come up.
10 Look right through here. Here, here, here, here.

11 A I don't believe all of those lights are from the
12 roadway, counselor. Look at all those, all those lights.

13 That's the 62-mile marker, right?

14 So, we're not in the City of Spartanburg. These
15 aren't, these aren't the city lights.

16 would -- I mean would that -- you've been out there on
17 Rolling Thunder. Would it be common to see five or six
18 other cars pulled over in your camera view?

19 A That would be similar with those other disabled
20 motorists also flashing hazard lights. I don't think those
21 are blue lights that you see.

22 Q Okay. Well, how many stops did, did you make during
23 Rolling Thunder?

24 A I don't recall.

25 Q Don't recall.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Okay. And you -- you're up here and what, what's your
2 captain tell you you're doing up here on Rolling Thunder?

3 A I'm sorry?

4 Q What's your captain tell you you're doing up here on
5 Rolling Thunder?

6 A What does my captain tell me I'm doing?

7 Q Yeah, why do you come up here?

8 A To reduce fatalities.

9 Q Okay. So, when you go to that kick off breakfast,
10 that's what they say?

11 A That's what they lead off with, yes, sir.

12 Q Okay. And then when you go to that dinner at the end
13 where they show off everything they got during the week, are
14 they putting up lives they saved?

15 A The sheriff comes in and tells us how happy the public
16 is that we came and made the roadways a much better place
17 for them to drive.

18 Q And what's he put on display?

19 A Everything that we seized for that week.

20 Q Okay. And that would be?

21 What are we seizing?

22 A Guns, drugs, contraband.

23 Q Cash?

24 A Everything. Cash.

25 Q Okay. And the truth of the matter is you have to have

D.G. Wilson - Direct examination
by Mr. Thompson

1 a reasonable articulable suspicion to pull these people over
2 for one, right?

3 A It's a legal traffic stop.

4 Q Okay. And really when you're involved in something
5 like this, you, you can't go at this with an objective point
6 of view. You've got a subjective point of view when you
7 pull these people over.

8 Isn't that the truth?

9 A Me?

10 Q Yes.

11 A No, sir.

12 Q Huh?

13 A No, sir.

14 Q So, all these cars pulled over, are you're saying could
15 be hazardous -- there has hazard lights flashing. I think
16 it clearly shows several, several cars pulled over and you'd
17 agree with me that, in Rolling Thunder, we're subject to
18 have several different jurisdictions. So, there may not be
19 the same consistent blue light or whatever light they pull
20 you over with, right?

21 You would, you would agree with me this is a Tuesday
22 night, right?

23 A Yes, sir.

24 Q Okay. What did you do right there, 3-6-0-7-1-9, when
25 you -- that was you on the radio?

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 A That's either his driver's license or his tag. I think
2 it was his D.L.
- 3 Q His tag number, right?
- 4 A I think it was his driver's license.
- 5 Q Okay. Driver's license number 360719.
- 6 So, you're running a license check on him right now,
7 right?
- 8 A Yes, sir.
- 9 Q You've got his license in your hand and car, car rental
10 agreement in your hand, right?
- 11 A Yes, sir.
- 12 Q Okay. Now, what's your concern here?
13 what, what -- you pulled him over.
14 what's your concern?
- 15 A I wanted to make sure he had a valid driver's license.
- 16 Q Okay. And did his driver's license check out okay?
- 17 A Yes, sir, I don't recall citing him for any driver's
18 license violation.
- 19 Q Okay. You agree with my assessment that, that 2100 --
20 actually it's like 2059:50 is when you initiated the blue
21 light.
- 22 Okay. Did that have anything to do with this stop?
- 23 A Was that me?
- 24 Q Yes, when that, when that came over your radio.
- 25 A I don't think that was me talking on the radio.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q I mean when that come over. Eventually you're gonna
2 find out his identity and everything, whether his license is
3 clear --

4 A Yes, sir.

5 Q -- right?

6 A Yes, sir.

7 Q Okay. Okay. At this, at this point, what had you
8 learned about the driver?

9 A I don't believe they'd given me any information about
10 that.

11 Q None?

12 A No, sir, not that I recall I don't think.

13 Q Okay. So, you don't know if his license was suspended
14 or anything like that, right?

15 A Not at this point, no.

16 Q Okay. And this is four minutes after 9:00, right?

17 All right. Now, you've got -- what do you have in your
18 hand right there?

19 A Probably got the rental agreement in my hand and
20 flashlight.

21 Q Okay. Now, is his inside light on?

22 A I don't recall.

23 Q All right. You're reaching in the car right there,
24 right?

25 Your head's almost in the car, correct?

D.G. Wilson - Direct examination
by Mr. Thompson

1 All right. And you just tell him he hadn't done
2 anything, right?

3 A He said that he didn't do anything.

4 Q Did you affirm that?

5 Is that what you said?

6 A You didn't do anything. I'll talk with you. I think
7 that's what he said.

8 Q Okay. All right. want to talk with you.

9 All right. At this point did you return his license to
10 him right there?

11 A No, sir.

12 Q Where's his driver's license at this point?

13 A Possibly in my hand with the rental agreement.

14 Q All right. Right there when you reached in, you sure
15 you didn't give his license back to him?

16 A I don't think, I don't think I reached in. I think my
17 hand was just at the window trying to hear what he was
18 saying.

19 Q Your hand's not in the car there?

20 A Don't think so. It's hard to see.

21 Q Okay. You couldn't -- may or may not of given his
22 license back, right?

23 A I'm sure that I did not.

24 Q Okay. All right. He's walking here.

25 what's he got in his hand?

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 A I don't know. A piece of tissue.
- 2 Q All right. Now, you're a highway patrolman. When
- 3 somebody's got something in their hand I believe you're
- 4 gonna know it, right, what it is?
- 5 Is that not his wallet in his hand?
- 6 A Looks like it may be.
- 7 Q Okay. So, you pulled him over and you said you're
- 8 going too slow. Now you're telling him you're gonna write
- 9 him a warning, right, for improper lane usage?
- 10 All right. So, at 2104 and 37 seconds, you informed
- 11 him that he would receive a warning, correct?
- 12 A Yes, sir.
- 13 Q Okay. Now -- so, you wrote down at or round 2157 is
- 14 when you were patrolling. So, you're a little bit off of
- 15 your narrative here, right?
- 16 A At or around?
- 17 Q Yeah.
- 18 A Yes, sir.
- 19 Q Okay.
- 20 A That's close.
- 21 Q Probably 2107 probably come off of that ticket or that
- 22 warning you wrote, correct?
- 23 A My watch could of been off that night or something.
- 24 Q Okay. So, but at 2104, per this tape, you informed
- 25 Mr. Falls he would be receiving a warning, correct?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A According to the tape, yes, sir.

2 Q All right. And you don't dispute that's his wallet in
3 his hand?

4 A That looks like it's a wallet.

5 Q Okay. And he says okay. He tried to argue a little
6 bit, and it's common -- do you commonly get a little bit of
7 resistance when you try to give a citation?

8 A Sometimes.

9 Q Okay. It's not uncommon.

10 A (Witness nods negatively.)

11 Q All right. Okay. Now, he indicates the trucks are
12 bothering him, and earlier we saw a big truck go by and here
13 goes two more trucks go by, right?

14 A Yes, sir.

15 Q So, that statement's pretty accurate, wouldn't you
16 agree?

17 SOLICITOR MCCARTY: I object, Your Honor. That calls
18 for speculation as to whether or not trucks were bothering
19 him. I mean I agree that's there's trucks on the
20 interstate.

21 MR. THOMPSON: No, I---

22 SOLICITOR MCCARTY: It's Interstate 85. It's a heavily
23 traveled interstate. There's gonna be trucks.

24 THE COURT: I'm gonna sustain the objection. It calls
25 for speculation for him to be able to state what effected

D.G. Wilson - Direct examination
by Mr. Thompson

1 someone he wasn't in the car with and---

2 MR. THOMPSON: Oh, let me rephrase that.

3 You would agree with me that those, those trucks were
4 heading down the road?

5 There's a good bit of them, correct?

6 A They are.

7 Q Okay. Okay. All right. Did you work today.

8 What's that question got to do with writing a ticket
9 for improper lane, lane changing?

10 A At that point we were just having casual conversation.
11 He had a work uniform on.

12 Q Okay. How long does it usually take you to write a
13 warning?

14 A It all depends on how busy dispatch is sometimes.

15 Q Okay. But you evidently are writing a warning here,
16 right?

17 A That's correct.

18 Q Told him you're giving him one. Where then -- you --
19 then you said I thought you said you went to Atlanta, right?

20 You want me to rewind it?

21 A That sounds like what I said.

22 Q Okay. And then you basically -- you say I thought you
23 said you worked today or you -- I thought you went to
24 Atlanta. Let's see how it comes out here.

25 All right. All these questions, are these questions

D.G. Wilson - Direct examination
by Mr. Thompson

1 related to the improper lane usage citation or warning that
2 you wrote him?

3 A Just causal conversation.

4 Q Just casual conversation?

5 A Yes, sir.

6 Q And is that common that you do that when you pull
7 someone over?

8 A Again, like I stated in the beginning, he could of been
9 tired, just seeing how long he was on the road traveling
10 that day, how many hours he had been driving.

11 Q Okay. All right. Now, earlier in your narrative --
12 you, you had this, right?

13 A Yes, sir.

14 Q You stated that the driver had a nervous look on his
15 face and his hands were shaking rapidly as he handed Trooper
16 Wilson a North Carolina driver's license and Avis rental
17 agreement.

18 Do you recall that?

19 A Yes, sir.

20 Q Okay. Now, is that before he moved the car or after he
21 moved the car?

22 Before he moved the car, right?

23 A I think that was after he moved the car. Before.

24 Q Okay. So -- all right. So, does he look nervous
25 there?

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 All right. His hands aren't shaking, are they?
- 2 A It's kind of, kind of hard to see here.
- 3 Q And he's relaxed sitting on your car, right?
- 4 A He's a little unsteady on his feet.
- 5 Q He's unsteady on his feet?
- 6 A He's got to lean, use my car to lean on.
- 7 Q Okay. Would that not -- is he not just relaxing on
- 8 your car?
- 9 A I guess he is tired.
- 10 Q Okay. So, when you went to his car, you didn't
- 11 indicate in here that you smelled alcohol, did you?
- 12 A No, sir.
- 13 Q You indicated you smelled marijuana?
- 14 A No, sir.
- 15 Q You didn't indicate you saw anything that would lead
- 16 you to believe he had illegal contraband in the car, did
- 17 you?
- 18 A There was at one point on here where I asked -- right
- 19 before I asked him to get out of the car he was reaching
- 20 underneath the seat. That drew my attention to him.
- 21 Q He was reaching underneath the seat to get something?
- 22 A Appeared to be putting something under the seat.
- 23 Q Okay. All right. Now, I'm gonna go back to right
- 24 here. I guess right here he appears to be putting something
- 25 in his wallet, does he not?

D.G. Wilson - Direct examination
by Mr. Thompson

1 04:37, writing him a warning. He basically apologized.

2 Didn't he say I'm sorry?

3 A The trucks.

4 Q Watch his hands now and this portion I want you to see
5 what's going on with everybody's hands.

6 He opens his wallet there, right, and he puts something
7 in and closes it, right?

8 A He could be fidgeting for something. I didn't see him
9 put anything in it.

10 Q All right. Well, you didn't really say in your
11 narrative one way or the other, right?

12 A Right.

13 Q Okay. Now, if he testifies that you gave him his
14 wallet, his license, and that's what he's doing, you
15 wouldn't have any way to rebut that, would you?

16 A Well, that would be almost impossible because if I'm
17 still writing a warning I would need his license to complete
18 the warning.

19 Q Well, let's talk about you writing this warning. Look,
20 your hands aren't touching the pad at all, right?

21 Aren't -- here you go.

22 All right. Your hand's not touching the pad.

23 All right. So at this point you have written down
24 improper lane usage?

25 A I want to make sure I understand what you're saying.

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 Q Okay. Still no pen, no pen or paper used, and a
2 minutes gone by since you said you're getting a warning.
3 Still no writing, right?
4 And now the pen's on the paper finally, right?
5 It's not writing, is it?
6 Still not writing, right?
7 Another minute goes by, still not writing, is that
8 correct?
9 Is that correct?
- 10 A Sir, I'm doing something there. I'm conducting
11 business.
- 12 Q I think you're fishing, aren't you?
- 13 A Not at all, sir.
- 14 Q All right. Now you're writing a little bit, right?
15 You're turning it over, what does, what does it mean?
16 You flip that page over.
- 17 A Maybe it's two sheets there. Maybe the wind blew one
18 up. I'm not sure.
- 19 Q All right. It looks like your hand turns it over to
20 me.
- 21 A I'm not sure.
- 22 Q See there.
23 You wouldn't argue your hand is flipping it up, right?
- 24 A I think that's the top page. It's blue. It's the
25 previous warning, yeah. That's what it looks like.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay.

2 A It's just flopping.

3 Q So, you're writing, writing on the previous warning or
4 are you writing Mr. Falls' name?

5 A I was moving out. So, I could see I believe.

6 Q All right. Officer Wilson---

7 A I, I see exactly what it is. On the back seat we have
8 to -- there's some boxes you got to check that you can not
9 check on the front which tells whether or not it's a moving
10 violation or some other type violation.

11 Q Okay. Now, the person's being pulled over privy to
12 that page?

13 A That's all on the same warning.

14 Q It's all on the same warning?

15 A Yes, it's just not on that first sheet.

16 Q So, you gave him two sheets?

17 A No, he gets one copy.

18 Q He gets one copy.

19 All right. So, this would be the sheet that you write
20 originally, right?

21 SOLICITOR MCCARTY: Is that gonna be marked for
22 anything, Your Honor?

23 THE COURT: I don't know what that is.

24 MR. THOMPSON: I'll let him identify it.

25 THE COURT: Okay. Let him identify it and we'll see

D.G. Wilson - Direct examination
by Mr. Thompson

1 where we are.

2 A The warning that I issued Mr. Falls.

3 Q Okay. And that is -- you're G. Wilson and your
4 signature, correct?

5 A Yes, sir, and then that's the proper date of -- well
6 now 2/20/07.

7 A Yes.

8 Q I-85.

9 Okay. Have that marked as Defendant's 1, Your Honor.

10 THE COURT: Any objection to it being entered,
11 introduced?

12 SOLICITOR MCCARTY: No, Your Honor.

13 THE COURT: All right. It will be marked and entered
14 into evidence.

15 (WHEREUPON, the ticket was marked as Defendant's
16 Exhibit No. 1 and received into evidence for purposes of
17 this hearing only at this time.)

18 Q Okay. So, you're writing this warning, and at 2104:37
19 or so you indicated to him he would be getting a warning,
20 right?

21 Is that around that time?

22 A Yes, sir.

23 Q And now you're explaining it to him, and you're telling
24 the court that there's this page that he received, right,
25 and then there's another page on the back of it, correct?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A The copy that goes to the district office, yes, sir.

2 Q Okay. And is the Solicitor's Office privy to that
3 copy?

4 A Yes, I'm sure it's filed away somewhere.

5 Q Okay. And, so, you're flipping that over, and you're
6 just having to check off it's a moving violation, correct?

7 A There's a number of other boxes on there, yes, sir.

8 Q There's the flipping.

9 So, the wind didn't blow it. It was just you flipped
10 it over, right?

11 A To check the appropriate boxes on the back, yes, sir..

12 Q Wasn't the old, the old ticket or the prior warning you
13 wrote, right?

14 A Right.

15 Q And do you have that back ticket with you today?

16 A No, sir.

17 Q That back piece, you don't have that?

18 A No, sir.

19 Q Okay. And you just turn that in?

20 You don't maintain a copy for yourself, right?

21 A No, sir.

22 Q All right. And your hands fall down again.

23 No writing, right, and you flip back over?

24 So, what, maybe ten seconds that took you to check off
25 the box on the back page?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A There's, there's more than one box back there.

2 Q Okay. Well, I mean but it didn't take you but about
3 ten seconds to do the back page, right?

4 A Yes.

5 Q All right. Now, you're asking him about renting a car,
6 right?

7 Correct?

8 A I didn't get to hear it, no.

9 Q I'm sorry.

10 When did you rent this car, right?

11 A Yes, sir.

12 Q And is that got anything to do with improper lane
13 change or usage or the safety of the road?

14 A Just want to make sure it's probably not an overdue
15 rental --

16 Q Okay.

17 A -- or that he is the person that rented the vehicle.

18 Q Okay. And then on that rental agreement, this -- and
19 if it were, if it were overdue, you could seize the car,
20 right?

21 A I could call the rental company and see what they would
22 like to have done.

23 Q Okay. And his wasn't overdue, right?

24 A Best of my recollection.

25 Q Okay. I think he informed you earlier, later that he

D.G. Wilson - Direct examination
by Mr. Thompson

1 had to turn it in the next day?

2 A The following day, yes, sir.

3 Q And you recall when he told you he got the rental car?

4 A Not exactly.

5 Q I think he says Valentine's Day. Right there.

6 Okay. So, he says picks it up on Valentine's and
7 returns it tomorrow.

8 That would be the 21st, right, and would you agree
9 that's him, Jeffrey Falls?

10 A Yes, sir.

11 Q Kendrick Avenue in Charlotte, right?

12 A Yes, sir.

13 Q And this basically says that he rented it the 14th of
14 February of '07, is that correct?

15 A Yes, sir.

16 Q And it was due the next day, right?

17 A Yes.

18 Q Okay. So, he was accurate on the, on when he rented it
19 and when it was suppose to be back, correct?

20 A Yes, sir.

21 MR. THOMPSON: Enter that as Defendant's 2.

22 SOLICITOR MCCARTY: I would object, Your Honor, because
23 we have filed previously reciprocal rule for discovery. I
24 don't have this. It wasn't in the State's evidence or
25 possession prior to today. In fact, I saw it for the first

D.G. Wilson - Direct examination
by Mr. Thompson

1 time just a moment ago. Your Honor, the State was served
2 with a reciprocal rule, rule of discovery on Mr. Thompson
3 back in 2007, April 18th, 2207, requesting that they
4 produce any evidence they claim to admit at trial. The
5 ticket I do have a copy of due to Trooper's Wilson file.
6 Prior rental agreement, I don't, I don't dispute that's what
7 it says, but I would disagree with that being admitted into
8 evidence.

9 MR. THOMPSON: And, Your Honor, I just move to enter it
10 basically to reinforce the trooper's testimony.

11 THE COURT: He's testified to it already. I'm gonna
12 leave it out.

13 MR. THOMPSON: Okay.

14 THE COURT: While we're in this break, I noticed
15 Officer Hollifield has arrived and I think I heard he might
16 be on his day off.

17 Do you want to go ahead and let's stop for a second and
18 let's take care of him?

19 MR. THOMPSON: I can do that, Your Honor.

20 THE COURT: All right. Step down briefly, officer.
21 Officer Hollifield, come on up and be sworn please.

22 WITNESS: Yes, sir, I apologize for my attire.

23 THE COURT: That's quite all right. I understand we
24 kind of inconvenienced you.

25 RANDY HOLLIFIELD, being first duly

Randy Hollifield - Direct examination
by Mr. Thompson

1 sworn, testified as follows:

2 THE COURT: State your name for the record.

3 WITNESS: Randy Hollifield.

4 THE COURT: Mr. Thompson.

5 DIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q Captain, you received a call from my office or a fax
8 earlier this week, correct?

9 A Yes, sir, I did.

10 Q And we were seeking out what?

11 A As far as the agreement between Trooper Wilson and the
12 Sheriff's Office as far as Rolling Thunder.

13 Q Okay. And to your knowledge, does any such agreement
14 exist?

15 A Not between the South Carolina Highway Patrol and the
16 Sheriff's Office itself, no, sir, it does not.

17 Q And you've indicated there was a jurisdictional
18 issue---

19 A Yes, sir, there is.

20 Q ---right---

21 A That's correct, sir.

22 Q ---that the county didn't enter into that agreement
23 because of the statewide jurisdiction---

24 A That is correct.

25 Q ---the Highway Patrol has, is that correct?

Randy Hollifield - Direct examination
by Mr. Thompson

1 A Yes, sir, that's correct.

2 Q But do your records indicate whether or not they were
3 involved with the Rolling Thunder?

4 A Yes, sir, they were.

5 Q Okay.

6 A Yes, sir.

7 Q Now, is that invitation sent out to all Highway Patrol
8 agencies or just a select few?

9 A That is sent out to a select few. That is sent out to
10 the South Carolina Highway Patrol A.C.E. Team.

11 Q Okay. And, and your -- it's your testimony there's no
12 written agreement between the office, county officer, County
13 Sheriff's Office---

14 A No, sir, there is not, no, sir.

15 Q ---and the Highway Patrol?

16 Okay. That's all I want, Your Honor.

17 THE COURT: All right. You wish to ask any questions?

18 SOLICITOR MCCARTY: No, Your Honor. We got Captain
19 Hollifield up. Thank you.

20 THE COURT: All right. Thank you.

21 You may step down.

22 WITNESS: Thank you, sir.

23 THE COURT: Any objection to his leaving at this time?

24 MR. THOMPSON: I need him to stay around all day. No,
25 I'm joking, Your Honor.

D.G. Wilson - Direct examination
by Mr. Thompson

1 THE COURT: You're free to go. Thank you for coming.

2 WITNESS: Thank you, sir. Yes, sir.

3 THE COURT: All right. I'm sorry I interrupted you.
4 Officer, resume the stand.

5 MR. THOMPSON: That's fine.

6 WITNESS: Yes, sir.

7 THE COURT: Okay. You may proceed, Mr. Thompson.

8 MR. THOMPSON: Thank you, Your Honor.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Okay. Officer, my, my notes indicate at 2105 you told
12 Mr. Falls he would be getting a warning. It's 2107 now,
13 correct, you're still writing on that warning, right?

14 A Yes, sir.

15 Q Okay. Now I'm looking at the ticket.

16 Now, would you agree with me that when you told him
17 that at 2105 you were over five minutes into the stop?

18 SOLICITOR MCCARTY: Your Honor, I see Mrs. Reeves
19 outside the door. I think she has something from the jury
20 on that other case.

21 THE COURT: All right. I don't know if they need me or
22 not.

23 Go ahead.

24 They'll come in if they need me. I think they're
25 getting lunch.

D.G. Wilson - Direct examination
by Mr. Thompson

1 SOLICITOR MCCARTY: She had a piece of paper in her
2 hand. That was my only concern.

3 Q So, remember I said you pulled up at the -- the, the
4 traffic stop occurred about 2059:50?

5 A Uh-huh. (Affirmative).

6 Q So, we're seven minutes into the stop.

7 Okay. At 2105, five minutes into the stop you've said
8 we're gonna give you a warning, right?

9 Is that fairly closely there?

10 A Yes, sir.

11 Q Okay. And at this time, 2107, you are still holding
12 that warning in your hand writing it to him, right?

13 A Yes, sir.

14 Q Okay. All right. 2107:25. All right. Let's watch
15 the last few seconds here, and I'm not sure what you got to
16 say. I can't understand you. All right. You maybe can
17 help us out.

18 Okay. Now, the ticket, you have it before you, or that
19 warning, you've signed that -- you issued that at 2107, is
20 that correct?

21 A That's what I got on here, yes, sir.

22 Q Okay. And would that be pursuant to this or your time
23 you were keeping on your watch?

24 A Possibly be my watch time at the time if I got a watch
25 on. I'm not sure. watch or cell phone.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. So, I think we determined earlier that you said
2 it was around 2107 prior to pulling him over when actually
3 it was 2059. So, we're about eight minutes off.

4 would that be accurate?

5 A At or around.

6 Q Okay. So, really you couldn't have had the ticket
7 written eight minutes earlier because you were in the, in
8 the very premature stages of the stop, right?

9 A Yes, sir.

10 Q Okay. But that ticket indicates he, that warning was
11 written at 2107 at sometime, right?

12 A Yes, sir.

13 Q Okay. Here -- okay. Still no writing.

14 All right. These last few seconds you didn't write
15 anything. So, evidently the, the citation's done.

16 All right. So, almost eight minutes into the stop, is
17 that right, about right?

18 A Yes, sir.

19 Q Okay. And would you agree with my assessment of that
20 citation that you're looking at, there is a total of nine
21 words on that citation, right?

22 A Actual words, yeah.

23 Q Okay. So, nine words and consisting of 58 letters, ten
24 numerals, consisting of 50 digits, five dashes, and one
25 check mark.

D.G. Wilson - Direct examination
by Mr. Thompson

1 A You want me to count them all?

2 Q Well, I mean does that sound fairly accurate just from
3 looking at the ticket. You can count if you'd like.

4 A Around about.

5 Q Okay. You didn't put a dot or a period after D.G. or
6 dot the I in Wilson.

7 All right. So---

8 SOLICITOR MCCARTY: Your Honor, I'm gonna object to
9 this line of questioning.

10 MR. THOMPSON: Here---

11 SOLICITOR MCCARTY: I don't know where we're going
12 exactly with whether or not he dotted the I in his last name
13 on the issuance of the citation.

14 THE COURT: I think Mr. Thompson is trying to
15 demonstrate that maybe the traffic stop took too long, but
16 this presentation is also taking too long. Let's get to the
17 point.

18 MR. THOMPSON: Okay.

19 Q Officer---

20 SOLICITOR MCCARTY: Thank you.

21 Q ---you are gonna try to tell this Court it takes you
22 over seven minutes to write this little bit of information
23 on that ticket?

24 A Yes, sir, and I still have not heard back from dispatch
25 yet.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. Well, you've heard enough. You've got the
2 ticket written at 2107.

3 That's what you have on the ticket, right?

4 A That's what I put on it for the time, yes, sir.

5 Q All right. So, right now, at 2107:27, what do you --
6 what's in your mind right now?

7 Where are you going with this stop?

8 A I wouldn't say that the warning is complete at this
9 time. I think, at this point, I got to go back to my car to
10 look at my GPS unit to get the degree coordinates off of it.

11 Q Meaning what?

12 A Where you see the lat and long?

13 Q Longitude and latitude.

14 A I got to put lat and long on there.

15 Q Okay. But you don't dispute it's 2107 when it's
16 written, right?

17 A That's on the warning.

18 Q Okay. And the writing of a warning doesn't take near
19 as long as the ticket, right?

20 You would---

21 A All depends.

22 Q You wouldn't disagree with me if I've got case law that
23 says that, would you?

24 A Probably not. I don't know.

25 Q Okay. All right. Now, right here you're going to the

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 car for the latitude and longitude, right?
- 2 A I don't, I don't recall. I don't, I don't know. It's
- 3 possible.
- 4 Q All right. Hearing from dispatch yet?
- 5 A I don't recall hearing them over the radio.
- 6 Q Okay. Did you hear that?
- 7 A I said something.
- 8 Q Do you recall what you said?
- 9 A Can you play it back for me one more time?
- 10 Any unit near 62 north.
- 11 Q Okay. Any unit near 62 north means any unit near 62
- 12 mile marker north, right?
- 13 A Yes, sir.
- 14 Q Okay. You're calling another car in?
- 15 A I'm seeing who, who is close.
- 16 Q Okay.
- 17 A Closer.
- 18 Q Okay. And for what reason?
- 19 A As previously stated, I called another unit prior to
- 20 this after my second approach to the vehicle and no one is
- 21 still yet arrived.
- 22 Q Okay. So, you're -- when did -- you called it when?
- 23 A Right before he stepped out of the vehicle.
- 24 Q Did you put that in your narrative?
- 25 A Give me just a moment please.

D.G. Wilson - Direct examination
by Mr. Thompson

1 (Pause.)

2 A No, sir.

3 Q Okay. In fact, you, you put in here, in your, in your
4 narrative, Mr. Falls appeared to have placed an object under
5 the seat before getting out.

6 Now, is that when you're saying you called another
7 unit?

8 A Yes, sir.

9 Q Okay. And that was around the time right when you got
10 him out of the car, right?

11 A Yes, sir.

12 Q That was around 2104:37.

13 Okay. And right thereafter you informed him he'd be
14 getting a warning ticket, correct?

15 A Right.

16 Q So, really you didn't call another officer?

17 A I radioed for someone, yes, sir.

18 MR. THOMPSON: Your Honor, you mind if I run it back
19 and if we can clarify that?

20 THE COURT: You're -- you may -- let me ask you, how
21 much longer do we think we're gonna go?

22 I've got a question from the other jury I've got to
23 deal with.

24 MR. THOMPSON: Okay.

25 THE COURT: That's the reason I'm asking. I'm not

1 trying to shorten your presentation.

2 MR. THOMPSON: Maybe another---

3 THE COURT: What I'm trying to do is just manage the
4 courtroom.

5 MR. THOMPSON: Thirty minutes---

6 THE COURT: Okay.

7 MR. THOMPSON: ---to an hour maybe.

8 THE COURT: Okay. Well, what we're probably going to
9 end up doing at this point in time is I'm gonna probably
10 adjourn this. I don't know if you fellows have had lunch
11 yet.

12 Have you?

13 So, we're gonna let everybody go to lunch and then
14 we'll come back and start over on this.

15 MR. THOMPSON: Okay.

16 THE COURT: So, we're gonna call a recess. Be back in
17 about an hour. That will be about ten minutes till 3:00,
18 and we should be in a position then to resume at that point
19 in time.

20 Court's in recess in this case right now.

21 MR. THOMPSON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Officer, let me caution you that you're in the middle
24 of your testimony and you should not discuss your testimony
25 with anyone during the break.

1 Do you understand that?

2 WITNESS: Yes, sir.

3 SOLICITOR McCARTY: I do need to speak with Trooper
4 Wilson regarding any possible accommodations they may need
5 tonight.

6 THE COURT: Oh, I understand that. I said not his
7 testimony. You can talk about his sleeping accommodations.
8 That's fine with me.

9 (WHEREUPON, Court was in recess for the lunch hour.)

10 THE COURT: While we're waiting on that, can I get the
11 attorneys in the next case to come up, Mr. McCarty, Mr.
12 Thompson?

13 (WHEREUPON, a bench conference was held out of the
14 hearing of the jury at this time.)

15 THE COURT: All right. Mr. McCarty is in the
16 courtroom. If you gentlemen will step up to counsel table.
17 I'm gonna get that jury in and send them home for the
18 evening. We'll need to get the defendant in the courtroom.

19 (WHEREUPON, the defendant comes into the courtroom at
20 this time.)

21 THE COURT: Bring them in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: Ladies and gentlemen, as I indicated to you
25 earlier, we are, we are in the midst of pretrial matters

1 still in this case. Rather than make you stay any longer,
2 I'm just going to excuse you for the afternoon. I'll ask
3 that you be back in the jury room at nine o'clock in the
4 morning. We should of taken care of those matters by then,
5 and be in a position to start at that time. I apologize for
6 any inconvenience, but this is taking a little bit longer
7 than I thought it would, and rather than having you sit back
8 there this afternoon we'll release you at this time.

9 Now, the jury room you'll be reporting to is the one
10 right outside of the door. The bailiffs will show you where
11 to come to in the morning, nine o'clock. My instructions
12 concerning your activities outside of the courtroom
13 continue. You're free to go at this time. Thank you very
14 much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Trooper, if you'll resume the
18 stand. Let's get the TV up and rolling because I'm sure
19 we're still into that.

20 CONTINUED DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Trooper, I want to -- please the Court, are you ready?

23 THE COURT: Beg your pardon?

24 MR. THOMPSON: Are you ready?

25 THE COURT: Yes, sir, we're on the record anytime you

D.G. Wilson - Direct examination
by Mr. Thompson

1 want to start.

2 Q Trooper, when we left I think we were discussing the
3 fact that you, it was 2107, and you were returning to the
4 patrol car for the longitudes and latitudes for coordinates
5 for the event, is that correct?

6 Does that sound about right?

7 A Yes, sir.

8 Q Okay. And -- okay. At this point you said that you
9 went over the part that he had rented the vehicle and he
10 stated he rented it on Valentine's Day, that his car was in
11 the repair shop, is that correct?

12 A Yes, sir.

13 Q And then he was returning the rental the following day,
14 right?

15 A Yes, sir.

16 Q All right. You next stated that Mr. Falls began
17 nervously licking his lips as they began to turn white.

18 All right. Now, is this when you were in the car or
19 outside the car?

20 A While I was standing there having a conversation.

21 Q And this -- your testimony this gentleman's lips turned
22 white?

23 A Yes, sir, let me call it cotton mouth.

24 Q Okay. And his lips turned white.

25 Now, he starts hearing and the light's flashing on him

D.G. Wilson - Direct examination
by Mr. Thompson

1 and everything.

2 Is then when you're talking about his lips---

3 A During that entire time that I was standing outside the
4 car talking to him.

5 Q The whole time. You returned to the car.

6 Now, right there you say you called any unit to that
7 mile marker, right?

8 A I was calling for the next closest unit. I had called
9 for a unit way prior to this.

10 Q Okay. And you said that was when you went back to the
11 car the first time?

12 A Right before he got out, yes, sir.

13 Q Okay. So, this is another call for another unit.

14 So, at the time you made that first call, why were you
15 calling that other car?

16 A Cause I, as I stated earlier, he -- it appeared that he
17 placed something under his seat.

18 Q So, at that time then you determined that his car was
19 gonna be searched?

20 A No, sir.

21 Q Okay. So, you just---

22 A It was at that time I was concerned he may have some
23 weapons or something in his vehicle.

24 Q Okay. And then you radioed back for, again, is what,
25 is your statement now.

D.G. Wilson - Direct examination
by Mr. Thompson

1 In that for the same reason?

2 A Well, I guess I was calling to see where my backup unit
3 was.

4 Q Okay. All right. Putting his wallet back in his
5 pocket there, right?

6 A Yes, sir.

7 Q Okay. So, it was his wallet in his hand throughout.
8 Look up the road for your backup, right?

9 All right. What -- why is he not being given a ticket
10 at this time?

11 A If you recall, when I walked back up there, I told him
12 I needed to finish filling this out. It's not complete yet.

13 Q So, you still had not finished writing the ticket
14 after---

15 A No, sir.

16 Q ---almost ten minutes into the stop?

17 A Yes, sir.

18 Q Okay.

19 A If you'd like me to explain that I could.

20 Q Okay. Well, I'll let---

21 THE COURT: Wait a second. Wait a second. He has a
22 right to explain his answer.

23 Go ahead.

24 A As you see there, obviously your client's having some
25 trouble understanding me and I'm having some trouble

D.G. Wilson - Direct examination
by Mr. Thompson

1 understanding him cause I'm having to stop and pause and try
2 to listen to what he's saying and try to listen to the story
3 that he's telling me too. You know, wrap my head around
4 what he's telling me, and having a hard time hearing what
5 he's saying and understanding him.

6 Q Okay. And that's why you keep writing and not writing
7 and kind of going back and forth between writing the ticket
8 and not writing the ticket?

9 A well, he's talking to me. I don't want to disrespect
10 him and not pay him any attention. I want to let him know
11 I'm hearing what he's saying.

12 Q Okay. Okay. Right here you indicated you wanted him
13 to drive careful, you wanted him to be safe out there,
14 right?

15 A Yes, sir.

16 Q And you put the warning in his hand, did you not?

17 A Yes, sir.

18 Q Okay. And at that time you asked him for permission to
19 search your car, right?

20 A Correct.

21 Q His car?

22 A Yes, sir.

23 Q Okay. And -- okay. Now, so, you are done.

24 As far as this improper lane usage goes, this stop is
25 over, is it not?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A No, sir.

2 Q It's not. So, you're---

3 A No, sir.

4 Q ---still investigating the improper lane.

5 Is that what you're telling the Court?

6 A Oh, the improper lane usage?

7 Q Yes.

8 A I'm issuing him the warning.

9 Q Okay. So, at that point this -- at the point, this
10 point, is it -- the stop is over as far as that issue's
11 concerned, right?

12 A Once you receive the warning, yes, sir.

13 Q Okay. So, you put it in his hand and he, and he
14 doesn't want you to search the car. So, you pulled it back,
15 correct?

16 A He had one side of it and I had one side, yes, sir.

17 Q Okay. And you wound up with it, right?

18 A With it back I think so, yes, sir.

19 Q Okay. And his license aren't -- they aren't with this
20 ticket here, is it?

21 You already returned his license?

22 A I'm not sure.

23 Q Okay. And I want to go over those statements about
24 wanting him to be safe.

25 All right. Make sure you drive careful.

D.G. Wilson - Direct examination
by Mr. Thompson

1 So, he's good to go, right?

2 A Almost.

3 Q Almost.

4 Okay. Okay. Then you want to search his car. He
5 doesn't let you search his car.

6 Are you telling the Court that his refusing to let you
7 search the car gives you reasonable suspicion to search the
8 car?

9 A He did not right, outright refuse to search it. If you
10 want me to go over what he said I'll---

11 Q well, here -- right here. Okay. Then we'll -- all
12 right. What did he say right there?

13 A He said if I said no then can I leave.

14 Q Right.

15 And, so, he wants -- and do you remember your response?

16 A Not exactly. Probably something---

17 Q What did you say right there?

18 A I have a K-9 officer coming.

19 Q Okay. Now, didn't you testify earlier that you called
20 any unit?

21 A I don't remember his call number at the time, but Lance
22 Corporal English was my partner that -- well, me and him was
23 working in the same area that night. He's the gentleman
24 that I called and I knew he was in route. That's why I said
25 I got, I had a K-9 coming.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. You understand my problem with you saying that
2 you called any unit, and now you're telling the Court you
3 specifically called Mr. English with a dog?

4 You understand what my problem is with that?

5 A There were some delay in him responding I guess and I
6 said I called to see if they had another unit closer.

7 Q I'm pretty sure you said I'm asking for any unit in the
8 area at 2107 when you returned to your car.

9 A I called for a K-9.

10 Q So, now you're, you're indicating it wasn't
11 specifically for a K-9?

12 A I called Lance Corporal English.

13 Q At 2107? 

14 A Lance Corporal English.

15 Q Okay. And his leaving is contingent upon that K-9
16 searching, going around the car, correct?

17 A No, sir.

18 Q It's not?

19 A At that point I had no, no idea he was gonna refuse to
20 search or not consent to search.

21 Q Okay. Well, you know it now when you're telling him
22 the car's on the way with a K-9, right?

23 A It should be momentarily.

24 Q Okay. And he's not allowed to leave until that dog
25 goes around the car, correct?

D.G. Wilson - Direct examination
by Mr. Thompson

1 A I'm, I'm not exactly sure what you're asking.

2 Q I'm asking you was he free to walk in there and get in
3 that car and take off and leave right now after he said if I
4 say no can I leave?

5 A No, sir. No, sir.

6 Q He was not?

7 A No, sir.

8 Q Okay. So, you admit -- now -- and here's where I need
9 to go with this.

10 Are you -- do you, do you consider this a second
11 separate detainment of Mr. Falls or is this one continuous?

12 SOLICITOR MCCARTY: Your Honor, I'm gonna object.

13 That's a -- detainment, that's a legal conclusion that the
14 judge, in this case being the fact finder in the suppression
15 hearing, would have to determine. He's asking the trooper
16 to make a determination whether he finds it was legally a
17 second detention at the time. The trooper's testifying this
18 is what happened during the course of the stop as he
19 participated in it and what he's testifying to. Mr.
20 Thompson's asking him to draw a legal conclusion as to
21 whether or not a second detainment---

22 THE COURT: Oh, I understand the objection.

23 Mr. Thompson.

24 MR. THOMPSON: My point is, Your Honor, he's
25 testified -- I said is the stop over. He said almost. So,

D.G. Wilson - Direct examination
by Mr. Thompson

1 he can testify to whether he's detaining him anew based upon
2 his---

3 THE COURT: I'll allow the question. Go ahead.

4 Q Okay. would you consider this right here the end of
5 the first stop for the ticket and the initiation of the
6 second stop based upon his refusal to allow him to search?

7 A It was all one stop in my mind.

8 Q All one stop in your mind?

9 A Yes, sir.

10 Q Okay. And let's continue.

11 All right. what did you say there?

12 A I said I had a K-9 coming, I'm gonna run the dog around
13 the car, and if the dog alerts I won't need his permission I
14 think. I'm not sure, exactly sure if that's what I said
15 then.

16 Q Okay. All right. You told him that he's done nothing.
17 That means he's done nothing wrong, right?

18 A I told him -- he said he didn't do anything, and I told
19 him, I say, I didn't say you did anything.

20 Q Okay. So, you -- were you basically -- were you
21 agreeing with him or what's that statement mean?

22 A Well, let's see where we're at. 2111. In the past 15
23 minutes that I spoke with your client I developed some
24 suspicions, you know, totality of what he was said, what
25 I've seen, what I heard, that led, led me to believe I was

D.G. Wilson - Direct examination
by Mr. Thompson

1 gonna search your client's vehicle.

2 Q Okay. But didn't you tell me earlier that you called
3 backup within the first three or four minutes of the stop?

4 A I thought that may be some type of weapon or something
5 in the vehicle.

6 Q Okay. And do you -- so, do you -- is it your -- do you
7 normally search a car when you see someone make a, a
8 movement in the seat?

9 A Yes, sir.

10 Q Always?

11 A I want to know what they're hiding, yes, sir.

12 Q Okay.

13 A It's not normal that I stop people and I see them
14 reaching under the seat.

15 Q Okay.

16 A That's not normal.

17 Q Well, how many times -- didn't he ask you several times
18 about a hat?

19 A He wanted to get his hat?

20 Q Right.

21 A Yes, sir.

22 Q All right.

23 A He asked me once.

24 Q And where did you find the hat?

25 A It may have been in the front seat. I'm not sure.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. Or maybe in the console, I mean in the
2 floorboard of the front seat.

3 A I don't recall.

4 Q Okay.

5 A I don't think so.

6 Q So, had you made your mind up that that car was being
7 searched within the first three or four minutes of this stop
8 based upon that movement where he looked or appeared to have
9 put something under the seat?

10 A In the first three or four minutes I knew that
11 something wasn't quite right with that vehicle, yes, sir.

12 Q Okay. Well then that really runs contrary to your
13 statement about totality of the circumstances then, doesn't
14 it, because---

15 A No, sir.

16 Q ---there was several minutes when---

17 A After seeing that and then hearing everything else that
18 he said, the story, that wasn't plausible. I mean---

19 Q Okay. Well, what---

20 A One and one wasn't equaling two.

21 Q Well, what wasn't plausible about his story?

22 A If you'll give me just a moment. First of all, the
23 fact that he's gonna get off work and drive to Atlanta just
24 to meet with his brother-in-law and talk about a
25 conversation he could of had over the phone.

D.G. Wilson - Direct examination
by Mr. Thompson

- 1 Q Okay. That was his cousin, wasn't it?
- 2 A Let's see who he was. Yes, cousin.
- 3 Q Okay. Did you ask him if he worked that day?
- 4 A Yes.
- 5 Q Did he have on a work uniform?
- 6 A He did.
- 7 Q Does he have on a work uniform today apparently?
- 8 A I don't know what kind of shirt that is. I think
- 9 that's a work shirt. I don't know.
- 10 Q Okay. Did he tell you that he left from Charlotte?
- 11 THE COURT: Sir, you can be seated.
- 12 Go ahead.
- 13 A Did he tell me he left from Charlotte?
- 14 Q Yes, he's from Charlotte and said he worked that day,
- 15 right?
- 16 A I'm not exactly sure where he said he was coming from.
- 17 Q Okay. About midway through my page here.
- 18 A Page 1 or 2?
- 19 Q Yes, sir, Page 1. Mr. Falls stated yes when you asked
- 20 him if he worked.
- 21 A Okay.
- 22 Q Okay. And then you advised him you thought he was
- 23 coming from his house in Atlanta and he said he did. Okay.
- 24 A Coming from his cousin's house in Atlanta.
- 25 Q In Atlanta.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Okay. So, you're a highway patrolman, correct?

2 A Yes, sir.

3 Q How many years you been on the force?

4 A Patrol nine years.

5 Q Okay. So, if I leave from Charlotte to Atlanta, if he
6 leaves at 12:00, he'll likely be there by 4:00, 4:30, if the
7 traffic, normal traffic, is that about right?

8 A I guess.

9 Q Maybe even sooner.

10 Okay. Then did he tell you that he hung out with his
11 cousin for a few hours?

12 About halfway down Page 2. Trooper Wilson asked
13 Mr. Falls what he and his cousin did while in Atlanta.
14 Mr. Falls stated that they hung out with some girls and
15 stuff like that. He asked if they went anywhere and they
16 just shot the breeze and then he came back because he had
17 something to do and even -- is that right?

18 A Give me just a second to catch up with you here.

19 Is that the same report I got here?

20 Q I'm not sure.

21 A I don't think so.

22 Q You're on Page 1. I'm on Page 2. I'm sorry. I think
23 you're on Page 1.

24 A Oh, just hung out, just hung out with some girls and
25 stuff like that.

D.G. Wilson - Direct examination
by Mr. Thompson

1 Q Okay. So, he, he even indicated that he, the exit was
2 240 in Atlanta, right?

3 A He believes.

4 Q Okay. And, so, it's not -- I mean it's very possible
5 to leave Charlotte at 12:00, go to Atlanta, hang out a few
6 hours, and then be right back in Spartanburg at nine o'clock
7 at night, isn't it?

8 I mean that timeline's up fairly well, doesn't it?

9 A My question at that time was why.

10 Q Was why?

11 A Yeah.

12 Q Why?

13 A Why.

14 Q He went to---

15 A Yes, sir.

16 Q ---to go hang out with his cousin.

17 A I mean it wasn't so much what he said, how he said it,
18 hesitating as if he was fabricating or trying to create a
19 story.

20 Q Okay. And didn't you testify earlier that you were
21 having trouble hearing, he was having trouble hearing you,
22 there was a communication barrier due to the traffic and the
23 noise?

24 A Yes, sir.

25 Q Okay. And, in fact, that hindered your ability to

D.G. Wilson - Direct examination
by Mr. Thompson

1 write that warning according to your testimony, right?

2 A It delayed it, yes, sir.

3 Q Okay. So, you would, you would agree with me that his
4 timeline leaving Charlotte at 12:00, which is an hour from
5 Spartanburg, Atlanta is about three hours, he could be there
6 between three and four hours in Atlanta, hang out a few
7 hours, leave and come back through Spartanburg, and that
8 timeline would be fairly accurate, would it not?

9 A Well, he would of went there, turned around, came right
10 back to be back at 9:00, yes, sir. He wouldn't have hung
11 out that long.

12 Q It's Spartanburg now. He's not back in Charlotte.
13 He's in Spartanburg. So, be three hours away.

14 So, he could hang out till 6:00, right?

15 A I guess.

16 Q Okay. So, that story lined up and the story, the Avis
17 Car Rental, those documents proved that he was right on the
18 money with that. He rented it on the 14th. It was to be
19 back on the 21st, correct?

20 A Yes, sir.

21 Q Okay. And what other things, as far as the totality of
22 the circumstances, led you to believe something was amiss
23 here?

24 A His nervousness. Like I said, getting cotton, cotton
25 mouth. I've never had anybody ask me for some water or not

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by Mr. Thompson

1 being able to talk, his mouth constantly sticking together,
2 and trembling, having a nervous look.

3 Q Okay. And you -- so, you and I would disagree. I
4 don't think he looks nervous on the tape.

5 A We would disagree.

6 Q But you say he does?

7 A I've stopped thousands of cars and he don't fit with
8 the normal motoring public.

9 Q Okay. And I think you testified earlier that it's
10 quite natural for someone to be nervous when they get pulled
11 over?

12 A Initially.

13 Q Initially?

14 A Yes, sir.

15 Q Okay. And then you, you indicated he was shaking when
16 he handed you his license, correct?

17 A Yes, sir.

18 Q There's no shaking in this video that I can see.
19 Did you detect any?

20 A Well, we all, we all saw where he was unsteady on his
21 feet, where he had to lean on my vehicle.

22 Q Okay. Well, didn't you give him permission to lean on
23 the vehicle?

24 A I don't recall if I did or not.

25 Q Okay. Would you not consider -- but you didn't

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by Mr. Thompson

1 consider any field sobriety tests or anything like that?

2 I mean he wasn't unsteady on his feet, was he?

3 A After speaking with him initially it wasn't my concern
4 that he was under the influence. Most likely fatigued.

5 Q Okay. So, he's tired, coming down the road, and you
6 don't -- it's not necessarily what he told you, but how he
7 told you is what you got a problem with, correct?

8 A Like I said, his nervous behavior, his story. It just
9 didn't make sense.

10 Q Okay. Now, you would admit that Atlanta's got a lot of
11 places to go visit, right?

12 A Yes, in Atlanta. It's also a source, source city for
13 drugs.

14 Q Well, I mean so it's every road up and down 85 and 95,
15 isn't it?

16 But, but you would agree with my assessment that, that
17 you know there's places to hang out there, right?

18 A I'm sorry?

19 Q You, you'd agree with my, my opinion that there's
20 several places to hang out, as he put it, in Atlanta?

21 A Yes, especially if you want to purchase drugs.

22 Q Okay. I don't.

23 But now, as we go through here, explain to me once
24 more, you -- did you call Officer English the first time you
25 summons the police officer, a backup?

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by Mr. Thompson

1 A We changed call numbers several times, but I want to
2 think that that was his call number that I was calling.

3 Q So, you can -- so, you can, you can specify who you
4 call, but did the tape not say any unit?

5 Didn't you say it said any unit, but now you're saying
6 you specifically called him?

7 A You talking about the second time?

8 Q Yes.

9 A I don't remember.

10 Q The first time, do you know if you called him or not?

11 A That was his call number that I called---

12 Q Okay.

13 A ---that I recall.

14 Q And then the second time you specifically asked for a
15 dog again, right?

16 A No, sir.

17 Q All right. Now, at the point when the, the refusal
18 comes in, when he says you can't search his car, I'm trying
19 to understand what you're saying here to him.

20 Okay. Did you actually say if the dog doesn't hit I
21 won't need to search?

22 A I think what I'm saying if the dog refused, he don't
23 consent to my search, I can't search the car.

24 Q So -- right.

25 But you conditioned his leaving on the dog, right?

D.G. Wilson - Direct examination
by Mr. Thompson

1 I thought you maybe stated it in the negative. Let me
2 hear it one more time.

3 Could you understand that?

4 A I said if the dog does not alert I won't need a search.

5 Q Okay. All right. I'm just trying to clarify that.

6 All right. Your Honor, the remainder of it is the
7 search, and you may want to view it. I don't know. We can
8 watch the whole thing.

9 THE COURT: Only if you think that's important to the
10 motions that you've made.

11 MR. THOMPSON: I think as far as these two that I'm
12 working, but on the stop being improper and the detention
13 being prolonged and the scope of the stop---

14 THE COURT: Well, I'm looking at the five grounds in
15 your motion. One was that -- first was that he was not
16 authorized to act in Spartanburg County, and we've already
17 dealt with that.

18 Second was the traffic stop employed by the officer was
19 improper. We've talked about the purpose for the stop.

20 Third is the defendant was unlawfully detained, and I
21 assume you're talking about detained longer than was
22 necessary for the traffic stop.

23 MR. THOMPSON: And that's where I was. Kind of both of
24 those motions tread on whether the Court determines it's one
25 detention or two.

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by Mr. Thompson

1 THE COURT: And the defendant's automobile was
2 illegally searched. That may have to do with the search.
3 I'm not sure exactly what grounds you're saying that was
4 done on, and then, finally, subsequent seizure of the
5 defendant, of the defendant lacked reasonable suspicion.

6 MR. THOMPSON: That would be where we see the buy is.

7 THE COURT: Beg your pardon?

8 MR. THOMPSON: That would be where, in the event we
9 consider one stop over, and then there's -- I mean one
10 detainment has ended and a new detainment---

11 THE COURT: Okay. I don't know that I need to watch
12 the search for any of those motions.

13 MR. THOMPSON: Okay.

14 THE COURT: If you think I do -- I don't know what --
15 you've seen this tape. I haven't. So, I don't know what's
16 down the road. So, you tell me if you think I do.

17 SOLICITOR McCARTY: I can inform the Court just
18 timeline wise. If you, if you're looking at the time stamp
19 there on the right-hand side, 2113:42.

20 THE COURT: 2113:42.

21 SOLICITOR McCARTY: Trooper English actually comes into
22 scene on, if I back up one page, 2113:28. So, about forty
23 or fifty seconds from now Trooper English actually arrives
24 on scene you see. He may of arrived a few seconds earlier,
25 but he actually gets into the camera angle where you can see

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by Mr. Thompson

1 him. K-9 sniff actually begins at 2114:18. The search of
2 the vehicle, the hand search, once the K-9 alerts, lasts
3 approximately four more minutes and 12 seconds before the
4 cocaine's discovered.

5 THE COURT: Okay.

6 MR. THOMPSON: I mean I -- I'd rather watch it just to,
7 but and---

8 THE COURT: Well, I'd like to get all these motions
9 heard today. We're about an hour from five o'clock.

10 SOLICITOR McCARTY: Unless he's contesting the dog, I
11 don't think there's anything further.

12 THE COURT: And I'm sure the State's gonna want to ask
13 some questions.

14 MR. THOMPSON: Okay. Well, as far as my motions go I
15 think we've covered it.

16 THE COURT: Okay.

17 MR. THOMPSON: Thank you.

18 THE COURT: All right. Mr. McCarty, your witness then.

19 SOLICITOR McCARTY: May it please the Court?

20 THE COURT: Yes, sir.

21 SOLICITOR McCARTY: I'll try and watch what we can real
22 quick. I'm sorry I'm gonna have to go back over the tape,
23 Your Honor.

24 THE COURT: It's okay.

25 CROSS-EXAMINATION

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 BY SOLICITOR MCCARTY:

2 Q Trooper Wilson, I'm looking at the date on this,
3 February 20th, 2007, am I right?

4 A Yes, sir.

5 Q So, at this point we're more than four years old?

6 A Yes, sir.

7 Q Okay. You're trying to remember the best you can off
8 your incident report as well as having this video to use to
9 refresh your recollection, am I correct?

10 A Yes.

11 Q Okay. Do you recall verbatim what was said on here?

12 A Not word-for-word, no, sir.

13 Q All right. And there are times when there's other
14 traffic on the roadway, the microphone itself is muffled.

15 You're having to take your best guess sometimes as to
16 what was said, am I correct?

17 A Yes, sir.

18 Q I want to talk about one Mr. Thompson talked about. I
19 think I can agree with him and maybe you'll agree with me
20 too.

21 The defendant informed you he left Charlotte around
22 noon that day, the day you stopped him, on the 20th of
23 September or 20th of February 2007 to head to Atlanta?

24 A (Witness nods affirmatively.)

25 Q Approximately four hours down there. He said he stayed

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by Solicitor McCarty

1 a couple hours. He's on his way back. That's probably
2 about nine hours. If he stays two hours -- four hours down.
3 If he stays two, that's six o'clock, makes his way back,
4 he's in Spartanburg by about nine o'clock is about where
5 we're at. I think we're okay in saying that.

6 Is it necessarily the fact that you can make that trip
7 in nine hours that caused you any moment of pause or concern
8 when you talked with this defendant or was there something
9 else about that response or that storyline that caused you
10 to pay more attention or requesting what was being said?

11 A Yes, it was more the response than the story.

12 Q And why, why -- what about a short travel time or a
13 time with a short turnaround time would cause suspicion in
14 your mind?

15 A Again, first of all, with the normal motoring public
16 doesn't just make a turnaround trip, and the fact he was
17 going to visit his cousin, had to call him to meet him,
18 didn't know exactly where he lived. Once he got to Atlanta
19 he had called and find someone to meet. Through my training
20 and experience, we see that commonly with drug, drug
21 transactions.

22 Q And your training and experience, if you'll just touch
23 on that briefly, you said you are a member of the Aggressive
24 Criminal Enforcement Team, the A.C.E. Team with the Highway
25 Patrol.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Does that receive any type of other specialized traffic
2 interdiction training, drug source training beyond what you
3 might receive at the police academy?

4 A Yes, sir.

5 Q What, what all would it entail please?

6 A Desert Snow, which is a national school that I attended
7 in I think it was Las Vegas. We also have an A.C.E. school
8 that we teach through the academy, Criminal Justice Academy
9 here in South Carolina. Plus National Crime Enforcement
10 Association, N.C.E.A.

11 Q In fact, N.C.E.A had its U.S. conference for the winter
12 conference in Spartanburg this past year, am I right?

13 A Yes.

14 Q Did you attend that?

15 A Yes, sir, and several other different drug seminars and
16 conferences.

17 Q All right, sir. And in those seminars and conferences
18 and further trainings, you're taught about things like drug
19 source cities, am I correct?

20 A Yes, sir.

21 Q You're taught about certain indicators, both verbal and
22 physical, that a motorist or someone you encounter might
23 exhibit, am I correct?

24 A Yes.

25 Q So, you do have a basis of knowledge for that type of,

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by Solicitor McCarty

1 of what you're looking for, am I correct?

2 A Yes, sir.

3 Q So, what may be innocuous to me, with no formal
4 training, might be, because of your training and experience,
5 something you key off on, am I correct?

6 A That's correct.

7 Q I'm gonna have to do -- we're gonna -- I just want to
8 start back at the beginning because I want to, based on
9 those types of things you've learned, I want to go through a
10 few points on this with you and go through and ask what you
11 may have seen at a specific moment. Go all the way back
12 here.

13 All right. I want to stop right there. We're
14 approximately -- we're not even a full minute into the stop
15 yet at this point.

16 Tell me what you knew about this car as you approached
17 it.

18 It was a North Carolina tag, am I correct?

19 A Yes, sir.

20 Q When you approached the vehicle you learned it was
21 occupied one time with one motorist, am I correct?

22 A Yes, sir.

23 Q Mr. Falls, when he pulled over, he maintained his
24 vehicle position pretty close to that white fog line nearest
25 the interstate, am I correct?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A That's correct.

2 Q Caused you to have to do a passenger side approach to
3 the vehicle?

4 A That's correct.

5 Q Was there anything suspicious or out of the norm about
6 that?

7 A In our training, we're taught that the vehicles will
8 sometimes call, what we call white line meaning they pull to
9 the white line just so they keep us away from that side of
10 the vehicle.

11 Q Okay. Just so they put some distance between
12 themselves and you?

13 A Yes, sir.

14 Q Now, when you walk up and you talk to him and you say
15 how are you doing, sir, is there anything you noticed about
16 the defendant or about the vehicle or the interior of the
17 vehicle itself that, because of your training and
18 experience, maybe caught your eye whereas maybe if I had
19 approached him it may not have caught my eye?

20 A Well, first of all, for that to be a rental and for
21 someone traveling, the vehicle was unusually clean meaning
22 the exterior and the interior was clean. Immaculate.

23 Q So -- but in and of itself, somebody could keep a very
24 clean vehicle?

25 A Yes, sir.

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by Solicitor McCarty

1 Q But did it look lived in or driven in?

2 A No, sir.

3 Q So, pretty spotless?

4 A Yes, sir.

5 Q And you later learned he said he had the car at that
6 point for almost seven days?

7 A Yes.

8 Q Six to seven days?

9 A Yes, sir.

10 Q Okay. Did you notice any items in the vehicle like
11 luggage or bags, anything like that, in the back seat or in
12 the passenger's seat?

13 A There was nothing inside the vehicle.

14 Q And the defendant's dress, you stated you thought he
15 was wearing what appeared to be a work uniform, am I
16 correct?

17 A Yes, sir.

18 Q Okay. When you talked to him you said, I believe you
19 said I'm just checking in on you. You're driving a little
20 slow. I believe that's what Mr. Thompson said. I believe
21 that's what you may of said there. The defendant replied he
22 had some type of sinus problem, am I correct?

23 A That's correct.

24 Q Possibly, possibly looking for an exit to pull over at?

25 A That's correct.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q Did he advise you whether or not, where he was coming
2 from, what he was doing at that point?

3 A He stated he was just getting off work, stated that he
4 was coming from Atlanta.

5 Q Okay. So, you got a North Carolina car, pretty clean
6 on the interior, and now he tells you he's coming from what
7 you know from your training and experience to be a source
8 city. Again, nothing particularly unusual. I mean my
9 brother-in-law and sister-in-law live in Atlanta. I come
10 back from their house quite often.

11 But to you, based on your training and experience,
12 these were things that you began to look at to add together
13 for the whole pieces of the puzzle, am I correct?

14 A Yes, sir.

15 Q All right.

16 MR. THOMPSON: Your Honor, I know it's cross, but the
17 questions are almost like the solicitor's testifying here.
18 If you could---

19 THE COURT: Well, it is cross.

20 MR. THOMPSON: I understand that, but pretty lengthy
21 and---

22 SOLICITOR McCARTY: He has the chance to deny it or, or
23 disagree with me.

24 THE COURT: Well, let's try, let's try not to testify
25 for him. But you're on cross-examination, and people are

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 allowed to lead on cross-examination.

2 SOLICITOR MCCARTY: Thank you, Your Honor.

3 Q Did you indicate -- you indicated with Mr. Thompson
4 about the defendant's nervousness, am I correct?

5 A Yes, sir.

6 Q What about his nervousness caused you any concern or
7 suspicion?

8 A Well, when he passed me his driver's license and the
9 rental agreement his hands were shaking uncontrollably.

10 Q Was it more so than what you encountered with the
11 average motorist?

12 A Yes, sir, I could visually see the papers shaking in
13 his hand.

14 Q And he had papers cause he had a rental agreement, am I
15 right?

16 A Yes, sir.

17 Q This is just real quick. I'll fast-forward a little
18 bit here, and you tell him to pull up a little bit to get
19 out of that guardrail situation, is that right?

20 A Yes, sir, for safety reasons, of course.

21 Q Now, right there you're on your mic on your shoulder.
22 Can you see that on the video?

23 A Yes, sir.

24 Q You seem to be saying something. It sound or may -- do
25 you recall approximately what you said?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A Radioing Lance Corporal English.

2 Q This is the point at which we're talking about the
3 initial contact with Trooper English?

4 A Yes, sir.

5 Q And that occurs at 2104:10 on the video, am I correct?

6 A Yes, sir.

7 Q Right here at 2104:29 in the video you've asked the
8 defendant to step back with you, step out of the vehicle so
9 you can talk to him. I see you step back. It appears that
10 he places your flashlight up under you arm.

11 Am I correct?

12 A Yes, sir.

13 Q What's going on here?

14 What's going on at that moment in the video here?

15 A Well, at this point, like I said, I seen him make a
16 movement under the seat. I don't know what he got in the
17 vehicle at this point, and I want to separate him from the
18 vehicle and whatever it is that's---

19 Q Are you getting on your mic as he's getting out?

20 A Yes, sir.

21 Q For---

22 A And calling, calling out and trying to get in touch
23 with Lance Corporal English, English.

24 Q Okay. Right there at that part of the video you, you
25 initially tell the defendant you're just gonna write him a

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 warning ticket. He then responds with something.

2 Did you ask him a question?

3 A Well, initially when, when he got back there I told him
4 I was gonna write him a warning seeing he was already
5 nervous. Generally people are nervous when you pull them
6 over. But after finding out why they're being stopped and
7 is gonna receive a warning, the nervousness just started to
8 come down, and, again, at this point I don't know if he's
9 carrying any weapons. I just want to make him feel at ease
10 until my backup gets there.

11 Q You saw him reach under the car prior, reaching up
12 under around the seat area---

13 A Yes, sir.

14 Q ---before getting out.

15 This kind of chatter with you, is that indicative of
16 anything based on your training and experience?

17 A For people to just come out and just start, you know,
18 telling their life story so to speak or just start talking
19 without being asked a question, being overly friendly, trying
20 to take control of the traffic stop.

21 Q As you've been trained and taught, that's an indicator
22 of nervousness, am I correct?

23 A Yes, sir.

24 Q Trooper Wilson, you go on through the course of the
25 next little bit in the video and I believe you met the

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 defendant about working that day and whether or not he
2 worked, am I correct?

3 A Yes, sir.

4 Q Do you recall what type of responses he gave to any of
5 those in response to did you work today?

6 A He told me that he did work, and that he owned some
7 type of wrecker service or something like that.

8 Q Okay. Did you confront him about what appeared to be a
9 discrepancy in his story about coming from a house in
10 Atlanta or coming from Atlanta?

11 A Yes, sir.

12 Q At this point were you concerned that there may be an
13 inconsistency in his story?

14 A Yes, again, it appeared that he was trying to put, put
15 a story together as we were talking.

16 Q Which a normal motorist would know exactly what they've
17 been doing?

18 A Especially within that short period of time.

19 Q I want to go forward about 15 seconds in this video and
20 pause it again. Right there. You asked him how long he was
21 in Atlanta.

22 what type of response did that elicit from the
23 defendant when you asked him that question?

24 A He had to pause for a second to think about it, and---

25 MR. THOMPSON: Your Honor, I'm gonna -- he can't

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 testify what my client was thinking.

2 SOLICITOR MCCARTY: Oh, it's absolutely on the video,
3 Your Honor. There's two seconds where his client just would
4 not at all---

5 MR. THOMPSON: He can testify to what---

6 THE COURT: Don't both talk at the same time.

7 MR. THOMPSON: All right.

8 THE COURT: Go ahead, Mr. Thompson.

9 MR. THOMPSON: I'm just saying he can't testify to
10 what's in my client's mind. He can testify that he paused.
11 But he can't testify to what he was, what his mind, what was
12 on his mind.

13 Q Trooper Wilson, did the defendant pause before he gave
14 a response to that answer?

15 A There was hesitation in his response.

16 Q Did he -- so, he didn't immediately -- I'm sorry, Mrs.
17 Reeves.

18 He didn't immediately respond to that answer, did he?

19 A No, sir.

20 Q He had to think about it possibly, am I correct?

21 A Yes, sir.

22 Q Okay. You had learned previously that he had been at
23 what he described as his cousin's house, am I correct?

24 A That's correct.

25 Q Do you recall asking what his cousin's name was?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A I do.

2 Q And do you recall, when you asked him initially what
3 his cousin's name was, what type of response was elicited
4 from the defendant?

5 A Again, it was a hesitation with a huh, his name is
6 Black, last name Black.

7 Q Did he ever mention in here -- and I think -- let's
8 watch for a second.

9 He talks about something about a birthday party, am I
10 correct?

11 A Yes, when I was asking him about his cousin's name,
12 that's when he ignored that question and said well, his
13 cousin was really gonna have a birthday party. I'm sorry.

14 Q Is ignoring a direct question by an officer, again, one
15 of those indicator type things that you been taught or
16 trained on as a cue to look for in somebody's developing a
17 pattern in a story?

18 A Yes, sir.

19 Q So, would you say this is a non-responsive answer to
20 your question?

21 A Yes, sir.

22 Q Did you ask him at all about the birthday party or a
23 party that may of been planned?

24 A I did not.

25 Q But he ended up telling you that the party was the

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 following week, am I correct?

2 A That's correct.

3 Q Did you ask him why he went so early?

4 A Yes, sir, I asked him why he went to Atlanta so early
5 and he stated that his cousin just told him to come, come
6 and check him out.

7 Q At this point, based on the story that the defendant
8 has given you, does it seem like a common sense style travel
9 plan to you?

10 A No, sir, not to work all day and then just go check my
11 cousin out for a couple hours.

12 Q And just to talk about a birthday party?

13 A Correct.

14 Q A birthday party is something we can usually conduct
15 business over the phone about, am I correct?

16 A Yes, sir.

17 Q Did the defendant indicate to you that he had gone down
18 there to sign any contracts for a rental hall or a bounce
19 house for whatever for a party?

20 A No, sir.

21 Q Sign any contracts with a DJ or somebody, a caterer,
22 anything like that?

23 A No, sir.

24 Q He only indicated to you it was just to talk about it,
25 am I correct?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A That's correct.

2 Q So, nothing to you that indicated that he would require
3 his physical presence in Atlanta for that conversation?

4 A No, sir.

5 Q Play it forward a few seconds more.

6 Right there approximately 2106:10 or 2109:09, if I
7 recall the video correct, you asked the defendant where's
8 this Antwan or Antwan Black live at in Atlanta.

9 Do you recall asking that question?

10 A Yes, sir, and, again, there was a long hesitation.

11 Q I'm sorry?

12 A He hesitated again before responding.

13 Q Hesitated again before responding.

14 When you were speaking with the defendant, did you
15 notice anything or did he maintain eye contact with you or
16 did he look away before he responded to these questions?

17 You may not recall. I'm just asking if you recalled.

18 A No, sir.

19 Q Okay. Fair enough. It was a little more than four
20 years ago.

21 Did you inquire as to whether or not Mr. Falls, the
22 defendant, had been to Atlanta before?

23 A Yes, I asked him how many trips he had made down
24 previously.

25 Q And what do you recall his response to be?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A I think he said he'd been down there three times prior.

2 Q Did he indicate with anymore specificity, in those
3 three trips, where his cousin lived at in Atlanta?

4 A He did not.

5 Q Again, is this something that's triggering in your head
6 as to a story that's not adding up?

7 A Yes, sir.

8 Q Are you, at this point, do you believe the defendant is
9 possibly being deceptive with you with regard to his travel
10 plans and itinerary?

11 A Very much so.

12 Q If we fast forward a little bit in through here just to
13 speed it up.

14 You did ask him about having a rental car, am I
15 correct?

16 A Yes, sir.

17 Q And as we've learned with Mr. Thompson he had that
18 rental car, like I said, for approximately six or seven days
19 prior to this stop?

20 A Yes, sir, Mr. Falls, yes, sir.

21 Q Oh, I'm sorry. Mr. Falls had this.

22 The defendant had a pretty clean rental car for six
23 days prior to you making a stop on him that night. Here in
24 just a moment you return back to your cruiser. Right here
25 you return back to your cruiser.

D.G. Wilson - Cross-examination
by Solicitor McCarty

- 1 Now, you stated, once you'd returned back there, that
2 the defendant asked you a question, am I correct?
3 Let me back it up. Maybe you've not heard it.
4 A Yes.
5 Q The defendant asked you for a water?
6 A Yes, sir.
7 Q Nine o'clock at night, am I right?
8 A Yes, sir.
9 Q You've been a trooper for nine years?
10 A Yes, sir.
11 Q How long with the A.C.E. Team?
12 A At least six, five, six.
13 Q You estimated you've done over a thousand traffic stops
14 in that period of time?
15 A Easily.
16 Q In a thousand traffic stops, how many times has someone
17 ever asked you for water?
18 A That was a first.
19 Q You indicated to Mr. Thompson, when he asked the
20 question that the defendant appeared to be licking his lips,
21 is that correct?
22 A Yes, sir, cotton mouth.
23 Q Had what you thought to be cotton mouth?
24 A Yes, sir.
25 Q Cotton mouth is just dry mouth, am I correct?

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 A Yes, sir.

2 Q What about cotton mouth or having a dry mouth will
3 cause anybody to be suspicious?

4 A Through my training and experience and doing public
5 speaking, you're nervous and your mouth get dry.

6 Q Okay. So, right here this is an indication of
7 nervousness to you?

8 A Yes, sir.

9 Q And we're approximately seven and a half to eight
10 minutes into this traffic stop?

11 A Yes, sir.

12 Q Okay. While you were inside of your cruiser -- this is
13 the point where Mr. Thompson is asking you, at that point,
14 probably -- at some point in here you called for any
15 additional unit in the area of Mile Marker 62 northbound, am
16 I correct?

17 A Yes, sir.

18 Q Having previously radioed for your other A.C.E. Team
19 member, Steven English, am I correct?

20 A Yes, sir.

21 Q All right. Let me ask you real quick too about Mile
22 Marker 62. You've been in Spartanburg a few times.

23 Mile Marker 62 northbound, at Mile Marker 63, that's
24 the exit for Duncan, am I correct, the Duncan exit off of
25 I-85?

D.G. Wilson - Cross-examination
by Solicitor McCarty

- 1 A I believe it is, yes, sir.
- 2 Q Highway 290?
- 3 A Yes, sir.
- 4 Q Okay. Are you familiar with that exit?
- 5 Have you ever stopped at it before?
- 6 A I may of been there for some gas or something.
- 7 Q Okay. So, there's gas stations there, am I correct?
- 8 A Yes, sir.
- 9 Q Other businesses probably at that exit?
- 10 A I think a couple restaurants maybe.
- 11 Q Okay. So, right adjacent to the interstate, do you
- 12 recall?
- 13 A Very close.
- 14 Q Okay. So, when Mr. Thompson asked you earlier about
- 15 these nine lights, you're driving up the interstate, the
- 16 interstate on 85 is a part of the corridor of 85, are there
- 17 woods on each side of the interstate?
- 18 A Yes, sir.
- 19 Q Okay. So, it's not open pasture land and field land
- 20 through there, am I correct?
- 21 A Correct.
- 22 Q It's at nine o'clock at night. You had your lights on
- 23 obviously. It appears that most of the other motorists on
- 24 the interstate had their lights on.
- 25 A Yes, sir.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q would it probably be safe in assuming that a business
2 like a gas station might have its lights on?

3 A Yes, sir.

4 Q We're in February of 2007 at nine o'clock at night?

5 A Yes, sir.

6 Q Is it possible that those nine other motorists that
7 were possibly stopped out there could of been off in the
8 distance as we saw, is it possible, the lights from those
9 businesses at Exit 63 Highway 290 in Duncan, South Carolina?

10 A I'm sorry. Say that --

11 Q well, when he talks about following the defendant up
12 the road, are you following the defendant up the road to the
13 point of the second stop, he pointed to all those lights off
14 in distance and said to you that those were other law
15 enforcement officers or highway patrolmen that were pulling
16 another motorist over.

17 I'm asking you, those lights off in the distance, was
18 it also possible that those could have been gas station
19 lights, restaurant lights, something like that, at the next
20 exit up?

21 A Yes, sir, that could of been passing vehicles passing
22 by other vehicles making the lights flicker.

23 Q And even if it was nine separate traffic stops out
24 there on Interstate 85 and what appears to be the southbound
25 lane, do you have any control over how other motorists drive

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 and what traffic infractions that may occur, do you?

2 A No, sir.

3 Q Okay. Trooper, when you get back in the car here, and
4 I'm to go back that far, but when you get back in the car
5 here and you radioed for another unit to come and assist you
6 at this point, you've seen the defendant reach under the
7 seat. We don't know what he's got. He may have a weapon or
8 hidden a weapon in the car or even on his person.

9 Did you observe the defendant's behavior while you were
10 in your cruiser and he was out in front of you?

11 A Yes, sir. While I was sitting in my car I was watching
12 him also. I seen he was still licking his lips and
13 constantly kept looking back towards his vehicle.

14 Q Looking back at his vehicle?

15 A Yes, sir.

16 Q And throughout all this, even to the point where we
17 informed him that a K-9 is coming, he keeps asking to go
18 back and get a hat out of his vehicle, am I correct?

19 A Yes, sir.

20 Q Are you gonna allow him to walk up to that vehicle and
21 retrieve a hat by himself?

22 A No, sir.

23 Q Why not?

24 A That's officer's safety.

25 Q Exactly.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 You don't know what he put under the seat, do you?

2 A I do not.

3 Q Could of been a gun, am I right?

4 A Absolutely.

5 Q And you don't know where that hat was located?

6 A No, sir.

7 Q Did he tell you the hat was in the back seat?

8 A No, sir.

9 Q Did he tell you the hat was under the front driver's
10 seat?

11 A No, sir.

12 Q Okay. After you get back out with the defendant here,
13 and I'll fast forward again just a little bit to speed it
14 up, looking back, looking back, looking back, you're back
15 out here talking with him again about this citation
16 possibly. I believe at that point, at 2109:52, if I am
17 correct, you stated to the defendant where did you meet him
18 at, and I think you're referencing his cousin, am I correct?

19 A Yes, sir.

20 Q Was the defendant's response to that question
21 immediate?

22 A No, sir, he again pondered for an answer for a few
23 seconds.

24 Q And did he -- once he committed to an answer to you,
25 was it affirmative or did he even have like he was searching

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 for that once he responded to you?

2 A He was searching for it and he stated Exit 240 he
3 believe.

4 Q So, he wasn't even sure which exit it was?

5 A Correct.

6 Q Been to Atlanta three times, his cousin lived down
7 there, had just been there a couple hours earlier.

8 You asked him did you go to his house.

9 What was his response, the defendant's response?

10 A I couldn't -- he stated no.

11 Q And we're talking approximately 2110 in the video.

12 Did you ask him then where did they go once he met his
13 cousin?

14 A Yes, I asked him did they just stay beside the highway
15 and talk and he stated yes.

16 Q Did that make sense to you that someone would drive to
17 Atlanta from Charlotte, spend a couple hours on the side of
18 the road at possibly Exit 240, speak with a relative, and
19 then drive all the way back to Charlotte that evening?

20 A If they were gonna meet, the cousin could of drove just
21 halfway and just meet him to cut his travel time in half.

22 Q So---

23 A Didn't make sense.

24 Q Didn't add up to you?

25 A No, sir.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q Okay. And, again, even at this point here did you feel
2 like the defendant was being dishonest with you?

3 A Absolutely.

4 Q And here in about five seconds we get to you tell him
5 that he's fatigued and he might want to pull over.

6 Did you hear that?

7 A Yes, sir.

8 Q And then it looks like Mr. Falls right here is
9 continuing on with the conversation with you, am I correct?

10 A Yes, sir.

11 Q Explaining to you about the trucks and the problem he
12 had with his vision, am I right?

13 A Yes.

14 Q And that was at 2110:49 on the tape?

15 A (Witness nods affirmatively.)

16 Q From the moment of the stop -- and it seems like with
17 this traffic stop, as we been talking about the video and
18 going through, it lasted two and a half hours. Let me do my
19 calculation and see if I'm right.

20 But from the initial stop to the point where this
21 warning ticket was explained, ten minutes 53 seconds, am I
22 correct, or thereabouts?

23 A Yes, sir.

24 Q Ten minutes and 53 seconds from the time you get him
25 actually stopped on the roadside, comes to a complete stop

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 next to that guardrail to here, is ten minutes an average or
2 within your average amount of time for your normal traffic
3 stop given the situation which you have here?

4 A Yes, I would say that's about average.

5 Q How would you -- an average traffic stop, with nothing
6 else going on with it, you pull somebody over, you say hey,
7 just be careful as you're driving, be on your way, how long
8 would you estimate that traffic stop to take?

9 A Guesstimating about, depends on the speed of dispatch,
10 five to seven minutes.

11 Q So, we're not even that far outside of that normal
12 routine for you and we've got all this other stuff going on
13 with the defendant, you walk up to him, North Carolina tag,
14 am I correct?

15 A Yes, sir.

16 Q Tells you he's coming from Atlanta. You learn that he
17 made a down and back trip in one day.

18 Am I right?

19 A Yes, sir.

20 Q You also learn from him that he's visited his cousin,
21 am I correct?

22 A Yes, sir.

23 Q And was he able to immediately tell you what his
24 cousin's full name was?

25 A Was not.

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 Q He told you his last name first, am I correct?

2 A Correct.

3 Q Told you his last name was Black?

4 A Black.

5 Q You had to ask what his name was, right?

6 A That's correct.

7 Q You then learn, as you speak with him during this ten
8 minute 53 second stop with, as I may recall, as I may state,
9 there's a point there which when you have initially pulled
10 him over you ask him to move beyond the guardrail for your
11 safety and his safety for this traffic stop. So, we still
12 have to go beyond that to do that, am I correct?

13 A Yes, sir.

14 Q But upon your initial approach to that vehicle,
15 initially when you get up on, on that guardrail, clean
16 looking car, unusually clean given that it's a rental, and
17 as we know, he's had it for six days, rental car -- is there
18 anything about rental cars that in and of themselves would,
19 based on your training and experience, cause some suspicion
20 in your mind?

21 A Yes, sir, people involved in criminal activity won't
22 use their own vehicle for fear of it being seized. They
23 normally rent cars.

24 Q So, that -- let's just fast forward a good bit here.

25 This car was actually seized that night, am I correct,

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 and turned back over to Avis?

2 A Yes, it was towed.

3 Q But had been, this been Mr. Falls or let's say this was
4 me in this situation, my personal vehicle, it would of been
5 towed, put in impound that night, am I correct?

6 A Very well possible, yes, sir.

7 Q Very well possible.

8 And that's a normal part of procedure for forfeiture of
9 assets when you're running drugs on the interstate or
10 anywhere, am I correct?

11 A Yes, sir.

12 Q All right. He tells you he's coming from a source
13 city.

14 when you walk up on a car, you call for that additional
15 unit because you have seen what?

16 A An unusual, an unusual action in the vehicle by him.

17 Q And what is that unusual action?

18 A Reaching under the seat.

19 Q Okay. You ask him to get out of the seat, out of the
20 car and talk to you.

21 In the course of that conversation as you're writing
22 the ticket to him, citation to him, as he's talking to you,
23 you pause to look and respond to him, am I correct?

24 A Yes, sir.

25 Q And you stated to Mr. Thompson that's just because you

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 didn't want to be disrespectful, is that correct?

2 A Wanted to make sure I was understanding and hearing
3 what he was saying.

4 Q And, in fact, as we watch this whole video, this ten
5 minutes and 55 seconds, there's times here where you have to
6 ask him to repeat himself because a truck goes by or
7 Interstate 85 is just loud, am I correct?

8 A Yes, sir, and lean into him to hear him.

9 Q Let me ask you about the driver's license check. You
10 first called it in when you came in, and I think you called
11 it in about 2101:33 into the video. I mean you called North
12 Carolina 3-6-0-7-1-9.

13 During the whole course of this, did the license ever
14 come back to you, any confirmation to you as to whether or
15 not it was under suspension, it was clear, anything like
16 that while you're speaking with him outside of the vehicle?

17 A I don't recall.

18 Q Okay. So, you're still waiting for that action to
19 occur during all of this?

20 A Yes.

21 Q Okay. Called a K-9 unit because you yourself had
22 suspicions about something possibly criminal afoot here in
23 this vehicle, am I correct?

24 A Yes, sir.

25 SOLICITOR MCCARTY: All right. May I have just one

D.G. Wilson - Cross-examination
by Solicitor McCarty

1 moment, Your Honor?

2 THE COURT: Yes, sir.

3 (Pause.)

4 SOLICITOR McCARTY: Your Honor, I think that's all the
5 further questions I have for Trooper Wilson. Thank you.

6 THE COURT: Redirect?

7 MR. THOMPSON: Please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Trooper Wilson, with all of these suspicions you got,
12 you just gonna give the guy a warning and let him go?

13 A At least for the purposes of why we're here today to
14 make sure I had a strong case, sir.

15 Q Well, what was, what was to make sure you had a strong
16 case?

17 A Listening to his story.

18 Q Going fishing for evidence?

19 A I wouldn't call it fishing, sir.

20 Q Huh?

21 A No, sir.

22 Q Okay. Well, you called -- you say you called for that
23 backup immediately, 2109, 2104 or so, right?

24 A Yes, sir.

25 Q At that point it was determined he would be searched.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 So, really your totality of the circumstances argument
2 goes out the window right there, doesn't it?

3 A No, sir, and if you care for me to explain I will.

4 Q Love to.

5 A Okay. December the 12th -- 27th of 2003 I was
6 involved in a shooting. When he went to reach under the
7 seat I was in fear of my safety.

8 Q Okay. This guy didn't shoot you, did he?

9 A No, sir.

10 Q Okay. And---

11 A I wasn't gonna give him the opportunity.

12 Q Okay. And you're -- Officer English, he searched that
13 car thoroughly, didn't he?

14 Tore out the back seat, ripped open a door, didn't he?

15 A I think that's a question you need to ask Lance
16 Corporal English on that.

17 Q Well, you sat there and watched him, didn't you?

18 A I watched Mr. Falls. That's my job as backup.

19 Q Okay. And what did, what did Officer English bring you
20 out of that car?

21 A I want to say he brought the plastic bag with the
22 9-ounces of cocaine in it.

23 Q Okay. And where did he say he found that?

24 A Driver's side door panel.

25 Q Okay. What did he tell you he found under the seat?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A I don't recall.

2 Q Didn't find anything under the seat, did he?

3 A Don't recall.

4 Q Huh?

5 A Don't recall.

6 Q Okay. All this I don't recall, I don't remember, I
7 can't, you can't understand what Mr. Falls is telling you,
8 he tells you it's a wrecker, you think he's talking about a
9 wrecker, another kind of wrecker, wouldn't that be
10 indicators that somebody's nervous and on drugs from your
11 training?

12 A No, sir, that's just an indication that was four years
13 ago.

14 Q Okay. So, he -- so, it's okay for you to hesitate and
15 stumble through your conversation, but if he does it it
16 means he's guilty of trafficking in drugs and needed to be
17 searched?

18 Is that what you're telling the Court?

19 A No, if it happened nine hours ago I'd have a better
20 memory of it.

21 Q Okay. Now, you go back and call for another backup,
22 right?

23 A I call for a unit on the radio.

24 Q Okay. And that being done, you, you call for that
25 backup.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Now, you've already, you've already determined that,
2 that car was gonna be searched when you made that first
3 call, right?

4 A I was gonna find out what he was placing under his
5 seat, yes, sir.

6 Q Okay. And, so, at that point, when you determined that
7 that search was gonna happen, you knew you had a black male
8 driver, you had a North Carolina license plate, a rental car
9 coming from Atlanta?

10 That's all you knew, is that right?

11 A I knew that his story didn't make a lick of sense.

12 Q He's not started in on his story at the point you
13 called that first time, had he not?

14 All, all you had asked him was a couple of questions,
15 did you work today, where were you coming from?

16 I think that's all.

17 A Okay. At that point I knew he was extremely nervous.

18 Q Okay. And nervousness?

19 A Yes, sir.

20 Q Okay. And your indication that we are shaking
21 profusely, that's not backed up by what we see on the tape,
22 is it?

23 A I don't know if you see it. I saw it.

24 Q Okay. Can you -- if I -- I hate to turn that tape on
25 again, but can you tell -- does it show up on the tape where

D.G. Wilson - Redirect examination
by Mr. Thompson

1 he's supposedly went under the seat?

2 A I don't, I don't guess you can see it.

3 Q You -- so, you could see it, but the camera couldn't
4 see it?

5 Is that your testimony?

6 A I was standing right there at the passenger window.

7 Q And that's when you saw him go?

8 A Yes, sir.

9 Q So he just, right in front of you, just went under his
10 seat?

11 A As I was approaching the passenger side, yes, sir.

12 Q Okay. And with that going on, at various points, you
13 know, you turn your back to him, do you not?

14 A I think I kept a pretty good eye on him.

15 Q Well, I mean there's times in that tape when your back
16 was to him and you're getting in the car or that type of
17 thing.

18 A And, again, at that point he was removed from the
19 vehicle, from whatever he was placing under that seat---

20 Q Okay.

21 A ---or in that area.

22 Q You didn't suspect a gun on his person then?

23 A I suspected whatever he had pushed under the seat.

24 Q Okay. Now, you answered a lot of questions that
25 Mr. McCarty asked you, and I'm gonna go over some of these,

D.G. Wilson - Redirect examination
by Mr. Thompson

1 those things.

2 You, you testified you told Ryan McCarty that you
3 didn't, his story wasn't adding up, right?

4 A No, sir.

5 Q Did you testify to me earlier that it wasn't what he
6 was saying but how he was saying it?

7 A I think I said that it wasn't so much in what he was
8 saying but how he was saying it.

9 Q You did say that, but now you're saying it was what he
10 was saying.

11 Is that what you're telling the Court?

12 A It's a combination of all things.

13 Q The truth is you're on Rolling Thunder, and you pull
14 somebody over, that truck, that car's getting searched if
15 it's a black person's, especially in a rental car, isn't
16 that correct?

17 A Absolutely not.

18 Q And he -- Mr. McCarty harps on that clean car,
19 unusually clean car.

20 All right. It's February 20th at nine o'clock,
21 right?

22 Right?

23 A Yes, sir.

24 Q Do you recall when that that Avis rental agreement said
25 that car had to be back?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A When it had to be back?

2 Q Yes.

3 A The 21st.

4 Q Okay. So, would it make sense that he's gonna take it
5 back nasty and dirty or would he take it back clean?

6 SOLICITOR MCCARTY: Objection, Your Honor. That's
7 gonna call for speculation.

8 THE COURT: Sustained.

9 Q If you're taking a car back to somebody, are you gonna
10 take it back nasty or clean?

11 SOLICITOR MCCARTY: Objection, Your Honor. That calls
12 for opinion. On that point it's not material.

13 THE COURT: He's asking what he would do. I'll allow
14 it.

15 A I wouldn't clean it 24 hours to return it. I'd
16 probably clean it on my way to taking it back and fuel it up
17 and all that stuff. That's what I normally do.

18 Q Okay.

19 A If I had to clean it out.

20 Q Do you rent cars?

21 A Sometimes.

22 Q Okay. So, stands to reason people rent cars, right?

23 A Yes, sir.

24 Q So -- let's say -- I drive an old pickup. Let's say I
25 want to go to Atlanta and watch the Braves play. I rent a

D.G. Wilson - Redirect examination
by Mr. Thompson

1 car and I go watch the Braves play, and then I'm gonna shoot
2 up here to Charlotte to watch a race.

3 Okay. Your, by your analysis, if you pull me over,
4 you're gonna suspect I'm carrying drugs, right?

5 A No, sir, cause you probably gonna have some Braves
6 stuff in there, paraphernalia, some drinks, some fast food
7 wrappers, or whatnot in there.

8 Q All right. I'm pretty cheap. So, I might not.

9 But, but that's, that's the way your analysis, your
10 analysis goes in this case, right?

11 A Totality of the circumstances.

12 Q So, that's that you're basing your argument on is
13 totality of the circumstances?

14 A Yes, sir.

15 Q But you've already, you're already -- so, really, the
16 only -- those circumstances are limited to the fact that you
17 got a rental car, from North Carolina, and he's coming from
18 Atlanta, right, because then -- cause you, you called for
19 the guy that searched the car right then?

20 That's all you knew about this situation, right?

21 A No, sir.

22 Q What else did you know at that time?

23 A I did call for a search of the car at that time. I
24 called for an officer because Mr. Falls was reaching under
25 his seat.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Q Did you not tell me earlier that you, that it was to
2 search that car for that purpose?

3 A If I did, that wasn't my intent that you took it that
4 way.

5 Q Did you not testify that once you called on that
6 shoulder speaker, whatever it is, okay, you called that
7 backup and you told this Court that it was your intention to
8 search that car?

9 A I think I said I wanted to find out what he placed
10 under the seat.

11 Q Okay. well, that would be to search the car then,
12 wouldn't it?

13 Now, in your training and your experience, is a K-9
14 gonna find a gun or a knife in a car?

15 Is he gonna alert to that?

16 A If they're trained on it.

17 Q If they're trained on it.

18 A Yes, sir.

19 Q All right. So, you sent out a call to Officer
20 English's dog because, cause he's trained for that or do you
21 remember?

22 A I'm sorry. Say that again.

23 Q You, you called Officer English's dog.

24 Is he trained to, to find guns and knives or do you
25 know?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A I'd have to speculate, but I don't think he is.

2 Q Okay. Now, I'm not gonna turn that tape back on, but
3 are you alleging, or I know he alluded to it, that he pulled
4 up close to the white line to keep you from coming to the
5 driver's side door.

6 A That's a tactic that's used.

7 Q But you're not saying my client did that?

8 A I can't think for your client.

9 Q Okay. But you can think for -- you can look at the
10 tape and say it, and see that he's -- now right there he
11 couldn't of got much closer to that guardrail, could he?

12 A I could of got a little bit closer.

13 Q He could of got a little bit closer.

14 Okay. So, that's one of those tactics you're trained
15 to see that -- over here you went -- you approached the, the
16 passenger side again. In fact, he gets off the pavement
17 when he pulls over the next time, doesn't he?

18 A Well, you'll see me pull over farther and then he pulls
19 over a little bit more. If you want me to assume I guess
20 cause I pulled over farther. I don't know.

21 Q Okay. So, your, your testimony is he could of gotten a
22 little closer to that guardrail I guess, right?

23 A (No response.)

24 Q All right. Now, you called that officer right here at
25 2104. You called him, specifically call him, Officer

D.G. Wilson - Redirect examination
by Mr. Thompson

- 1 English, right here, is that correct?
- 2 Right here in just a second.
- 3 A It's part of the -- you want me to explain it?
- 4 I'm sorry.
- 5 Q Well -- all right. At that point had you, had you seen
- 6 him hide the or go under the seat allegedly?
- 7 A As I was approaching, yes, sir. As soon as I got right
- 8 to the back passenger glass.
- 9 Q Now, right there you're summonings Officer English,
- 10 right?
- 11 A I was calling him just prior to that. I don't know if
- 12 he was responding to what.
- 13 Q Then you tell my client at 2104 he's gonna be getting a
- 14 warning, right?
- 15 A Yes, sir.
- 16 Q And all this training and these classes and things you
- 17 go to, have they had an occasion to tell you anything about
- 18 the dog arriving while you write a ticket?
- 19 A Yes, sir.
- 20 Q Okay. What have they told you?
- 21 A Well, I tell you what I know. It's if a dog arrives, a
- 22 dog -- if one is on the scene and unavailable, they can do a
- 23 free air sniff.
- 24 Is that what you're alluding to?
- 25 Q Okay. While you're writing the ticket, right?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A They can, while I'm conducting business.

2 Q Okay. You know that. You knew that before on, right
3 here at this stop, didn't you?

4 A If it's in my mind I guess I had knowledge of it.

5 Q Okay. So -- and that's why your pen's dancing around
6 with that warning, and those nine words that you wrote took
7 11 minutes, isn't it?

8 A No, sir, I was listening to your client.

9 Q I, I -- you're waiting on that dog to get there so you
10 can have that free air sniff to give you probable cause to
11 search the car, are you not?

12 A Not at all. If I was waiting on that I would of never
13 asked him to search the car.

14 Q Well---

15 A I would of just went straight---

16 THE COURT: Now, Mr. Thompson---

17 MR. THOMPSON: I'm sorry.

18 THE COURT: ---I've given you a lot of latitude.

19 You're on direct. You've been asking a lot of argumentative
20 questions. I've let it go on and on and on.

21 MR. THOMPSON: All right.

22 THE COURT: I know what the argument's gonna be I
23 think. Now, if there's something new I would be more than
24 happy to hear it.

25 MR. THOMPSON: Well---

D.G. Wilson - Redirect examination
by Mr. Thompson

1 THE COURT: I think we've covered a lot of this already
2 on direct. If it's something new that came out on, on the
3 cross by Mr. McCarty, you certainly have the right to do
4 that on redirect. But now we're getting into simply
5 argumentative question after argumentative question, and I'm
6 gonna have to call time on that.

7 MR. THOMPSON: Yes, sir, Your Honor.

8 THE COURT: Thank you.

9 Q All right. You went into the, the -- you said he told
10 your, his life story to you and he was overly friendly or
11 you agreed with that.

12 A That's, that's not exactly how I said that.

13 Q Okay. How did you say that?

14 A I believe I said that when they're trying to take over
15 the conversation, they tell you their life story, start
16 rambling on about something you didn't ask them about,
17 something to that effect.

18 Q All right. So, did he tell you stuff you didn't ask
19 about or did he not answer your questions or did you ask
20 him---

21 A He ignored---

22 Q ---or did you testify to that too?

23 A Well, I know on one specific example he ignored the
24 question and started talking about something I didn't even
25 ask him.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Q And you went into and -- Mr. McCarty hit on this. He
2 asked you about riding up there to talk about a birthday
3 party, and that could of been done on the phone, right?

4 A Sure.

5 Q You said well, they could of met half way, right?

6 A Sure.

7 Q Okay. Mr. McCarty didn't allude to the fact that they
8 met and hung out with girls, did he?

9 A No, he didn't, but if you want me to get exactly to
10 what he said there I'll try to find that in my notes here.

11 SOLICITOR MCCARTY: well, Your Honor, I would just
12 object to this point. I believe that this was asked
13 originally on the direct. I believe Trooper Wilson did.
14 testify that the defendant had indicated that they hung out
15 and talked with girls and stuff like that I believe is one
16 of the quotes he said if I may be phrasing incorrectly, but
17 I believe that's what he said previously. I would agree
18 that he did testify to that earlier.

19 THE COURT: Okay, sir.

20 MR. THOMPSON: And my, my next question would go into
21 that.

22 THE COURT: Sure.

23 MR. THOMPSON: Okay.

24 Q And, trooper, it's about half way down, but he's, he's
25 clarified that. Okay. And through your experience you

D.G. Wilson - Redirect examination
by Mr. Thompson

1 can't, you can't hang out -- it's not suppose, much fun to
2 hang out with girls on the phone as it is in person, is it?

3 SOLICITOR MCCARTY: Your Honor, I object. That calls
4 for speculation there too.

5 MR. THOMPSON: Withdrawn, Your Honor.

6 THE COURT: Thank you.

7 Q Okay. But you would agree that the cousin wasn't the
8 only person he met with in Atlanta, correct, according to
9 his statement?

10 A I'm not even sure he met with the cousin.

11 Q According to what he told you, correct?

12 A Yes, sir.

13 Q Okay. And you stated that the water was a big deal,
14 asking for the water, right, and I think you described it as
15 cotton mouth, is that right?

16 A Cotton mouth, yes, sir.

17 Q What is cotton mouth?

18 A Dry mouth.

19 Q Dry mouth.

20 A Mouth becomes clammy.

21 Q When I was in college we got cotton mouth because we
22 got, drank too much beer the night before.

23 You ever heard of cotton mouth?

24 SOLICITOR MCCARTY: Your Honor, I'm gonna object to
25 this. This is just not even covering any new ground here.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 MR. THOMPSON: Well, Your Honor, he's trying to show
2 cotton mouth is a specific cause, nervousness. I'm trying
3 to show---

4 THE COURT: Well, the Court will take judicial notice
5 of the fact that cotton mouth can have several causes. You
6 certainly have the right to argue that when we do our
7 argument.

8 MR. THOMPSON: Right.

9 THE COURT: I don't know that, again, this is an
10 argumentative, argumentative question that you're asking.
11 The time for argument's coming I hope.

12 Q Okay. And then you basically said that he put
13 something, you saw him go under the seat, and it could of
14 been a weapon, right?

15 A I don't know what it was. It could of been anything.

16 Q All right. And then, and then -- you, to your
17 knowledge, nothing was recovered under the seat, right?

18 A No, sir.

19 Q Okay. And you testified your normal stop time is ten
20 to eleven minutes, correct?

21 A Five to seven.

22 Q Five to seven minutes.

23 Okay. And this one went on for maybe 12 minutes, close
24 to 12 minutes, right?

25 A Ten, twelve.

D.G. Wilson - Redirect examination
by Mr. Thompson

1 Q Okay. And you said that because of all the other stuff
2 going on.

3 What other stuff are you talking about?

4 A Like we had to reposition our vehicles. Mr. Falls
5 talking, not being able to understand what he was saying,
6 you know, just the conversations that we were having.

7 Q All right. And those conversations were initiated by
8 the 16 questions you asked him, right?

9 A Not all of them.

10 Q Huh?

11 A Not all of them.

12 Q Well, but I would be accurate that you did fire about
13 16 questions at him?

14 A I didn't count them. I'm not, I'm not sure, no.

15 Q Okay. And then I think you told him on the -- when Mr.
16 McCarty played the tape again, you said let me explain this
17 warning, no points, no fine, correct?

18 A I believe that's what I said.

19 Q Okay. And then you don't deny that you withheld that
20 ticket because you were waiting on that dog, right?

21 A I was waiting on his response.

22 Q Whose response?

23 A Mr. Falls.

24 Q So, if he had said well -- but he said no.

25 Then what, then what would, were you thinking?

D.G. Wilson - Redirect examination
by Mr. Thompson

1 A I'm sorry?

2 Q What was your -- what's your response?

3 If he says no, then what are you thinking?

4 A Then I just reach -- he had it like this and I just
5 pulled it back.

6 Q You pulled it back?

7 A Yes, sir.

8 Q Okay. So, his receiving permission to leave was
9 contingent upon that dog going, going around the car,
10 correct?

11 A When I told him good to go, he was good to go, I'm sure
12 he had in his mind that he was free to go.

13 Q Okay. And you, you told him he was good to go, right?

14 A Right.

15 Q And the only---

16 A He asked if he was good to go.

17 Q Okay. And you admit he was good to go until he told
18 you no, right?

19 A I'm not sure where you're going with that.

20 Q Well, you said -- you told him he was good to go and
21 you're sure that's what he's thinking, right?

22 You didn't just say that?

23 A Yes.

24 Q Okay. And he said no, and, therefore, you pulled back
25 the ticket and he was not allowed to leave, right?

D.G. Wilson - Redirect examination
by Mr. Thompson

- 1 A Right.
- 2 Q Okay. So, did his, his saying no, did that create more
- 3 reasonable suspicion for you to hold him?
- 4 A He was gonna stay anyway.
- 5 Q He was gonna stay anyway?
- 6 A Yes, sir.
- 7 Q Okay. So, you were gonna pat him on the back, say have
- 8 a nice day, but not let him leave?
- 9 A I was gonna search his car. He could of left.
- 10 Q Okay. So, the purpose for your original stop had, is
- 11 ended a long time ago then, right?
- 12 A No, sir.
- 13 Q The fog line violation?
- 14 A what you call a long time ago?
- 15 Q well, about 11 -- I mean 2104 when you called your
- 16 backup.
- 17 A No, sir.
- 18 Q Okay. what about 2107 when you called for backup
- 19 again?
- 20 A No, sir.
- 21 Q Okay. So, you are basically saying this was one
- 22 continuous stop.
- 23 Is that what you said earlier?
- 24 A Yes, sir, in my mind.
- 25 Q Okay. And you testified that you don't remember if his

D.G. Wilson - Redirect examination
by Mr. Thompson

1 driver's license information came back?

2 A And after listening to the video again, I never heard
3 it come across the radio. I don't recall.

4 Q All right. So, you were -- but you could of heard that
5 it was okay, right?

6 A I don't, I don't recall.

7 Q You did say in your statement that his driver's license
8 came back as being Jeffery Falls, right?

9 Page 1 of your statement.

10 A Said -- I think I said he was identified by his license
11 as Jeffery Falls. Yes, he was identified by his license.

12 Q Okay. So, he's -- so, you never heard back about his
13 license?

14 A No, sir.

15 Q You didn't know?

16 A To the best of recollection.

17 Q You had no indication whether he had a suspended
18 license or anything like that?

19 A No, sir.

20 Q And yet you were just gonna write a warning, right, and
21 let him go?

22 A Write a warning for failing to maintain a lane, yes,
23 sir.

24 MR. THOMPSON: Okay. No further questions, Your Honor.

25 SOLICITOR MCCARTY: I'm not gonna ask anything

D.G. Wilson - Redirect examination
by Mr. Thompson

1 substantial, Your Honor, but I do have---

2 THE COURT: That's okay. I'll let you clear up some
3 matters if you need to.

4 SOLICITOR MCCARTY: There's not matters to clear up
5 except one, two really. We been watching the video. I was
6 gonna have marked as State's Exhibit No. 1. I would ask at
7 this time---

8 THE COURT: Any objection to that.

9 MR. THOMPSON: None, Your Honor.

10 THE COURT: All right. It will be marked as---

11 SOLICITOR MCCARTY: Thank you, Your Honor.

12 THE COURT: ---State's Exhibit No. 1.

13 (WHEREUPON, the videotape was marked as State's Exhibit
14 No. 1 and received into evidence for purposes of this
15 hearing only at this time.)

16 RECROSS EXAMINATION

17 BY SOLICITOR MCCARTY:

18 Q My only other question, Trooper Wilson, is just this
19 and this is because Mr. Thompson raised this issue three
20 separate times. He's identified the defendant as a black
21 male somehow insinuating that because he was a black male
22 that was some cause for the initiation of this traffic stop
23 or he being detained in the course of this traffic stop.

24 Did the defendant's race in any way, shape, or form
25 play into any part of your investigation of this matter?

D.G. Wilson - Recross examination
by Solicitor McCarty

1 A No, sir, it did not.

2 Q And, Trooper Wilson, I'm gonna ask this because if
3 somebody down the road should have to read this transcript,
4 again, you're a South Carolina Highway Patrolman, am I
5 correct?

6 A Yes, sir.

7 Q You're an adult male.

8 Do you identify yourself as an adult male, an adult
9 black male, an adult Latino male?

10 A Black male.

11 Q Thank you.

12 Nothing further, Your Honor.

13 THE COURT: Anything further based on those questions?

14 MR. THOMPSON: None, Your Honor.

15 THE COURT: All right. You wish to argue the point or
16 is there other evidence, other testimony?

17 Sir, you can step down.

18 MR. THOMPSON: No other testimony.

19 Please the Court, Your Honor. My argument, one, was
20 that the stop was not a valid stop. The officer testified
21 he pulled Mr. Falls over for coming over the fog line, and,
22 as we read subsection 56-5-1900 says a vehicle shall be
23 driven as nearly as practical entirely within a single lane.
24 Shall not be moved from the lane until the driver's first
25 ascertained such movement can be made safely. There's no

1 testimony provided by the officer that, that that's been
2 violated.

3 I think the, the language is clear as nearly as
4 practical within a single lane. I couldn't find a South
5 Carolina case on point. There's several from out of the
6 jurisdiction. U.S. versus Gregory, 79 F3rd 973. Basically
7 the Utah State Code, 41-6-61, is not an exact mirrative
8 (phonetic) of the South Carolina Code, but it is a great
9 deal like it.

10 The officer pulled over a U-Haul that had crossed over
11 into the right shoulder emergency lane. The officer stopped
12 the driver. During the search they found drugs. There was
13 a suppression motion made, and the Court looked at the Iowa
14 law, like I say, the Ohio law that states the same, a
15 vehicle shall be operated as nearly as practicable entirely
16 with in a single lane, shall not be moved from that lane
17 until an operator has determined it can be done so safely.

18 Relying on that law, the Tenth, the Tenth Circuit
19 states if we found -- we do not find that an isolated
20 incident of a vehicle crossing into an emergency lane on a
21 roadway is a violation of the law. In arriving at a
22 conclusion, the Court noted that the truck could of crossed
23 into the emergency lane for any number of reasons. Also
24 noted there's no evidence that the action created a danger
25 to any other traffic or there was any threat of collision.

1 Now, here we've got Mr. Falls being tailed or the
2 officer's beside him for two miles, and the complaint is
3 he's driving too slow originally, and then it evolves into a
4 lane violation or a fog line violation. And that, like I
5 say, it's not written out on the ticket. I'm not sure -- I
6 assume that that's where he's going with it. It's 56-5-1900
7 I believe it was and he testified that as to that being the,
8 the statute in which he felt like was violated.

9 Here, Your Honor, he didn't impede any other traffic.
10 There's no indication that he's a drunk drive. He doesn't
11 indicate he smells anything on him. He didn't smell
12 marijuana---

13 THE COURT: How would you know that until you stopped
14 him?

15 MR. THOMPSON: I'm sorry?

16 THE COURT: How would you know those facts until after
17 you stopped him?

18 MR. THOMPSON: He never goes into that is what I'm
19 saying. He never---

20 THE COURT: No, no, no. But the point I'm getting to
21 is the question's whether or not the stop was valid. That's
22 what we're talking about right now.

23 MR. THOMPSON: Right.

24 THE COURT: The initial stop. And if an officer
25 observes someone driving in such a, a fashion that raises

1 suspicion about several things, alcohol intoxication,
2 fatigue, things of that nature, how does an officer know
3 which of those issues might be involved until after he's
4 stopped the vehicle to check on the driver?

5 MR. THOMPSON: Well, he doesn't know, Your Honor.

6 THE COURT: Okay.

7 MR. THOMPSON: And -- but he's, he's just an
8 investigator, investigatory stop based on Rolling Thunder,
9 in my opinion, Your Honor, he's gonna pull him over for any
10 little violation. And if that's the case, then we'll pull
11 over everybody that rides up and down the road because
12 everybody's gonna swerve in their lane some.

13 THE COURT: Well, now, his testimony wasn't he didn't
14 swerve inside his lane. I think his testimony was that he
15 saw him on a couple of occasions cross the fog line.

16 MR. THOMPSON: Right.

17 THE COURT: And the case you're just reading from talks
18 about an isolated incident. I think that's probably once.
19 I think the testimony here was that it occurred, at least on
20 a couple of occasions, as he observed him driving up the
21 highway.

22 MR. THOMPSON: Well, no other, other cases go into it
23 where they go over the line more than once, Your Honor, and
24 it's not -- they're not impeding traffic, and they're not
25 creating a hazard. He didn't, he didn't say there was any

1 hazard. In fact, he said he drove beside him for a good
2 while.

3 THE COURT: well, again, to be a violation of that
4 statute I will tend to agree with you, Mr. Thompson, that
5 there would have to be some danger to other cars on the road
6 or something of that nature. But if the issue or the
7 question is driver fatigue -- in other words, I read about
8 it every weekend. Somebody goes to sleep on an interstate
9 and hits a bridge abutment or something, killed, other
10 drivers are killed, cross the center median.

11 If the issue is whether or not a driver is fatigued or
12 under the influence, how in the world will a police officer
13 ever know what, what's going on without stopping the car and
14 checking the driver?

15 I'm not sure how I understand how that's gonna be
16 accomplished assuming you think an officer has the right to
17 do that. Maybe you think an officer doesn't have the right
18 to do that.

19 MR. THOMPSON: well, an officer has the right to pull
20 him over and, and investigate the reason why he's doing
21 that.

22 THE COURT: Yes, sir, that, that would be my
23 conclusion, but---

24 MR. THOMPSON: I would go back to my original argument
25 that the officers, he's lacks, being objectivity here

1 because we're in a Rolling Thunder situation where we're
2 looking for any little thing to pull people over, and I'm
3 saying he was -- it was his subjective belief that this
4 person -- he's got nothing to lose. This is all a fishing
5 expedition, and that's what -- the first thing he does when
6 he sees it cross over that fog line, Your Honor, then he's
7 not -- he's, he's pulling him over when I don't believe it's
8 reasonable that he did. That would be my argument there.

9 THE COURT: Oh, I understand your argument.

10 Go ahead.

11 MR. THOMPSON: Your Honor, that would be -- then I
12 would just say that, you know, because he didn't break the
13 law, he was not, he was not, he was not warranted in pulling
14 my client over. That would be the end of that argument
15 there.

16 THE COURT: Yes, sir.

17 MR. THOMPSON: The other argument will be the prolonged
18 detention.

19 You ready for that?

20 THE COURT: Yes, sir.

21 MR. THOMPSON: Okay. Your Honor?

22 THE COURT: Do you want to address the stop first?

23 SOLICITOR McCARTY: I couldn't tell, Your Honor, when
24 you said yes, sir, I pointed at myself if you were pointing
25 at me.

1 THE COURT: No, no, he said -- he asked me if I wanted
2 him to go forward with his argument concerning the prolonged
3 detention, and I told him he could go ahead. We'll take it
4 all at one time and I'll let you respond.

5 Yes, Mr. Thompson, I'll hear from you concerning the
6 prolonged detention.

7 MR. THOMPSON: All right, Your Honor. Your Honor, I'll
8 go into some Fourth Amendment analysis. I mean I don't
9 think I need---

10 THE COURT: Well, I've, I've been up here listening and
11 I've read Tindall. I've read State versus Provet, I guess
12 how you, how you pronounce that.

13 It's Provet right or Provet?

14 SOLICITOR MCCARTY: Provet I believe, Your Honor.

15 THE COURT: Provet. Okay. And I don't know whether
16 it's a Chevrolet or Chevrolet. I'm not sure which one.

17 All right.

18 MR. THOMPSON: All right, Your Honor.

19 SOLICITOR MCCARTY: I have a copy.

20 Do you have a copy?

21 THE COURT: I've got them up on my computer. I'm
22 looking at them. But I'm familiar with that analysis. I
23 don't know that you need to repeat it to me. I've, I've
24 read both of those cases while we've been doing this this
25 afternoon.

1 MR. THOMPSON: Okay. All right, Your Honor. Well, you
2 know---

3 THE COURT: And I've, I've read them for some other
4 cases I had earlier. I mean I'm familiar with the argument.
5 It might of been one you were involved in, is that right?

6 SOLICITOR HUNTER: That's correct, Your Honor.

7 THE COURT: Okay. All right. I'm somewhat familiar
8 with that.

9 MR. THOMPSON: Okay. Well, I would argue under
10 Tindall, Your Honor, if you notice, and I don't have my
11 notes on it right there, but I'll jump to it, in Tindall the
12 Court basically says at the time that the officer informs
13 the driver that he's gonna be receiving a ticket or a
14 warning I think it was in the Tindall, and let me get that.
15 I want to make sure I'm not misspeaking.

16 THE COURT: They took the position that the purpose of
17 the stop was over as soon as the ticket would be or the
18 warning was completed.

19 MR. THOMPSON: Well, I think Tindall says, goes a
20 little bit further and says that once the, the dispatcher---

21 THE COURT: Now, in Tindall I think questioning
22 continued after that point in time. I think the issue is
23 whether the questioning that raised the reasonable suspicion
24 --

25 MR. THOMPSON: Right.

1 THE COURT: -- occurred -- let me finish. Before --
2 occurred before or after the reason the stop had been
3 completed, and in Tindall the Court said that once the
4 reason for the stop had been completed, the questioning
5 continued for several minutes thereafter during which time
6 the officer developed his reasonable suspicion and in
7 Provet---

8 SOLICITOR MCCARTY: Provet I believe is the way you say
9 it.

10 THE COURT: In Provet, they said that the reasonable
11 suspicion had been developed prior to that time. In fact,
12 in Provet he was still waiting on a call back from the, the
13 dispatch as to registration and license information when he
14 then launched into the request for search. I think there's
15 a difference in the facts in Tindall and Provet.

16 MR. THOMPSON: Right. I was, I was, I was speaking
17 toward Tindall.

18 THE COURT: Yes, sir, Tindall, again, I read it and
19 maybe I'm wrong, you can tell me, that the suspicion was
20 developed by questioning that occurred after the purpose for
21 the stop had been completed.

22 MR. THOMPSON: Right, and the Court made it clear that
23 once the officer informed Tindall he would write him a
24 ticket, at this point the purpose of the stop was
25 accomplished except for issuing the warning ticket, and

1 then, however, rather than issue the ticket, the officer
2 continued to question Tindall for an additional six or seven
3 minutes.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: In our case here, he tells him, at two
6 different points, one point, I'm gonna write you a warning.

7 THE COURT: He did.

8 MR. THOMPSON: And then the officer goes through a
9 series of questions. And, in my opinion, fiddles around
10 with the, with the, the warning, not writing it, because
11 he's waiting on the drug dog to get there. So, he's
12 covering---

13 THE COURT: Well, the motivation could of been several
14 things, and it is true this officer testified your client
15 continued to engage him in conversation during that period
16 of time. Of course, your client doesn't have to say a word
17 to him. He's got a right to stand there and be silent.

18 MR. THOMPSON: I understand that, but, but I---

19 THE COURT: From what I viewed on the, on the video, it
20 was a mutual conversation that continued after that point in
21 time. It wasn't simply an officer asking questions and
22 getting answers. There seemed to be some information
23 volunteered by your client and that without questioning.

24 MR. THOMPSON: All right. well -- and I think Tindall
25 says once that's established it goes into another analysis

1 on---

2 THE COURT: Well, now, but in Tindall, don't you agree
3 that they pretty much say though the reasonable suspicion
4 for continuing the stop after the purpose of the stop had
5 been completed was developed after the purpose for the stop
6 had been ended. And, in this case, the officer states, and,
7 of course, I'm sure you're gonna dispute it, you have a
8 right to dispute it, the, that his suspicion began when he
9 approached the car at the back window and it appeared
10 somebody -- that your client put something on the seat, and,
11 he, in fact, called for backup at that time, which would
12 tend, lead me to believe that he developed some suspicion at
13 that point in time.

14 MR. THOMPSON: Right.

15 THE COURT: Now, the question is whether it's
16 reasonable or not, and the question then becomes whether or
17 not it's sufficient to justify continued detention after the
18 purpose of the stop had been ended. That's where we are I
19 think.

20 MR. THOMPSON: Right, and that's where I'm saying that
21 Tindall says it goes from there, and the question then
22 becomes does he reasonably suspect that there's a serious
23 crime in effect, and then Tindall---

24 THE COURT: Possibility, possibility. In fact, they
25 don't even require probable cause. They call reasonable

1 suspicion---

2 MR. THOMPSON: Reasonable suspicion.

3 THE COURT: ---instead of probable cause.

4 MR. THOMPSON: And the Court goes into the analysis
5 that, at the point where the officer suspects, chose to
6 conclude the traffic stop despite the State -- chose not to
7 conclude the traffic stop, despite stated intention to issue
8 a ticket, instead to go into the questions, it looks at what
9 he had and knew.

10 Okay. It says at that point the officer ascertained
11 the following: Tindall was driving from Durham. Okay.
12 Durham is, is a drug source or a drug city for drugs much
13 like Atlanta here that Mr. McCarty was questioning the
14 officer on.

15 Secondly, to meet his brother. Okay. My client's
16 meeting a cousin. Then in Tindall did a felony stretch or
17 some type of thing where he raised his arm when he got out,
18 and then that he seemed nervous. And the Court found that
19 those facts did not provide the officer with reasonable
20 suspicion that a serious crime was afoot. Consequently
21 continued detention was illegal and the drugs discovered
22 were, should be suppressed, and that's the argument here.

23 At the time he calls in Officer English, he knows
24 just -- he knows he's got a North Carolina car or a tag. He
25 has a rental car and he's coming from Atlanta, and under,

1 and under Tindall---

2 THE COURT: And he has, and he has seen him possibly
3 place something under the front probably seat as he
4 approached the car.

5 MR. THOMPSON: And, and---

6 THE COURT: Now, let's don't leave anything out, Mr.
7 Thompson.

8 MR. THOMPSON: And in, in that respect, Your Honor, I
9 would go to a Wisconsin case. It's State v. Johnston, 2007.
10 W.E. 32.

11 Okay. In that case the officers testified that when
12 they, when he pulls up he sees the, the shoulders disappear,
13 their head goes almost under the seat as if they're putting
14 something under the seat. The Court looked at it and said
15 basically that when an officer's positioned behind the
16 vehicle, he might see the driver's head or shoulder move or
17 even momentarily disappear from view. Without more to
18 demonstrate that, under the totality of the circumstances,
19 an officer possesses specific or articulable facts
20 supporting reasonable suspicion that a person's dangerous
21 and may have immediate access to a weapon. Such an
22 observation does not justify significant intrusion upon a
23 person's liberty.

24 Were we to conclude that the behavior observed by the
25 officer here were sufficient to justify a protective search

1 of Johnston's person and his car, law enforcement would be
2 authorized to frisk any driver and search his car upon a
3 valid traffic stop whenever the driver reaches to get his
4 registration out of the, the glove compartment, a glass of
5 water---

6 THE COURT: Let me, let me ask you something. Don't
7 read the case to me. Answer, answer my question.

8 Did that case have any other factors of suspicion in it
9 other than what you just told me?

10 MR. THOMPSON: The others was when he got out of the
11 car he was, told him he had a bad leg and he, he resisted a
12 search of his person. He was pulled over earlier in the day
13 for an emissions violation. Later on the same police
14 officer sees him, assumes he is not remedied the violation,
15 pulls him over again because he fails to give a turn signal,
16 and then basically he finds out that the emissions issue
17 was, was cleared up, and then he, and then the part where he
18 goes in and looks or apparently goes down like he's putting
19 something under the seat, and I think it was a high crime
20 neighborhood too.

21 THE COURT: All right.

22 MR. THOMPSON: So, so, those -- the Court looked at
23 that and basically---

24 THE COURT: You know, the problem with all these cases,
25 Mr. Thompson, is that it depends on how a Court, at any

1 given time, and which Court, and which lawyers and judges
2 are looking at it, what constitutes a reasonable suspicion.

3 MR. THOMPSON: I agree.

4 THE COURT: And I'm not sure that Tindall case and
5 Provet case have really answered that question for us at
6 this point in time.

7 MR. THOMPSON: I agree, Your Honor, and I would go---

8 THE COURT: I don't know. There's no bright line test.

9 MR. THOMPSON: I understand that, and I'm asking the
10 Court to consider the tape, the officer's actions, I, what I
11 believe is obviously stalling, the fact that he is already
12 called for that dog. He testified he knows if that dog
13 shows up while he's writing that ticket he's got free reign
14 over that car, and he keeps, and he keeps stalling. He
15 doesn't write the ticket out. As I stated---

16 SOLICITOR MCCARTY: I don't think he's---

17 MR. THOMPSON: ---there's nine words---

18 SOLICITOR MCCARTY: If I can object briefly there, Your
19 Honor. I don't think Sergeant Wilson testified that he knew
20 that, once that dog showed up, that he would have free reign
21 over that car. I think Trooper Wilson testified that he
22 called Trooper English, who is his partner with the A.C.E.
23 Team, that they were up here for that purpose, that was the
24 initial radio call out.

25 THE COURT: And I think he also testified, and to be

1 fair, I think he testified that if the dog did nothing he
2 could do nothing --

3 SOLICITOR MCCARTY: Thank you.

4 THE COURT: -- on a free air sniff.

5 MR. THOMPSON: Right. But he did testify that the dog
6 would get a free air sniff if he was continuously writing,
7 if he was still writing that warning---

8 THE COURT: Well, I don't know if he knows that or not.
9 Now, that's---

10 MR. THOMPSON: I think he testified that he, he was
11 aware that if he's writing that ticket and the dog show up,
12 that dog can -- the dog will be given access to the car.

13 THE COURT: For a free air sniff. Walk around it
14 without getting in the car.

15 MR. THOMPSON: Right, for a free air sniff.

16 THE COURT: Okay. And he indicated -- I think his
17 testimony was, just to be fair, that if the dog didn't make
18 any hit on the free air sniff, he's done.

19 MR. THOMPSON: Well, right. But he didn't -- the dog
20 didn't show while he's writing that ticket.

21 THE COURT: I understand. I understand. I've heard
22 the facts. I understand all that.

23 MR. THOMPSON: Okay. Also---

24 THE COURT: I'm just trying to be fair to him. I think
25 you -- your statement was, Mr. Thompson, that if the dog

1 showed up he'd have free reign over the car and that's not
2 what he said.

3 MR. THOMPSON: Right. Well, a free air sniff is what I
4 should of -- okay.

5 THE COURT: Excuse me. Go ahead.

6 MR. THOMPSON: And then the officer also testified that
7 the dog was not trained to detect weapons. So that was
8 contrary---

9 THE COURT: I think he said he couldn't speculate on
10 that. He didn't know whether or not the dog had been
11 trained for that purpose. That was the testimony that I
12 heard.

13 MR. THOMPSON: Okay. So, he's, he's calling the dog
14 for what reason, to look for drugs, and if -- but he's
15 saying, he's saying this fear and his worry is that it's a
16 weapon.

17 THE COURT: All right. Mr. Thompson, you got five more
18 minutes.

19 MR. THOMPSON: All right, Your Honor. I'd go to that,
20 that case involving the, going down where the shoulders
21 disappeared, and then there's another case that basically
22 says that -- and in all -- continuing with the totality of
23 the circumstances, a surreptitious movement by a suspect in
24 a vehicle immediately after a traffic stop could be a
25 substantial factor. But it, but it does not necessarily

1 indicate that they are hiding a dangerous weapon, and then
2 it goes into the fact that a person could be putting
3 anything out there, getting a fast food wrapper up, getting
4 his registration out, putting his wallet---

5 THE COURT: I understand that that is one of the
6 factors to be considered and I'm looking at the totality of
7 the factors.

8 MR. THOMPSON: Right. And then I'll go---

9 THE COURT: I understand that.

10 MR. THOMPSON: I would go into the fact that my client
11 had his license returned to him. That is evidence on the
12 wallet, that he has, has his wallet there. He is putting
13 that back in there. The officer's returned his, his
14 license. He's told him that he'll be getting a warning, and
15 eventually does give him a warning, puts it in his hand, but
16 pulls it back, and he refuses to allow the search. My
17 argument would be that when he returns that license and told
18 him he was getting a warning, well, that ended that search
19 and that he had to have renewed reasonable suspicion --

20 THE COURT: I agree.

21 MR. THOMPSON: -- to, to detain him anew.

22 THE COURT: I agree.

23 MR. THOMPSON: Okay. And he's testified one time that
24 I think we weren't doing a totality of the evidence,
25 circumstances, that it turned into that when he was

1 cross-examined by Officer McCarty, I mean Solicitor McCarty.
2 Here, his reasonable suspicion on the first time when he
3 called somebody was basically that he had the car from
4 Atlanta, a rental, and that the, the reaching under the
5 seat, I'd argue that doesn't rise up to a level, under the
6 totality of the circumstances, to provide reasonable
7 suspicion to bring in a dog and search the car.

8 That being the case, him ending the search by telling
9 my client, his wording, want you to be safe out here, okay,
10 he says he could of walked away, he was gonna let him walk.
11 I don't think he meant to be safe walking up the road. He
12 meant safe driving. He had ended and concluded that stop,
13 and I would argue that his refusing to allow the car to be
14 searched is not reasonable suspicion that allows him to
15 search the car, and then he pulls that back, they sit on the
16 side of the road, and he's waiting for that dog.

17 THE COURT: I would agree that that would not, in and
18 of itself, constitute reasonable suspicion. The fact that
19 someone refuses to a consensual search.

20 MR. THOMPSON: Right. And I would -- that's my
21 argument on that, Your Honor.

22 So, you can look at it. He says it's one continuous
23 stop. I argue it's two. It's one stop, two detainments.
24 He returns those, that license and he's putting that warning
25 in his hand, putting that Avis rental agreement back in his

1 hand. In fact, that concludes it. Then he's got to have
2 something renewed, some renewed reasonable suspicion in
3 order to hold my client and he doesn't have it that, because
4 the refusal does not rise to that level, and I believe it's
5 the State's---

6 THE COURT: Well, that's what we're here to talk about
7 is whether or not there was a reasonable suspicion at that
8 time---

9 MR. THOMPSON: Okay.

10 THE COURT: ---to continue the detainment.

11 MR. THOMPSON: In the State cases -- sorry for talking
12 over you. You gave me five minutes. I'm trying to hurry.

13 THE COURT: I'm trying to bring this to a close. We
14 been going all afternoon.

15 MR. THOMPSON: The State cases would be Williams, Your
16 Honor, I believe and Pichardo and Riveria maybe, and I can
17 provide the cites for those. But there's several case law,
18 Your Honor, where nervousness -- everybody's nervous. I
19 don't think that should have a bearing on---

20 THE COURT: He -- Mr. Thompson, let me explain to you.
21 If you take any of these factors, and isolate them in and of
22 themselves, both, both Tindall and Provet say the same
23 thing. Any one of those factors may not be enough.

24 MR. THOMPSON: Right.

25 THE COURT: That's the reason you look at them put

1 together, the totality of them. That's the way I'm suppose
2 to view it.

3 MR. THOMPSON: Okay.

4 THE COURT: I'm sure there may be a case and you've
5 quoted me one and I'm sure you've quoted it right that says
6 that reaching under your seat, in and of itself, is not
7 sufficient, and I understand there may be a case that says
8 nervousness in and of itself is not sufficient. I'm sure
9 those cases exist.

10 MR. THOMPSON: Right.

11 THE COURT: The question becomes, and I know what the
12 question is, looking at all the circumstances that existed
13 at that time, was there sufficient suspicion to warrant the
14 continued detention once the purpose for the stop had been
15 completed, and I know you take the position in this case it
16 wasn't. You certainly have every right to take that
17 position.

18 MR. THOMPSON: And in closing, Your Honor, I would say
19 that if you look at Tindall and I think it's People v. Cox
20 out of Illinois, they do list the four elements that the
21 officer provided, that he claimed gave him reasonable
22 suspicion, and couldn't---

23 THE COURT: Gave him what?

24 MR. THOMPSON: He -- the officer -- basically what the
25 officer knew and the Court's determined that it did not rise

1 to the level of reasonable suspicion and that was in Tindall
2 where the officer knew Tindall was driving to Durham, he was
3 going to see his brother, he was in a rental car, and he, he
4 seemed nervous, and he did the felony stretch.

5 THE COURT: All right. Thank you, sir.

6 MR. THOMPSON: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 SOLICITOR MCCARTY: I believe Mr. Moore's gonna handle
9 the first part.

10 THE COURT: All right. Mr. Moore, I'll hear from you
11 please, sir.

12 SOLICITOR MOORE: Yes. Yes, sir, briefly, I don't
13 think you issued a ruling on the first position, but it's
14 the State's position that the Department of Public Safety,
15 under the direction of the Highway Patrol, has statewide
16 jurisdiction. I mean there's no necessary agreement---

17 THE COURT: Well, let me ask you.

18 Are you still arguing the point about jurisdiction?

19 MR. THOMPSON: I am, Your Honor, but I thought you were
20 gonna rule on that.

21 THE COURT: Well, I can rule on it right now. I'm
22 gonna rule that he had the authority to be here.

23 MR. THOMPSON: Okay.

24 THE COURT: So, we don't need to have any argument
25 further. I kind, I kind of come to a conclusion on that

1 one.

2 MR. THOMPSON: Okay. Thank you.

3 THE COURT: All right. Go ahead.

4 SOLICITOR MOORE: Very briefly on the second one, Your
5 Honor, it's the State's position that an officer has the
6 right, if he believes any of the multitude of traffic
7 violations that occurred on the interstate were in his
8 jurisdiction, he has reasonable suspicion to believe that
9 traffic violation has happened in his presence, he can
10 initiate a traffic stop to further that investigation to
11 determine whether or not the actual traffic infraction
12 happened. If so, he can issue a warning ticket or even
13 issue a citation or a fine based off that.

14 The only testimony we have on the record is Trooper or
15 Sergeant Wilson's testimony that he saw at least two,
16 possibly three times, the defendant's vehicle cross the fog
17 line. Based off that, it's the State's position he had the
18 right and within his jurisdiction to make a stop on the
19 roadside, and based off his observation, we believe we've
20 met the preponderance of the evidence standard in a
21 suppression hearing to show that the stop was completely
22 lawful, and Mr. McCarty's gonna address the further
23 detention on the roadside.

24 THE COURT: Thank you.

25 SOLICITOR MCCARTY: If I may, Your Honor, I appreciate

1 the fact that you've already looked up the Provet case.

2 Your Honor, I believe that there's a couple points---

3 THE COURT: And Tindall. Tindall doesn't help you as
4 much as the other one does.

5 SOLICITOR MCCARTY: No, but I believe this case is
6 closed and more analogous to the issues that have occurred
7 in Provet as they appeared and are played out, but much
8 like---

9 THE COURT: Well, do you agree with my analysis that
10 Tindall appears to be more of a questioning and development
11 of the suspicion after the purpose for the stop had been
12 ended?

13 SOLICITOR MCCARTY: It was, Your Honor, and, in fact, I
14 believe Tindall was one of the sticking points here was the
15 driver's license information had been returned to the
16 trooper in the situation in Tindall.

17 THE COURT: I think that's correct.

18 SOLICITOR MCCARTY: Whereas in here we do not have that
19 information as well as in Provet. It had not yet been done.
20 Your Honor, here we never had the driver's license come
21 back. Trooper Wilson testified that, during the course of
22 when he listened to the audio of this tape, he never heard
23 it come back over the radio, and, of course, he's somewhat
24 familiar with radio traffic and dispatch traffic. He would
25 probably recognize that. He said he didn't.

1 Your Honor, the questioning at times throughout the
2 whole event was deminimus. I know it took us three hours to
3 get through it. It's really only about ten, eleven minutes
4 start to finish. The whole thing, start to finish, even
5 from the point of the search, the initial stop to the
6 cocaine discovery, is 19 minutes and 17 seconds.

7 Your Honor, the last part, we're dealing with
8 reasonable suspicion. I appreciate the fact that you were
9 aware of Tindall and Provet. That saves me a substantial
10 amount of argument regarding those points, and I'll just ask
11 that the Court treat the situation and the factual situation
12 here sort of analogous to the facts that we had in Provet.

13 We had a situation here where Sergeant Wilson stopped
14 the car. Upon approach, it's a North Carolina car. It's a
15 rental vehicle. It's occupied one time. It's unusually
16 clean, based on his experience, with other motorists as
17 described. He finds out that the guy is coming from a
18 source city. In speaking with him further, we have travel
19 plans that are short. We have a story that doesn't seem to
20 be adding up. We have several points during conversing with
21 the defendant where his responses to the trooper's questions
22 cause him some moment of pause as if he has to think, as
23 Trooper Wilson described, for an answer. Not having it
24 readily available as if somebody who knew the story would be
25 able to tell it to you.

1 Your Honor, he describes a couple different physical
2 attributes the defendant has, the nervousness. I agree
3 whole heartedly with you that, in a vacuum, by themselves,
4 those things are quite innoxious. They don't necessarily
5 lend towards any type of reasonable suspicion, but under a
6 totality of the circumstances type situation it would.
7 Sergeant Wilson testified that the nervousness that he saw
8 exhibited by the defendant was above and beyond what he
9 normally encounters with motorist he's had in over a
10 thousand traffic stops in his career.

11 Your Honor, another physical indicator he saw with the,
12 the defendant was the presence of cotton mouth, and cotton
13 mouth, according to Trooper Wilson through his training and
14 experience, is an indicator of nervousness. Again, also the
15 physical attributes of the shaking of the hands,
16 nervousness, but also the physical mouth drying, asking the
17 trooper for water. Again, something uncommon to Trooper
18 Wilson's experience patrolling the roadways for the past
19 nine years.

20 You have -- give me one moment, Your Honor. I just
21 want to go over my list just one more time.

22 (Pause.)

23 SOLICITOR MCCARTY: Your Honor, finally, when we have
24 the initial part of this traffic stop going on, he had
25 testified he does see the defendant reach up under the seat

1 or in the front seat carrier. Ultimately we watched the
2 video further and that is where the cocaine is discovered in
3 the driver's side front door area, and that part of the
4 vehicle, and that's where it's ultimately concerned.

5 Trooper Wilson had previously been involved in the
6 officer involved shooting type situation concerned for his
7 safety primarily. Can't fault him for that. He has to be
8 worried about what the officer, what he just put there or
9 what he just removed from there.

10 Thank you, Your Honor.

11 THE COURT: Anything further?

12 MR. THOMPSON: Just mention to the Court, to the Court
13 that the State does not go into the renewed detention of, of
14 my client after the warning ticket is issued or that the
15 fact he's told -- like I said, under Tindall, when he's told
16 he's gonna be issued one, that's when the Court says he
17 needs to stop and does. And, like I said, you're right.
18 Tindall does go back and throw into another element, and
19 I'll wrap this up, the, the things he knew at the time he
20 contacted that backup officer were not sufficient to be
21 reasonable suspicion to search the car.

22 And then, like I say, my client's detained on the side
23 of the road while we wait for the dog basically because he
24 refused to allow the search, and that's the only thing he
25 could come up with after the fact that he withdrew that. I

1 mean he had put it, the warning in my client's hand, the
2 trooper did, Your Honor.

3 THE COURT: All right. Anything further?

4 SOLICITOR MCCARTY: Your Honor, I would only just argue
5 that all the reasonable suspicions involved here in the
6 original lawful stop. I was remiss in handing this case up.
7 It's a Fourth Circuit case. It just talked about the Court
8 should be able to give credit on, and I'll hand this to Mr.
9 Thompson, a Court should be able to give credit to an
10 officer's practical experience based on his daily
11 observations.

12 I think, based upon his involvement in the A.C.E. Team,
13 his nine years patrolling---

14 THE COURT: Well, one of these cases even talks about
15 this tactical group that he's involved in and the special
16 training that they have.

17 SOLICITOR MCCARTY: Yes, sir.

18 THE COURT: One of the cases I read.

19 SOLICITOR MCCARTY: I believe Trooper Owens, as with
20 Provet, was also a member of the A.C.E. Team as well at one
21 time.

22 THE COURT: Yes, sir.

23 All right. Well, I find that the facts in this case
24 are more akin to the case in Provet, in Provet. I find that
25 the reasonable suspicion was developed prior to the time of

1 the renewed or continued detention. I guess you can put it
2 either way. Therefore, I find that the officer had a
3 reasonable suspicion to continue the detention after the
4 traffic stop, and that the, therefore, the search, the free
5 air sniff would have been proper.

6 Now, any other matters we need to decide, Mr. Thompson?

7 MR. THOMPSON: Not at this time, Your Honor, and I
8 would -- can you clarify your ruling that it was developed
9 prior to the renewed detention, and, therefore, the---

10 THE COURT: I think there was a reasonable suspicion
11 that had been developed prior to the time that the warning
12 was handed and pulled back.

13 MR. THOMPSON: Right. Okay.

14 THE COURT: That had already developed at that point in
15 time, and I think it was a reasonable suspicion at that
16 point in time. Therefore, the continued detention under
17 Provet would of been warranted.

18 MR. THOMPSON: Right, but I just wanted clarification
19 on that, Your Honor.

20 THE COURT: That would be my finding in this case.

21 All right. Nine o'clock in the morning.

22 Let's see. Mr. Falls?

23 DEFENDANT: Yes, sir.

24 THE COURT: You're out on bond, is that right?

25 DEFENDANT: Yes, sir.

1 THE COURT: Your bond will continue until in the
2 morning. I will caution you that at nine o'clock in the
3 morning we'll resume the trial of your case. Should you
4 fail to appear at that time, you will be tried in your
5 absence and a bench warrant will be issued for your arrest.

6 Do you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right. Anything further before we
9 break for the evening, the State?

10 SOLICITOR MCCARTY: No, Your Honor. I was gonna ask
11 about the bond issue, but you addressed that.

12 THE COURT: Okay. Anything further, Mr. Thompson?

13 MR. THOMPSON: No, Your Honor.

14 THE COURT: All right. Nine o'clock in the morning.
15 Thank you, gentlemen.

16 SOLICITOR MCCARTY: Thank you, Your Honor.

17

18 (WHEREUPON, Court was in recess for the evening.)

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1 Thursday, August 11th, 2011

2

3 THE COURT: All right. We're back on the record in the
4 case of The State of South Carolina versus Jeffrey Falls.

5 Is the State ready to proceed?

6 SOLICITOR McCARTY: State is ready, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. THOMPSON: Yes, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Good morning, ladies and gentlemen. I hope
13 everyone had a good evening, and if anyone had any problems
14 or difficulty in following my instructions concerning your
15 behavior in the overnight, please stand.

16 (No response.)

17 THE COURT: It appears that all jurors were able to
18 follow my directions.

19 I told you that when you returned to the courtroom you
20 would be taking an oath concerning your duties and
21 responsibilities as jurors in this case, and at this time,
22 Madam Clerk, I'd ask that you please swear the jury panel.

23 (WHEREUPON, the jury panel was placed under oath at
24 this time.)

25 THE COURT: If there was any juror that failed or

1 refused to take the oath just administered by the clerk,
2 please stand.

3 (No response.)

4 THE COURT: It appears that all jurors have been sworn
5 concerning your responsibilities in this case.

6 Now, before we begin this trial, there's some matters
7 that I want to discuss with you so that perhaps we can
8 better understand the roles and responsibilities that each
9 of us has in the conducting of a trial.

10 Perhaps, for some of you, I think there's always
11 somebody on the jury who has never been in this position
12 before, whose never set on a jury where you were deciding a
13 question concerning the guilt or the innocence of someone
14 who's charged with a crime, and for those of you for whom
15 this is your first experience, probably most of what you
16 know about what goes on in courtrooms and how trials are
17 conducted and the responsibilities of jurors you might of
18 learned from television shows that you've watched or movies
19 that you've seen or books that you've read or that --
20 perhaps some from your school.

21 And while those are interesting forms of information, I
22 hope you realize that the people who write the scripts and
23 the story lines for those particular forms of information
24 take what they call literary license with what goes on in
25 the courtroom. In other words, for example, it never ceases

1 to amaze me that on television that you can have an event
2 occur, and the person arrested perhaps, and a trial occur,
3 and a verdict reached in the space of an hour and you still
4 have time for commercials. So, obviously they, they take
5 some license with what goes on in the courtrooms, and by
6 that I mean it's not really what happens in courtrooms, and
7 the reason for that is that those forms of information are
8 intended for your entertainment. I can assure you that the
9 trial that you're involved in today is intended for anything
10 but your entertainment.

11 what you're engaged in is what I believe to be a
12 fundamental part of our democracy where citizens are brought
13 before the court and placed in positions of authority as
14 jurors to make important decisions in the matters that go on
15 in our courtrooms and Court systems. You're engaged in a
16 search for the truth. We're engaged in an effort to see
17 that justice is done between the parties that are before
18 this Court, and you would perhaps, if I asked you, if I
19 asked you how, what would you expect a search for the truth
20 to be, you would expect it to be slow, you'd expect it to be
21 deliberate, and you'd expect it perhaps to be even
22 repetitive, and that's exactly what you're going to be
23 involved in, a slow, deliberate, and repetitive process
24 trying to see that justice is done between the parties that
25 are before the Court.

1 Again, I thanked you previously, I'll thank you again
2 for your willingness to come forward and accept the
3 responsibility that you've accepted in this case as jurors
4 in this case.

5 Now, this courtroom is also a place of honor and it's
6 dedicated to the preservations of citizens rights under the
7 Constitution of this state and the Constitution of the
8 United States. And I, as I've told you, we are operating
9 under a system of justice where you are important decision
10 makers in this, this courtroom and I'll go over your
11 responsibilities and the decisions that will be placed
12 before you during this trial.

13 Now, the attorneys that are involved in this case are
14 here to represent their client's interest. They're here to
15 present their cases before you in this matter. At -- but
16 first and foremost, those lawyers are also officers of this
17 Court. At some point in time they've appeared before some
18 tribunal in this state and they've taken an oath and part of
19 that oath includes an oath to assist you in your search for
20 the truth.

21 You can expect for, from them that they'll act in an
22 ethical profession, and a professional manner in the
23 presentation of their client's cases before you during this
24 trial. I'm going to remind each of you too that you've now
25 come before this Court and you've taken an oath to decide

1 this case based upon the law and the evidence, and, as such,
2 you're expected to act in a reasonable and a professional
3 and an ethical manner in the discharge of your duties as
4 jurors in this case.

5 Now, what I'm telling you now is not intended to serve
6 as a charge on the law later on once all the arguments have
7 been made and the evidence has been presented, and then I
8 will charge you concerning the law in this matter. What I
9 am trying to explain to you is the procedure that we'll
10 follow and also the responsibilities that we have in this
11 case. I've already gone over with you the indictment when
12 we went through jury selection. I won't read it to you
13 again now. I'll do that when I charge you concerning the
14 law.

15 But, as you're aware, the charge is trafficking in
16 cocaine in this case, and that indictment again is simply
17 the charge that brings the case before this Court and it
18 contains the allegations that the State has made against the
19 defendant in this case. It informs us, you and I, of the
20 charge to be tried. It informs the defendant of the charge
21 that's been lodged against him.

22 And the defendant has pled not guilty to that
23 indictment. That plea, under the law and the Constitution
24 of this state, places the burden of proof solely upon the
25 State in this case, and it's the State's duty to prove the

1 defendant's guilt by proof beyond a reasonable doubt.

2 It's your job, as jurors, at the close of this trial,
3 to determine whether or not the State has met that burden of
4 proof in this case. So, therefore, your purpose in this
5 case is to find and determine the facts in this case. Now,
6 the law and the Constitution of this state make the jury the
7 sole judges of the facts in this case.

8 Now, as the sole judges of the facts in this case, you
9 will be responsible to determine the truth of the evidence
10 that you've heard and the weight and the effect of the
11 evidence that you will hear during this trial. Now, the
12 same law that makes you the sole judges of the facts makes
13 me the sole judge of the law in this case.

14 Now, I will tell you that, as the presiding officer in
15 this trial, it will be my responsibility to perhaps rule on
16 questions of evidence or the appropriateness of questions
17 that might be asked during the trial, and I may have to
18 discuss some matters with the attorneys during that process.
19 I'm going to tell you now, and I'll tell you at the close of
20 the trial, please don't take from anything that I do as the
21 presiding officer in the discharge of my duties to indicate
22 to you in any manner or fashion whatsoever that I have an
23 opinion as to how you ought to determine the facts in this
24 case. You see, the law doesn't allow me an opinion on the
25 facts. You're the sole judges of the facts. So, I do not

1 have an opinion as to how you determine the facts in this
2 case.

3 But now the same law that makes you the sole judges of
4 the facts makes me, again, the sole judge of the law. The
5 law doesn't allow you to disagree with me concerning the law
6 just as I can't disagree with you concerning your
7 determination of the facts. Therefore, I will tell you that
8 if you came into this courtroom with any notion whatsoever
9 as to what the law is or if you have a belief as to what
10 the, the law ought to be, you should leave those notions
11 outside of the jury room. Because, under the oath that
12 you've taken, it's your responsibility to take the law
13 exactly as I give it to you at the close of the trial.
14 Then, then you would apply it to facts as you've determined
15 them to be, and, therefore, you should be in a position to
16 reach a just and a fair verdict in this case.

17 It's especially important that you, as jurors, perform
18 your duty as determiners of the facts conscientiously and
19 diligently because, under our law, ordinarily there's no
20 means by which an erroneous determination of facts that's
21 been made by a jury can ever be corrected.

22 Now, I've already told you and explained to you the
23 importance of you not -- keeping an open mind throughout the
24 trial, and I will emphasize that one more time. You've been
25 selected as jurors with fair and open minds on this case.

1 I'm gonna ask you not to begin any discussions about any
2 portions of this case now or at any break we have during
3 this trial because, again, I want you to keep an open mind.
4 I don't want you to begin to decide any issue because you're
5 going to hear arguments from counsel. You're going to hear
6 evidence during the trial, and then you'll hear more
7 arguments from counsel, and then you'll hear my charge on
8 the law. Until you have all of that information you don't
9 have all of the information in your possession with which to
10 begin to form decisions.

11 So, again, through the trial, accept the information
12 that you hear, listen to the testimony carefully, pay
13 attention to what goes on in the courtroom, don't begin
14 discussions until you are armed with all of the evidence and
15 all of the information that you'll need and then when I tell
16 you to begin your deliberations you should be in possession
17 of what you need to have in order to intelligently discuss
18 the issues that are involved in this case. So, again, don't
19 attempt to begin any discussions before that time, and,
20 again, under your oath, you have, you have taken an oath to
21 decide the case based on the evidence in this trial.

22 Now, let me explain to you what evidence is. Evidence
23 is testimony from witnesses that are sworn to tell the truth
24 that will, that will testify from this witness stand.
25 Evidence includes documents and other pieces of property

1 that come into the record of the case through that
2 testimony. So, I will tell you now that I'm going to allow
3 the attorneys to make arguments. I've told -- I've already
4 explained that to you. But the statements made by lawyers
5 at the beginning of the trial and the close of the trial,
6 they do not constitute evidence. At the beginning of the,
7 the trial, that's -- they'll explain to you perhaps what
8 they intend to prove, and at the close of trial they'll go
9 over the evidence that you've heard from their client's
10 perspective.

11 But, again, statements made by lawyers during the trial
12 do not constitute evidence, and, therefore, shouldn't be
13 considered by, by you in directly deciding guilt or
14 innocence. The evidence, again, will be the testimony that
15 you hear in the courtroom, and whatever comes into the
16 record through that testimony during the trial of the case.

17 For that reason, again, it would be -- it's important
18 that you not try to gather any information during any of our
19 breaks from any other source because there is no evidence in
20 this case outside of this courtroom. So, you should not try
21 to gather information from the Internet or any other source
22 if we have a break in this trial. That would be highly
23 improper. And I can assure you those sources of information
24 quite often contain information that is not, that, that is
25 not admissible under the rules of evidence that govern our

1 courts, and shouldn't, and shouldn't be considered by you in
2 reaching a verdict in your case.

3 Now, at the close of trial, I've already told you, it
4 will be your solemn responsibility to determine the guilt or
5 the innocence of the defendant in this case, and your
6 verdict must be based solely upon the record of this trial
7 and the evidence that is in that record.

8 Now, I've already told you that you are the sole judges
9 of the facts, and what that means also is that you will be
10 the sole judges of the credibility and believability of
11 witnesses who will testify during the trial, and that's what
12 credibility means. It means believability. And I'm going
13 to tell you to use your own good common sense in making that
14 determining. Each of you, everyday, make common sensical
15 decisions as to what you choose to believe and what you
16 choose not to believe. We do it everyday about the things
17 we hear, we see, or we read. And today's no different.
18 You'll be making that decision here in the courtroom about
19 the evidence that you'll hear.

20 Now, as the sole judges of the facts, you have the
21 right to believe all of what some witness may testify to,
22 part of what a witness testifies to. You also have the
23 right to believe none of what a witness has told you. You
24 have the right to believe one witness against the, all the
25 other or all the others against one because, again, you are

1 the sole judges of the facts. Therefore, you're the sole
2 judges of the credibility or believability of witnesses who
3 will testify during the trial.

4 Now, you have the right, using your common sense, to
5 use such factors in making that determination as to whether
6 or not a witness has a stake in the outcome of the case,
7 whether or not a witness has a bias or prejudice one way or
8 the other. You also can decide whether or not the witness
9 had the ability to know the facts about which the witness
10 testified, and perhaps, most importantly, observe the
11 witnesses as they testify, the way they speak, how they
12 deliver their testimony. Again, use your common sense and
13 make a decision as to the credibility and the believability
14 of the witnesses who testify, and then you should assign
15 whatever weight you think that testimony deserves in making
16 the decision in this case.

17 Now, I do not appoint a foreperson in this case until
18 the close of the case and I am charging you concerning the
19 law. And one reason I do that is because I want to
20 emphasize to a jury that no juror hearing this case has any
21 greater say than the others in making a decision because, in
22 the end, before a verdict is reached by a jury, it must be
23 unanimous. Each and every one of the 12 jurors who are
24 deliberating must agree upon the verdict before it becomes
25 the verdict of the jury. So, there's no great -- no, no

1 more important juror than any other juror. You all have an
2 equal say in the outcome of the case.

3 Now, when I appoint a foreperson, that person's job
4 will be to preside over the deliberations and send messages
5 to the Court if that's necessary during your deliberations,
6 ask questions, things of that nature. But that person has
7 no greater voice or say in the outcome of the case than any
8 other juror on the jury. So, I'll make that appointment at
9 the close of the trial.

10 Now, I want to be sure that I haven't violated anyone's
11 rights in my opening comments, does the State have any
12 objection to any of the opening comments?

13 SOLICITOR MCCARTY: None, Your Honor. Thank you.

14 THE COURT: Defense have any objections?

15 MR. THOMPSON: None, Your Honor.

16 THE COURT: All right. Now, ladies and gentlemen, I
17 have explained to you that the State has the only burden of
18 proof in this case because the defense, defendant, at this,
19 is presumed to be innocent. So, the State, since they have
20 the burden of proof, they're allowed to go first with their
21 opening statement, followed by the defense. Then, in the
22 presentation of evidence, the State will also go first in
23 presenting its evidence and then the defense has the right
24 to present any evidence they choose to present.

25 Once the evidence is all in, then the parties or the,

1 the attorneys will be allowed to sum up that evidence with a
2 closing argument. Thereafter I will charge you concerning
3 the law, and then I'll turn the case over to you for your
4 deliberations. So, that's the process that we'll go
5 through.

6 So, the State may begin with its opening statement.

7 Mr. McCarty.

8 SOLICITOR MCCARTY: May it please the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 SOLICITOR MCCARTY: Good morning.

12 I appreciate your patience so far. I know we started
13 this yesterday. You guys were brought in, we selected you
14 as a jury. We selected you based upon your ability to be
15 fair and impartial to both sides, the State and to Mr.
16 Thompson and his client, the defendant in this case, Jeffery
17 Bernard Falls.

18 I'll tell you from the outset, the testimony you'll
19 hear involves state troopers and it involves a traffic stop.
20 If you're like me, you've probably been involved in a
21 traffic stop. Maybe it's for speeding, maybe something
22 else. But I ask you to, as the judge said, as the judge
23 told you in his opening remarks, you're not to base in on
24 what you believe the law is, but what the law ought to be.
25 You're to follow the law as he will give it to you.

1 You're to listen to the testimony with a clear and open
2 mind. Don't have a previous bias or opinion based upon the
3 traffic stop you may of been involved, hopefully nobody was
4 involved in, but listen to what the troopers have to say
5 because I tell you they're professionals.

6 Mr. Thompson, I'm sure will attempt to tell you,
7 through the course of his cross-examinations of my witnesses
8 as well as even possibly in his closing argument, that this
9 was a fishing expedition by these troopers. They're out
10 just looking for anything. But I promise you, when you hear
11 their testimony, you'll find that it's different.

12 Trooper Wilson, who you'll hear from momentarily,
13 initiated this traffic stop against the defendant on
14 February 20th back in 2007. So, we're dealing with a case
15 that's a little bit old. Sometimes memories are a little
16 bit faded, but I think you'll find that he's very clear on
17 what happened there.

18 And I when said troopers are professionals, they are.
19 They're a professional just like a professional could be any
20 person, a doctor, a lawyer, any occupation, an accountant, a
21 teacher, whatever it may be. And within each one of those
22 professions, even in your own experience and your own work
23 lives, if you learn certain things that are unique to your
24 situation, that are unique to your occupation, and that's
25 what these troopers have, this experience, this training and

1 education that you'll hear about. Things that you and I
2 might think are a little innocuous. Don't mean anything.

3 To these troopers, they're signs. They're cues.
4 They're indicators. They're things to start to think about.

5 They're out on the roadside everyday. That pull people
6 over. They don't know who they are. They don't know where
7 they're coming from, what their temperament is, what their
8 histories are. They got to be aware. They got to be
9 thinking on their feet. They've got to be paying attention.
10 And in this case here, that's what you'll find Trooper
11 Wilson did during this entire course of this traffic stop
12 with the defendant.

13 Ultimately, because of Trooper Wilson's listening,
14 paying attention, responding to what the defendant told him,
15 Trooper Wilson was able to form a belief that something
16 other than just a traffic stop for which the defendant was
17 stopped for was going on with this. Ultimately you'll hear
18 from other trooper, Steven English who runs a K-9 dog, we
19 all have seen those maybe on TV or in the movie, he brings
20 the dog out. The dog alerted on the vehicle, and there was
21 a search of the vehicle.

22 When they did a search, a more thorough search of that
23 vehicle, they found, as you'll hear, .250 grams of powder
24 cocaine. That's a quarter of a kilo. We'll put it in those
25 kind of terms.

1 Ladies and gentlemen, this case will be short in terms
2 of number of witnesses that the States puts before you. I
3 anticipate only having to call three witnesses, but I don't
4 want you to misconstrue the brevity of my witnesses or the
5 number of them for the importance of this case.

6 The defendant is charged with trafficking in cocaine in
7 excess of 200 grams. Trafficking in this state can be based
8 on multi or trafficking in this state alone is based on
9 weight. It doesn't require that it necessarily be in a
10 vehicle traveling up and down the road. Trafficking can and
11 it doesn't apply in this situation, but trafficking can
12 apply to somebody sells something, brings it to somebody
13 else, makes something. It's all based upon the weight.
14 And, so, the defendant stands before you, and as the State
15 will argue, was in possession of more than 200 grams of
16 powder cocaine.

17 Ladies and gentlemen, I think you'll find that after
18 the conclusion of the State's presentation, with all its
19 witnesses, the testimony, the evidence that puts forward,
20 that at the end of this trial you'll be able to find proof
21 beyond a reasonable doubt that the defendant is guilty of
22 the crime of trafficking in powder cocaine more than 200
23 grams.

24 Thank you.

25 THE COURT: Mr. Thompson for the defense.

1 MR. THOMPSON: Please the Court, Your Honor?

2 May we approach briefly?

3 THE COURT: Yes, you may.

4 (WHEREUPON, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: Mr. Thompson, you may proceed.

7 MR. THOMPSON: Please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. THOMPSON: Ladies and gentlemen, my name is Chris
10 Thompson, and I'm an attorney here in Spartanburg, South
11 Carolina. I'm representing Mr. Jeffrey Falls in this trial
12 here today.

13 I, like Mr. McCarty said, I appreciate your service.
14 You're gonna watch a videotape of a stop. The stop is part
15 of a multi-jurisdictional task force that we have here in
16 Spartanburg called Rolling Thunder, and Rolling Thunder is a
17 situation where police officers from various jurisdictions
18 come into Spartanburg County to enforce the law, and
19 basically there's -- they saturate I-26 and I-85, and at the
20 end of it, you got your paper Saturday, you saw the front
21 page. It said Thunder's Haul.

22 SOLICITOR MCCARTY: Your Honor, I'm gonna object. This
23 is a -- I think the offense in this case occurred back in
24 2006. We're talking about something that occurred in 2011
25 here with the newspaper.

1 THE COURT: Mr. Thompson, I don't know if that's
2 relevant in this particular case. I don't know if that
3 relates to what went on in '07 or not. I don't know the
4 scope of this particular, this particular reported incident
5 or that one. I'm gonna sustain the objection.

6 SOLICITOR MCCARTY: Thank you, Your Honor.

7 MR. THOMPSON: Your Honor, I would argue that it's a
8 continued yearly task force or sting.

9 THE COURT: Oh, I understand that. But each one stands
10 on its own, and I, again, do not know the scope of that
11 operation and it compares to the one that we're talking
12 about in this case, and it happened after this particular
13 incident. I've made my ruling. I'll sustain the objection.

14 MR. THOMPSON: Thank you, Your Honor.

15 THE COURT: You can talk about this, this particular
16 operation all you'd like.

17 MR. THOMPSON: Thank you, Your Honor.

18 Ladies and gentlemen, Rolling Thunder is a sting where
19 we saturate these highways and more people are pulled over
20 than normal, and my belief and I hope I can show you today
21 that it's a contest.

22 People do stuff that's wrong. You're gonna look at
23 this tape and you got to decide who did something wrong, my
24 client, somebody that rented a car before him, or this
25 gentleman over here. We been through all the legal

1 arguments yesterday. They will go through those again. But
2 it's gonna put it before you today.

3 I want you to take this evidence and do what the judge
4 said, use your common sense, and arrive at a decision, and
5 make that decision and make it be based on the evidence.
6 Make it be your decision.

7 Okay. Don't -- you know, don't be swayed by me, by
8 him, by anybody. Make your decision. When you do, I think
9 you're gonna find out that my client's not guilty of this
10 crime. You'll come back with a not guilty verdict. I
11 appreciate your service.

12 THE COURT: All right. At this time the State may call
13 its first witness.

14 SOLICITOR McCARTY: Your Honor, if I can, I'm gonna --
15 I'd like to call Lieutenant Beth Stuart a little out of
16 order. She's got an appointment she's get to get to.

17 THE COURT: Certainly.

18 Come forward please, ma'am. Come to my left and be
19 sworn please. Right over here.

20 BETH STUART, having been first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please, ma'am, and once you're
23 seated I'd ask that you state your name.

24 WITNESS: Sure. Mary Elizabeth Stuart.

25 THE COURT: And, Mr. McCarty, it's your witness.

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1 SOLICITOR MCCARTY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR MCCARTY:

4 Q Lieutenant Stuart, if you will, tell the jury who you,
5 where you work, what you do please.

6 A Yes, I'm a forensic chemist with the Spartanburg County
7 Sheriff's Office, and I have been there about eight and a
8 half years now.

9 Q As a forensic chemist, what do you do with the
10 Spartanburg County Sheriff's Office?

11 A Sure. My main duties are drug analysis, fire debris
12 analysis, poison analysis, and meth labs.

13 Q In order to do those types of analysis, I'm sure you
14 have some type of educational training and background.

15 would you tell the jury what that consists of?

16 A Sure. I have a Bachelor's Degree of Science Degree in
17 Chemistry and a Bachelor's of Science in Biochemistry both
18 from the College of Charleston and I have a Master's Degree
19 in Chemistry from the University of South Carolina. I have
20 been to the law enforcement school down in Columbia. I've
21 also been to the DEA forensic chemist school, and I've been
22 to the DEA clandestine lab, essentially meth lab school.

23 I've also been to our instrumentation company, a
24 company that makes it, called Agilent. I've also been to
25 numerous classes with them as well as I am nationally

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1 certified by the paid American Board of Criminalist in all
2 areas of forensic science. Every year we're required to
3 have 40 hours of continuing training in our areas. And, so, I
4 have that.

5 Q Assuming, based on all that, you've had a chance to
6 analyze something that's considered a narcotic or narcotic
7 type substance in your time at the Sheriff's Office, is that
8 correct?

9 A I think I'm up to about 3,000 items now.

10 Q And those 3,000 items have included various drugs like
11 marijuana, cocaine, heroine, methamphetamine, pills?

12 A Yes.

13 SOLICITOR MCCARTY: Okay. Bear with me for just one
14 moment if you will please. I'm sorry.

15 THE COURT: Yes, sir.

16 (Pause.)

17 SOLICITOR MCCARTY: I thought I missed a question
18 there.

19 Lieutenant Stuart, have you ever been qualified as an
20 expert in State or Federal Courts?

21 A I have both, 28 times total.

22 SOLICITOR MCCARTY: All right. Your Honor, at this
23 time I would offer Lieutenant Stuart as an expert in the
24 field of chemistry and narcotics analysis.

25 THE COURT: Any objection?

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1 MR. THOMPSON: No objection.

2 SOLICITOR MCCARTY: Thank you.

3 THE COURT: Ladies and gentlemen, let me explain to you
4 what we're doing right now so that you maybe will understand
5 this process. Generally, under the rules of evidence,
6 witnesses who testify in Court are not allowed to state
7 opinions. They're allowed to testify concerning facts
8 within their knowledge, but not state opinions based on
9 those facts.

10 Now, that's the general rule. There's an exception
11 made for witnesses who are qualified as expert witnesses in
12 some field, science, calling, or profession, something of
13 that nature. And once a witness is designated, designated
14 as an expert witness, that witness has the right then to
15 state opinions within that field of expertise and also
16 allowed to state the basis or the reasons that, that they
17 have those opinions.

18 In that case this witness is being offered as an expert
19 in the forensic analysis of, of drugs and chemicals, and,
20 without objection, I'm going to qualify her as an expert
21 within that field. That means she'll be allowed to state
22 her opinions concerning matters within that field and the
23 reasons for those.

24 Now, at the close of the trial, and during my charge,
25 I'll discuss, in a, in a little more detail, how you, the

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1 jury, have the right to consider the testimony of experts
2 along with other witnesses. So, we'll talk about that again
3 at the close of the trial. But at this time I have
4 qualified the witness as an expert.

5 Mr. McCarty, you may proceed.

6 SOLICITOR McCARTY: Thank you, Your Honor.

7 Q Lieutenant Stuart, you work in a lab type situation or
8 setting at the Sheriff's Office, am I correct?

9 A Yes, sir.

10 Q And that lab has certain controls and safeguards within
11 it for maybe processing of evidence or narcotics?

12 A Yes, sir.

13 SOLICITOR McCARTY: If I can, if I have just one thing
14 we need to mark, Your Honor.

15 THE COURT: Yes, sir.

16 (WHEREUPON, a report was marked as State's Exhibit No.
17 3 for identification purposes only at this time.)

18 Q Lieutenant Stuart, when you or your laboratory receives
19 an item that's a, potentially a narcotic substance, what do
20 you do to insure that it hasn't been tampered with or messed
21 with or anything like that?

22 A Make sure it's sealed.

23 Q And it's sealed in what?

24 A Typically it's a B.E.S.T. Bag.

25 Q Okay. I want to show you, if I can -- if I may

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1 approach, approach the witness, Your Honor?

2 THE COURT: You may approach the witness.

3 Q Those are both State's 2 and No. 3, and ask you if
4 you'll look at those real quick.

5 Do you recognize the item in State's No. 2?

6 A I do. It's a B.E.S.T. Bag containing the items that
7 we're here today for. It has my initials all over it.

8 Q Okay. And actually we kind of got two bags there, am I
9 correct?

10 We got a B.E.S.T. Bag that's kind of a blue lined
11 baggy---

12 A Yes.

13 Q ---inside it?

14 A Yes.

15 Q And then you have a separate bag containing that, am I
16 correct?

17 A Yes.

18 Q Now, what about the B.E.S.T. Bag is it that you look
19 for to see if there's been anything happening to the bag,
20 altered or tampered, or anything like that?

21 A Sure. In our lab we have agencies from all over
22 Spartanburg County bring us drugs. So, we needed a uniform
23 way for everyone to submit the drugs to us so everybody
24 would do it the same, and that's why we use the B.E.S.T.
25 Bag, and B.E.S.T. is just an acronym for Best Evidence

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1 Sample Testing. So, it's just a way for everybody to submit
2 it the same way.

3 Basically this bag you see in here with the blue lines,
4 you drop the evidence inside and then it has a seal across
5 the top. It's not tamper proof. If you want to get in it
6 you can. You just cut it, whatever. But you're gonna be
7 able to tell. If you try to rip the sides, the lines are
8 gonna distort. Obviously if you cut it you will be able to
9 tell. So, it's the way that we ensure that when the sample
10 comes to us that they are sealed properly.

11 When I go to pick something up I do an initial check to
12 make sure it's sealed, and then I take it back to the lab
13 with me, and then when I go to work the case, I actually
14 double-check to make sure it's sealed, check behind myself
15 again, and then I'll put my initials on the bag with the
16 date I cut it open and the letters okay so I know it was
17 sealed properly and there was no tampering before I ever
18 opened the bag.

19 Q And if it wasn't properly or if it wasn't squared away
20 like you anticipated, would you test that substance---

21 A I would not.

22 Q ---or analyze it?

23 A It would not be tested. The officer would be
24 contacted.

25 Q So, in the case here of the State of South Carolina

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1 versus Jeffrey Bernard Falls in State's Exhibit No. 2,
2 that's the item you tested, am I correct?

3 A Yes, it is.

4 Q Were you able to -- how did you test the item?

5 What steps did you do to test that item?

6 A Sure. It's a two part test. The first part is what we
7 call a presumptive test, and it's basically a chemical color
8 change. If I drop chemicals on it, it will change colors
9 for me.

10 The second part of the test is an instrumental test and
11 it's what's called a confirmatory test. We use an
12 instrument called a GCMS. Basically it prints me out a
13 report that we call "a fingerprint" of that item. So, I did
14 both those tests on the item.

15 Q And are you able to, based upon those tests, form an
16 expert opinion as to what the substance is that you tested?

17 A Yes, it was cocaine.

18 Q Were you able to weigh the cocaine or weigh the amount
19 of cocaine and determine how many grams it was?

20 A Yes, it 254.12 grams.

21 Q 254.12.

22 And I'll make sure my math is correct, a kilo gram is a
23 thousand grams, am I correct?

24 A Yes.

25 Q So, this is a quarter of a kilo?

Beth Stuart - Direct examination
by Solicitor McCarty

1 A A little over, yes.

2 Q A little bit over.

3 Lieutenant Stuart, the papers there before you I have
4 marked as State's Exhibit No. 3.

5 Will you look at that please?

6 Do you recognize that?

7 A Yes, sir.

8 Q What is that please?

9 A This is the lab report, copy of the lab report.

10 Q And that is a fair and accurate copy of it?

11 A Yes.

12 Q On the second page of the lab report, is that a copy of
13 just the qualifications here?

14 A Yes, my form with my qualifications and my signature
15 for the report.

16 Q And if I can ask you to look kind of down towards the
17 bottom of the page.

18 From whom or from where did you receive this evidence
19 that you tested?

20 A In this case I actually received the evidence directly
21 from Trooper Wilson.

22 Q Thank you.

23 And on what date was that received?

24 Do you recall?

25 A On February the 20th.

Beth Stuart - Direct examination
by Solicitor McCarty

1 Q Thank you.

2 Your Honor, at this time I'm not gonna offer State's
3 No. 1 or No. 2 at this point, but I would offer State's No.
4 3, the report from her analysis for admission into evidence.

5 THE COURT: Is there an objection?

6 MR. THOMPSON: That's the report, right?

7 THE COURT: That's what he indicated, yes.

8 MR. THOMPSON: Yes. No objection to that report.

9 THE COURT: All right. Without objection, that will
10 be -- is it already marked?

11 SOLICITOR MCCARTY: It is already marked, Your Honor.

12 THE COURT: All right. It will be admitted as marked
13 into the record.

14 (WHEREUPON, State's Exhibit No. 3 was received into
15 evidence at this time.)

16 THE COURT: You may proceed.

17 SOLICITOR MCCARTY: Your Honor, I believe that will be
18 all the questions I have for Lieutenant Stuart at this time.

19 THE COURT: Your witness, Mr. Thompson.

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q Ma'am, you said you received that directly from officer
23 Wilson on the 20th of February?

24 A Yes, sir.

25 Q Okay. And what time of day was that?

Beth Stuart - Cross-examination
by Mr. Thompson

1 A I don't mark the time. Just the date.

2 Q But that would of been during the day?

3 You worked the day shift back or night shift?

4 A With it being actually during Rolling Thunder, I would
5 of been working all hours whenever they needed me.

6 Q Okay. And I have no further questions.

7 THE COURT: Anything further?

8 SOLICITOR McCARTY: No, Your Honor. I'd ask that
9 Lieutenant Stuart be excused please.

10 MR. THOMPSON: No objection.

11 THE COURT: Any objection?

12 MR. THOMPSON: None.

13 THE COURT: Ma'am, you may step down. You're free to
14 go if you'd like. I'm sure you have other things to do.

15 WITNESS: Yes, sir.

16 SOLICITOR McCARTY: Thank you, Your Honor.

17 Your Honor, the State---

18 THE COURT: You may call your next witness.

19 SOLICITOR McCARTY: Thank you. I'm sorry.

20 The State would call Trooper Darren Wilson to the
21 stand.

22 THE COURT: Sir, if you'll come forward to my left and
23 be sworn.

24 D.G. WILSON, having been first duly
25 sworn, testified as follows:

D.G. Wilson - Direct examination
by Solicitor McCarty

1 THE COURT: Have a seat, and once you're seated, state
2 your name for the record.

3 WITNESS: Darren Wilson.

4 THE COURT: Mr. McCarty, your witness.

5 SOLICITOR MCCARTY: Thank you, Your Honor. If I may
6 just have a moment here to remove these and put them back.

7 THE COURT: I understand.

8 DIRECT EXAMINATION

9 BY SOLICITOR MCCARTY:

10 Q Sergeant Wilson, just by way of introduction, if you
11 will tell the jury who you are and where do you work and
12 what you do.

13 A My name is Darren Wilson. I work for the South
14 Carolina Highway Patrol. I've been with them for nine
15 years, and I am a supervisor with the Aggressive Criminal
16 Enforcement Team.

17 Q And the acronym for the Aggressive Criminal Enforcement
18 is the A.C.E. Team, is that correct?

19 A Stands for A.C.E.

20 Q What exactly does the A.C.E. Team do?

21 A We patrol the highways enforcing traffic laws, trying
22 to reduce fatalities throughout the state. Also controlling
23 the flow of illegal drugs, illegal contraband, fugitives,
24 terrorists, things of that nature coming and throughout our
25 state.

D.G. Wilson - Direct examination
by Solicitor McCarty

1 Q Trooper Wilson or Sergeant Wilson, during the course of
2 your nine years with the Highway Patrol, have you received
3 any type of training or education in traffic interdiction or
4 drug enforcement interdiction, those types of issues?

5 A Yes, sir, I've been to numerous classes. Desert Snow,
6 which is the national class. I attended that in Las Vegas.
7 NCEA, National Criminal Enforcement Association, attended
8 several different seminars and trainings with them and
9 numerous other trainings in Georgia, North Carolina, you
10 know, just throughout the United States.

11 Q In these trainings, what, what types of issues do you
12 focus on?

13 Can you explain to the jury a little bit more so
14 they'll understand where you're coming from, your
15 background, your ability to reason things out during traffic
16 stops please?

17 A In the field of interdiction, we learn the trends, what
18 is, what is normally seen when someone is trafficking or
19 carrying illegal drugs, contraband. Those things that I
20 spoke of earlier. We learned indicators or items of
21 interest like how they're concealed, numerous, numerous
22 things.

23 Q You're taught about or are you taught rather about the
24 physical characteristics of suspects in roadways on the
25 roadside stop?

D.G. Wilson - Direct examination
by Solicitor McCarty

1 A Yes, we also taught interview techniques, how to listen
2 to what's being said, how it's being said, what we see,
3 hear -- we use our five senses. what he see, hear, and
4 smell.

5 Q Trooper Wilson, how many times would you estimate
6 you've conducted a traffic stop with your times in the
7 Highway Patrol?

8 A Thousands.

9 Q Over the course of nine years?

10 A Yes, sir.

11 Q And have all of those stops resulted in a search of a
12 vehicle or a traffic stop or a traffic ticket being issued?

13 A They have not.

14 Q So, you've issued some folks just a warning or just a
15 courtesy reminder?

16 A Yes, sir.

17 Q All right. Trooper Wilson, let me ask you about -- do
18 you have any other law enforcement experience other than
19 with the trooper, about being a trooper?

20 Do you have any prior military experience?

21 A Yes, sir, I worked five years with Clarendon County
22 Sheriff's Department. Also served 20 years in the military,
23 and I am retired at this point from the Army.

24 Q Sergeant Wilson, do you have -- have you ever been
25 recognized by either the Troopers Association or anyone else

D.G. Wilson - Direct examination
by Solicitor McCarty

1 for any type of award for your service or your duty as a
2 trooper?

3 A Yes, sir, in 2003 I was Trooper of the Year for the
4 State of South Carolina. In 2004 I was National Trooper of
5 the Year for the entire nation to include Canada. At that
6 point I was the first and only trooper and still is the only
7 trooper ever in South Carolina to be given that honor.

8 Q Trooper Wilson, I want to take you back to
9 February 20th, 2007.

10 On that date you were involved with a traffic stop
11 involving the defendant, Jeffrey Bernard Falls, am I
12 correct?

13 THE COURT: Yes, sir.

14 Q And Mr. Falls who we're speaking of, he's the gentleman
15 sitting next to Mr. Thompson in the courtroom?

16 A Yes, sir.

17 Q Trooper, were you on patrol in Spartanburg County on
18 that day?

19 A I was.

20 Q Now, is Spartanburg County your normal area of patrol?
21 Is it some place you find yourself day in and day out?

22 A No, sir.

23 Q Why were in, you here in Spartanburg County?

24 A Operation Rolling Thunder.

25 Q Okay. Now, as a trooper, maybe some folks on the jury

D.G. Wilson - Direct examination
by Solicitor McCarty

1 know this or not, but do you have statewide jurisdiction to
2 enforce traffic offenses and criminal offenses across the
3 State?

4 A I do. I can enforce any laws anywhere in the State of
5 South Carolina.

6 Q And were you invited up here, as a member of the A.C.E.
7 Team, for traffic interdiction and traffic safety for that
8 purpose?

9 A I was.

10 Q What were the primary goals during the Rolling Thunder
11 as you understood it?

12 A The primary goal is to reduce facilities here in
13 Spartanburg County and to reduce the number of DUI's.

14 Q And that's done through a heavy enforcement, heavy
15 saturation, as Mr. Thompson said, of law enforcement on the
16 roadways, am I correct?

17 A Yes, sir.

18 Q Has it been your experience, when people are traveling
19 up and down the roadway, they see a police office or a
20 cruiser and they tend to slow down, pay a little bit more
21 attention about what they're doing?

22 A Absolutely. Officer presence is a deterrence.

23 Q Now, on the night of February 20th, 2007, when you
24 were patrolling in Spartanburg County, where did you come
25 into contact with Mr. Falls?

D.G. Wilson - Direct examination
by Solicitor McCarty

1 A On Interstate 20 -- excuse me. Interstate 85 around
2 the 62-mile marker north.

3 Q The 62-mile marker going north; that's approaching the
4 City of Duncan, Highway 290 area, am I correct?

5 A Yes, sir, Exit 63.

6 Q What about Mr. Falls drew your attention or caused you
7 to be involved in this incident with him?

8 A In that portion, I believe it's a three -- that portion
9 of the interstate is three lanes. I was in the center lane,
10 and he was in the far right lane. As we were traveling down
11 the interstate, I observed the vehicle go across the white
12 fog line, the solid white line to right of the interstate.
13 I observed the vehicle go across that line on several
14 occasions meaning the right side of his vehicle went
15 completely off the roadway.

16 Q What about traveling off the side of the roadway or
17 exiting your lane of travel like that causes you or what
18 about that would cause you to be concerned or suspicious?

19 A It could be an indication of someone driving under the
20 influence, someone driving fatigued, sleepy, or somebody
21 having some type of medical condition.

22 Q Now, when you talk about fatigued, when you witnessed
23 this, when you witnessed the defendant driving in that
24 manner, approximately what time of the day was it?

25 A This was 9:07 at night.

D.G. Wilson - Direct examination
by Solicitor McCarty

- 1 Q So, you---
- 2 A Around about.
- 3 Q Approximately nine o'clock at night?
- 4 A Yes, sir.
- 5 Q February 20th?
- 6 A Yes, sir.
- 7 Q Dark outside?
- 8 A Yes, sir.
- 9 Q Everybody have their headlights on?
- 10 A Yes, sir.
- 11 Q All right. Did you initiate a traffic stop on the
- 12 defendant?
- 13 A I did.
- 14 Q And what do we mean by initiating a traffic stop?
- 15 A Meaning that I activated my emergency equipment at the
- 16 point with my blue lights without the siren.
- 17 Q Did the defendant pull over pretty much immediately
- 18 thereafter?
- 19 A He did.
- 20 Q Trooper Wilson, let me ask you about this incident.
- 21 Did your car have a -- was it equipped with a video
- 22 recording device?
- 23 A Yes, it was.
- 24 Q Now, is that device activated -- can you activate it
- 25 manually or does it come on when you turn your blue lights

D.G. Wilson - Direct examination
by Solicitor McCarty

1 on?

2 A I can activate it manually by mashing a record button,
3 but once you turn your blue lights on it automatically comes
4 on.

5 Q Now, do you have any control over that camera as to how
6 it's operated once the blue lights are on as to can you cut
7 it off, pause it, or do things with it?

8 A I can not pause it, but I can stop recording.

9 Q During the course of this traffic stop with Mr. Falls,
10 from the point where you initiated the traffic stop till the
11 end, did you turn off the video or turn it, cut it off at
12 any point?

13 A I did not.

14 Q Have you seen the videotape prior to your testimony
15 today in trial?

16 A From what I seen yesterday.

17 Q All right. Trooper Wilson, does that video or that DVD
18 that I'm asking you about, does that fairly and accurately
19 represent the event that occurred on February 20th, 2007?

20 A Yes, sir.

21 Q Your Honor -- if I may show you what's marked as
22 State's Exhibit No. 1.

23 Trooper, is that the video equipment that we're talking
24 about?

25 A Yes, sir.

D.G. Wilson - Direct examination
by Solicitor McCarty

1 SOLICITOR MCCARTY: Your Honor, at this time I ask that
2 State's No. 1 be admitted for purposes of evidence.

3 THE COURT: Any objection?

4 MR. THOMPSON: I'd like to hear a little bit about the
5 chain of custody on it, on the video.

6 THE COURT: You can ask about that. I'm not sure that
7 that's required, but I'll---

8 Q Well, I'll ask you this. Trooper, is the video -- how
9 is it maintained in your vehicle?

10 How is it recorded?

11 Did you have---

12 A It's recorded on VHS, which is in a locked box stored
13 in the trunk.

14 Q Who has access to that lock box?

15 A I do.

16 Q Are you the only person who has that access?

17 A Yes, sir.

18 Q When you have an incident like this where something has
19 been recorded, what do you do with that videotape?

20 A I keep the original for evidence and make a working
21 copy of the tape.

22 Q So, the original has been placed into evidence and this
23 is a copy of that original tape?

24 A Yes, it is stored and put in the district.

25 Q Okay. And, so, this copy that, that we're looking at,

D.G. Wilson - Direct examination
by Solicitor McCarty

1 talking about today marked as State's Exhibit No. 1, that's
2 a fair and accurate copy of what you have recorded on VHS
3 cassette?

4 A Yes, sir.

5 Q It hasn't been altered or amended in anyway?

6 A No, sir.

7 Q Has it been edited for time or shortened or lengthened?

8 A No, sir.

9 SOLICITOR McCARTY: All right. Your Honor, that would
10 be, as far as my offer on the tape.

11 THE COURT: Any objection, Mr. Thompson?

12 MR. THOMPSON: None.

13 THE COURT: All right. It will be admitted as marked
14 as State's No. 1.

15 (WHEREUPON, State's Exhibit No. 1 was received into
16 evidence at this time.)

17 SOLICITOR McCARTY: Thank you.

18 Your Honor, may I publish to the jury at this time?

19 THE COURT: You may.

20 SOLICITOR McCARTY: Thank you.

21 THE COURT: Now, ladies and gentlemen, what we mean by
22 publish, that's a long legal phrase for we're gonna show it
23 to you. That's what that means.

24 Mr. McCarty, can you bring it out just a little
25 further?

D.G. Wilson - Direct examination
by Solicitor McCarty

1 I think they're having a hard time getting where they
2 can see it. I notice some people kind of straining around a
3 little bit.

4 All right. If anybody has any difficulty I want you to
5 let me know. I want you to be able to see.

6 Q Trooper, can you also see the video?

7 A Yes, sir.

8 SOLICITOR MCCARTY: Your Honor, may I be permitted to
9 stand up by the trooper while we're doing this?

10 THE COURT: Oh, yes, sir.

11 SOLICITOR MCCARTY: Thank you.

12 THE COURT: Is it okay if we lower the lights a little?

13 (WHEREUPON, a portion of the videotape was played for
14 the jury at this time.)

15 Q Trooper, I'm gonna pause it right there. I want to ask
16 some questions as we go through this video about some, about
17 the course of this traffic stop you have.

18 Right here we see that you stopped the defendant, am I
19 correct?

20 A Yes, sir.

21 Q And this is his vehicle.

22 Would you describe to the jury what that vehicle is?

23 A It's a -- excuse me just a second. It's a Lincoln.

24 Q Lincoln.

25 What type of tag does that have on it?

D.G. Wilson - Direct examination
by Solicitor McCarty

1 A North---

2 Q Is it South Carolina?

3 A North Carolina.

4 Q North Carolina registered vehicle.

5 Now, is there anything, when you make this traffic
6 stop, about where the defendant stopped on the roadway that
7 you're looking for as a state trooper based on your training
8 and experience?

9 MR. THOMPSON: Your Honor, I'm gonna object to the
10 leading nature of this. A lot of it is immaterial, but
11 we're getting to the point where---

12 THE COURT: Well, now, that question was is there
13 anything -- I don't find that last question to suggest an
14 answer. So, I'll allow the question.

15 SOLICITOR MCCARTY: Thank you.

16 Trooper, would you like for me to ask it again?

17 A Yes, sir.

18 Q Is there anything, based on your training and
19 experience, about the way or the nature in which the
20 defendant stopped his vehicle or positioned his vehicle that
21 became suspicious or, or alerted to you anything?

22 A Well, he stopped right on the white fog line that I was
23 speaking about earlier.

24 Q Position, position -- when you say stop on the white
25 fog line, do you mean positioned the driver's side of the,

D.G. Wilson - Direct examination
by Solicitor McCarty

1 the vehicle on the white, on the white fog line?

2 A Yes, sir, making it pretty much impossible for me to
3 walk up to the driver's side, not unless I was to step out
4 into traffic.

5 Q And why is that important in your training, experience,
6 and education on this?

7 A Through my training and experience we're taught that if
8 a person pulls up to the white line, that's what we call
9 white lining, they're trying to keep you from that side of
10 the vehicle. There's some reason they don't want you on
11 that side of the vehicle. They're trying to create distance
12 between myself and that side of the vehicle.

13 Q Now, trooper, we can see you kind of leaned into the
14 window of the passenger side talking.

15 At this point of the stop, what information have you
16 gathered from the defendant or from his vehicle?

17 A Well, upon my getting out of my car and my initial
18 approach, I was looking at the vehicle. I was noticing that
19 it was unusually clean. As I got up to the back window
20 there, viewing inside of the vehicle, I could see no items
21 in the vehicle. It was unusually clean. There was nothing
22 inside the vehicle that could be seen.

23 Q And when you say unusually clean, does that mean that
24 the vehicle didn't look like it was lived in so to speak?

25 A Correct.

D.G. Wilson - Direct examination
by Solicitor McCarty

1 Q And based on your experience with thousands of traffic
2 stops, do -- was this vehicle different from those other
3 vehicles you've stopped in the past?

4 A Yes, it did not match what I normally see from the
5 normal motoring public.

6 Q What about the defendant, at this point, were you able
7 to notice?

8 A His attire, what he was wearing.

9 Q What was he wearing, do you recall?

10 A A work uniform meaning a pair of blue pants, work
11 shirt, and a work jacket. I believe it had a name tag on
12 it.

13 Q And we're talking about approximately nine o'clock at
14 night?

15 A Yes, sir.

16 Q We heard you say something to the effect of you're just
17 driving a little slow, just checking on you.

18 Did the defendant respond to that statement to you?

19 A I believe he said he was just, just getting off work.

20 Q Just getting off of work?

21 A Yes, sir.

22 Q Now, did he tell you maybe where he had been from or
23 where we was going?

24 A Said he was coming from Atlanta.

25 Q So, at this point you have the defendant telling you

D.G. Wilson - Direct examination
by Solicitor McCarty

1 that he just got of work, he's coming from Atlanta?

2 A Yes, sir.

3 Q And the tag on the car is from North Carolina, am I
4 correct?

5 A Yes, sir.

6 Q Add we're dealing with at nine o'clock at night.

7 Now, has the defendant, at this point, handed you his
8 driver's license and registration or do we need to watch
9 just a few seconds more?

10 A I think this is at the point that he's getting ready to
11 pass me his license.

12 (WHEREUPON, another portion of the video was played for
13 the jury at this time.)

14 Q And, Trooper Wilson, now we just heard North Carolina
15 3-6-0-7-1-9 and you've repeated that number. That appears
16 on the tape in State's Exhibit No. 1 at 2101:37, 9:01 and 37
17 seconds according to the way your camera records the time,
18 am I correct?

19 A Yes, sir.

20 Q What was that you had just said to -- and I'm assuming
21 you just called dispatch, is that correct?

22 A Yes, I was talking with the radio dispatcher and I was
23 checking his driver's license. That was his driver's
24 license number that was being said over the radio.

25 Q So, he had previously given you his driver's license

D.G. Wilson - Direct examination
by Solicitor McCarty

1 and you asked him to pull on up?

2 A Yes, sir.

3 Q And why did you ask him to pull on up?

4 A For safety reasons. You saw me take a look back. I'm
5 not sure what happened back there. But that was a bad
6 location to be in up next to that guardrail. I just wanted
7 to get him in a little bit more open space.

8 Q Pinning yourself between the guardrail and his vehicle?

9 A Yes, sir.

10 Q At -- when the defendant handed you his license and
11 registration on the vehicle, was there anything you noticed
12 about the defendant?

13 A Yes.

14 MR. THOMPSON: Your Honor, I object to leading, Your
15 Honor.

16 THE COURT: He asked if there was anything he noticed.
17 I don't find that to suggest an answer. Overruled.

18 Q Was there anything about the defendant that you noticed
19 as he handed you his license and registration?

20 A Through my training and also we're taught don't
21 immediately reach in and take the license. Let them reach
22 out to you just so they hand it to you and stare at them for
23 a while, and as he done that, as he handed me his license, I
24 could see that his hand was shaking uncontrollably. Just
25 visually shaking.

D.G. Wilson - Direct examination
by Solicitor McCarty

1 Q Is it normal for a motorist to be nervous during the
2 course of a traffic stop?

3 A Initially, yes.

4 Q And you've encountered that nervousness in other
5 traffic stops?

6 A Numerous times.

7 Q Would you, comparing the defendant's nervousness as you
8 saw it on February 20th, 2207, was it more or less
9 compared to other motorist you've encountered?

10 A He was more nervous than any normal traffic stop.

11 Q Was there anything about the registration of this
12 vehicle that also caught your eye?

13 A He did not actually have the registration. It was a
14 rental agreement that was due back the following day.

15 Q So, at this point you've learned now that the car is
16 also a rental car?

17 A Yes, sir.

18 Q Trooper Wilson, based on your training and experience,
19 is there anything odd about a rental car from what you have
20 learned in your training and experience that would cause you
21 to begin to think about that scenario or that situation?

22 A Yes, sir, we're also taught that people involved in
23 criminal activity will also rent a vehicle because, in fear
24 of having their vehicle seized if they're caught with large
25 amounts, large amounts of contraband.

D.G. Wilson - Direct examination
by Solicitor McCarty

1 Q All right. I'm gonna continue to play the video on a
2 little bit further.

3 (WHEREUPON, another portion of the video was played for
4 the jury at this time.)

5 Q Trooper, from right there it sounded like you said
6 something as you approached the vehicle, did you?

7 A Yes, sir, I was calling for my partner, Lance Corporal
8 English.

9 Q Why were you calling for your partner at this point?

10 A As I was reapproaching the vehicle, I noticed that
11 Mr. Falls was leaning forward appearing to be placing
12 something under the front seat driver's side.

13 Q Why would that be concerning to you?

14 A I did not know if he had any weapons, whether or not
15 he's trying to hide a weapon, or what he was trying to do.

16 Q Trooper, do you have any personal experience involving
17 motorist who have been involved with weapons?

18 A Yes, sir, December the 27th of 2003 I had a fellow
19 trooper and friend who stopped a vehicle for the very same
20 reason, failing to maintain lane, walked up to the vehicle
21 and was immediately shot for no apparent reason. I, in
22 turn, responded to the scene and was confronted by the guy
23 who shot him and I ended up shooting that guy five times.
24 Turns out he had just recently stabbed his wife several
25 times, stolen the car, and stolen the handgun.

D.G. Wilson - Direct examination
by Solicitor McCarty

1 Q So, for you it's primarily officer safety?

2 A Yes, sir, absolutely.

3 Q All right. Trooper, I want to continue to play on just
4 a little bit more.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q Also there you explained to the defendant at that point
8 that you were gonna write him a warning, am I correct?

9 A Yes, sir.

10 Q And then it seemed the defendant responded to you.
11 What, what did -- as you recall, what did he say to
12 you?

13 A He was saying that the trucks were bothering him.

14 Q Did you ask him about, about that question?

15 A Don't -- no, sir.

16 Q Is that type of response or, or chatter, is that, in
17 your training and experience, taught you anything or is
18 there anything about that type of situation that is a pure
19 indicator for you?

20 A Yes, sir, we're also taught that when people just start
21 rambling on about, for no apparent reason or answering
22 questions that are not asked, they're trying to distract you
23 or to, I guess, get your mind off what you're focused on.

24 Q Continue to play on.

25 (WHEREUPON, another portion of the video was played for

D.G. Wilson - Direct examination
by Solicitor McCarty

1 the jury at this time.)

2 I think we heard you ask him about whether or not he
3 had worked that day, am I correct?

4 A Yes, sir.

5 Q Do you recall how he responded?

6 A He began saying something about he owned a wrecker
7 service of some type of towing service.

8 Q Was that the question you had asked him?

9 A No, sir.

10 Q Did you reask him again if he had worked?

11 A I did.

12 Q And---

13 A I asked him again if he worked and he stated that he
14 was coming from his cousin's house in Atlanta.

15 Q You asked him about coming from his cousin's house in
16 Atlanta.

17 Did you ask him how long been, he had been at his
18 cousin's house in Atlanta?

19 A Yes, sir.

20 Q How did Mr. Falls respond to that question?

21 A When, when I asked him how long he stayed at Atlanta,
22 he looked away from me for a brief moment and paused and
23 then he looked back and then he stated, stated for a few
24 hours.

25 Q Now, what about that is, in your experience and your

D.G. Wilson - Direct examination
by Solicitor McCarty

1 training, something to be looking for or a cue?

2 A It's, it's not normal to find someone traveling a long
3 distance just to go stay for a few hours anywhere a long
4 distance.

5 Q Is there anything about coming from Atlanta being a,
6 being, again, on, based on your training and experience as
7 you've learned about the City of Atlanta, is that something
8 you're looking for or listening for?

9 A Yes, sir, I'm taught, through DEA and other law
10 enforcement entities, that Atlanta is a source city for
11 narcotics.

12 Q Source city being?

13 A Being a major hub. They're large amounts of drugs
14 coming in and out of Atlanta.

15 Q So, at this point in the traffic stop we're about five
16 approximately minutes into it. You've learned that the
17 defendant has a North Carolina driver's license. Said he
18 had worked.

19 Am I correct?

20 A Yes, sir.

21 Q That he'd been to his cousin's house in Atlanta and is
22 on his way back, am I correct?

23 A Yes, sir.

24 Q Through the information that you've gathered at this
25 point, and not to mention too when you approached the

D.G. Wilson - Direct examination
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1 vehicle you saw him reaching up under the seat apparently,
2 am I correct?

3 A Yes, sir.

4 Q So, at this point are you beginning to listen more
5 attentively to what he's trying to tell you about things or,
6 or we just going on business as usual?

7 A I'm listening to what's being said and my suspicions
8 are rising even more that something's just not right about
9 this stop. It's more than just my normal traffic stop.

10 Q Play it a little bit more please.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q It's a little bit hard to hear I know. We can tell
14 Interstate 85's rather busy, am I right?

15 A Yes, sir.

16 Q And, and those trucks we hear distorting the sound on
17 this video, are they distorting how you're hearing things on
18 the interstate as well?

19 A Yes, I'm having some trouble hearing what I'm saying,
20 what he's saying.

21 Q Are you sometimes having to ask him to repeat what he
22 just said?

23 A Yes, sir.

24 Q Trooper Wilson, at this point I think we've asked him
25 about or you've asked him about being in Atlanta.

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1 Did the defendant state for what purpose he'd been in
2 Atlanta?

3 A Said his cousin called him and wanted him to come to
4 check him out.

5 Q Was there any reason why he was down there that he
6 stated he was going to check out his cousin?

7 A To plan a birthday party.

8 Q Was the party that day?

9 A It was the next week, the following week.

10 Q And that's according to what Mr. Falls told you?

11 A Yes, sir, according to him.

12 Q So, according to what Mr. Falls told you at this point
13 he went to meet his cousin to plan a birthday party that was
14 the following week?

15 A Yes, sir.

16 Q Did Mr. Falls indicate to you, at that time, that he
17 had gone down there because he met, they met with a caterer
18 or met with a DJ or met with anybody like that?

19 A No, sir.

20 Q Just stated he'd gone to plan a party with his cousin?

21 A Yes, sir.

22 Q You asked him his cousin's name, am I correct?

23 A I did.

24 Q How did the defendant respond to that question?

25 A He paused as if he was searching for a name and said

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1 uh, Black.

2 Q Just provided the name Black?

3 A Yes.

4 Q Did you ask him to expand on that?

5 A I did. I asked him is his name Black or was that the
6 last name.

7 Q And how did Mr. Falls respond?

8 A He said last name Black.

9 Q Did he provide a first name?

10 A Once I asked him what was his cousin's first name he
11 did state Antwan Black.

12 Q So, first -- so, when asking about his cousin's name,
13 he paused, gave you the name Black, and then when you asked
14 him was that his last name he said yes, am I correct?

15 A Yes.

16 Q And then after that you had to ask him for a first
17 name, am I correct?

18 A I did.

19 Q That -- now, what about that is suspicious, that
20 somebody doesn't provide you with a first name or a full
21 name upon being asked that kind of a question?

22 A Well, being that he was searching for a name or had to
23 think of the name that long for his cousin, I felt that he
24 was trying to give me a fictitious name or try to just
25 create a name to give me to throw out.

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1 Q Trooper, I'm gonna play a little bit further.

2 (WHEREUPON, another portion of the video was played for
3 the jury at this time.)

4 Q I'm gonna stop right there and I heard you say when did
5 you rent this car, but I want to ask you about conversations
6 that precede that.

7 What were you inquiring with the defendant about in
8 this conversation?

9 I know it's a little hard for us to hear, but what were
10 you asking him?

11 A I asked him where his cousin live, and he stared at me
12 with a, with a blank look on his face and then he paused for
13 a few seconds and was shaking his head and indicated that he
14 did not know where he lived.

15 Q Did you ask him if he'd ever been to Atlanta before
16 today?

17 A I did.

18 Q All right. How did Mr. Falls respond to that?

19 A He, he said he had.

20 Q Did he indicate a number of times he had been there
21 before?

22 A He said he'd been there a few times before.

23 Q A few times before.

24 Did he indicate how long his cousin may have lived in
25 Atlanta or had his cousin recently moved to Atlanta?

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1 A Approximately one year.

2 Q So, according to Mr. Falls, his cousin had lived there
3 a year, been there a few times, but he didn't know where he
4 lived?

5 A Correct.

6 (WHEREUPON, another portion of the video was played for
7 the jury at this time.)

8 Q I heard the defendant ask you for water, am I correct?

9 A Yes, sir, he did.

10 Q Did you have any water for him?

11 A I did not.

12 Q And what about the defendant's physical presence, as
13 you were out on the roadside, did you observe prior to him
14 asking that question?

15 A As you can see right before I walked off from the
16 screen, he was nervously licking his lips. He was
17 developing cotton mouth, and I'm taught, through my training
18 and experience, that whenever you get dry mouth or cotton
19 mouth that could be a sign of nervousness also.

20 Q Now, trooper, you've been on the road for nine years,
21 a member of the A.C.E. Team for several more than that, done
22 over a thousand traffic stops, you ever had a, someone ask
23 you on the roadside for a glass of water?

24 A This is the first time anybody ever asked me for water.

25 Q Is that suspicious to you?

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- 1 A Yes, sir.
- 2 Q Now, trooper, you're back in your cruiser at this
3 point, am I correct?
- 4 A Yes.
- 5 Q What are you doing at this time?
- 6 A On the warning citation that I issued Mr. Falls, I have
7 to -- well, at that time I had to put a grid coordinates, a
8 latitude and longitude. I'm retrieving that from my GPS
9 that's mounted inside my vehicle.
- 10 Q During the course of that time, are you able to observe
11 the defendant and his actions?
- 12 A Yes, I was making sure that I kept an eye on him and
13 I'm observing him from my vehicle, and just as his head is
14 turned here, I can notice that he's continuously licking his
15 lips and looking back towards his vehicle.
- 16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)
- 18 Q We just heard a little bit, something sound like it
19 went over the radio, am I correct?
- 20 A Yes, sir.
- 21 Q What are you doing at this point in the video at 2108,
22 approximately 19 or 20 seconds?
- 23 A Calling again for another unit to respond to my
24 location.
- 25 Q So, at this point, Trooper English had not yet made it

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1 out to your location, am I correct?

2 A Yes, sir.

3 Q And you called him at 2104:10.

4 So, approximately four minutes earlier?

5 A Yes, sir.

6 (WHEREUPON, another portion of the video was played for
7 the jury at this time.)

8 Q Okay. The defendant asked to get his hat, am I
9 correct?

10 A Yes, sir.

11 Q Did he indicate, I guess, I'm assuming his hat was in
12 the vehicle?

13 A I'm assuming so, yes, sir.

14 Q Were you gonna allow the defendant to go back up to the
15 vehicle at this point and get his hat?

16 A I was not.

17 Q And why would that be?

18 A Office safety issues. Again, I've already seen him
19 make a movement under the seat and I was not gonna allow him
20 to return to the vehicle without me clearing the vehicle
21 before he reentered.

22 Q So, you didn't know really what he made that movement
23 for, if it had been a weapon or putting something away or
24 putting his hat there at that point, you don't know?

25 A I do not.

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1 Q Okay. Trooper, let me ask you one quick question about
2 your partner, Trooper English.

3 Trooper English is a K-9 handler, am I correct?

4 A He is.

5 Q But he's also your partner on the A.C.E. Team, am I
6 correct?

7 A He is.

8 Q So, he assists you in these calls and you assist him in
9 these types of calls, is that correct?

10 A Yes, and just to elaborate on that just a little bit,
11 ever since 1992 when Trooper Mark Coates got killed in
12 Jasper County down on Interstate 95, on the A.C.E. Team, we
13 try to stay close to one another, within a few miles, so if
14 we need assistance we can respond as quick as possible.

15 Q So---

16 MR. THOMPSON: Your Honor, may we approach?

17 THE COURT: Yes, you may.

18 MR. THOMPSON: I'm sorry.

19 (WHEREUPON, a bench conference was held out of the
20 hearing of the jury at this time.)

21 THE COURT: Ladies and gentlemen, this is an occasion
22 where I need to discuss some matters with the attorneys, and
23 any time it may involve something that I believe might be
24 something that should not be considered by you, in other
25 words, evidence that may not be admissible, I'm gonna ask

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1 you to step out of the courtroom while I have that
2 discussion, and then once I've made a ruling we'll bring you
3 back in and I'll discuss the rulings with you.

4 As always, when you leave the courtroom, I'll instruct
5 you not to begin any discussions concerning the case until
6 such time as I've advised you to do so.

7 You may retire to the jury room at this time.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. You want to state your concern
11 on the record please.

12 MR. THOMPSON: Please the Court, Your Honor.

13 Yesterday I think Trooper Wilson testified they were
14 team members, he and Trooper English. Today he's saying
15 their partners, and I was just requesting a sequester of
16 Trooper Wilson for the remainder of the testimony that
17 Trooper Wilson provides.

18 SOLICITOR MCCARTY: I have, I have no problem asking
19 Trooper English to step outside. I used the term partner.
20 That wasn't provided to me. That's just meaning they were
21 members of the same A.C.E. Team unit that were up here and
22 that's a choice of word on my part. But if it causes any
23 concern to the defendant---

24 THE COURT: Okay. I'm gonna ask Trooper English to
25 step outside the courtroom and not to discuss his testimony

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1 with anyone that he might have or discuss with anyone else
2 their testimony in the case.

3 Thank you, sir.

4 MR. THOMPSON: Thank you, Your Honor.

5 THE COURT: And while you're, we got the jury out,
6 we're gonna take a short break. We been going for about an
7 hour and a half, which is when we normally take a break.

8 I'll instruct the witness also not to discuss
9 testimony, your testimony with anyone at this time during
10 your break.

11 You can move about.

12 WITNESS: Yes, sir.

13 SOLICITOR MCCARTY: Thank you, Your Honor.

14 THE COURT: Court's briefly in recess. Thank you.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: Okay. Officer, you can resume the stand
17 please, sir.

18 (Witness returns to the stand.)

19 THE COURT: State ready to proceed?

20 SOLICITOR MCCARTY: Yes, sir, we are.

21 THE COURT: Defense ready to proceed?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: All right. Let's bring the jury in.

24 MR. THOMPSON: Your Honor, I'm okay, aren't I?

25 THE COURT: Yeah, that's fine. No problem.

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1 MR. THOMPSON: I'm asking for forgiveness instead of
2 permission.

3 MR. THOMPSON: No problem.

4 THE COURT: We're ready for them. Come on in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect the
8 jury has returned to the courtroom, and as you come and go,
9 there aren't any assigned seats except for you, ma'am.
10 You're the alternate and you're always seated there.

11 All right. When we broke earlier you were in the
12 process of examining the witness, Mr. McCarty, and you may
13 proceed.

14 SOLICITOR MCCARTY: Thank you, Your Honor.

15 Mrs. Reeves, cut the lights down for me please.

16 CONTINUED DIRECT EXAMINATION

17 BY SOLICITOR MCCARTY:

18 Q Trooper, I'm just gonna pick back up with the video and
19 continue to play on.

20 (WHEREUPON, another portion of the video was played for
21 the jury at this time.)

22 Q Right there I heard you ask the defendant when did you
23 leave to go to Atlanta, am I correct?

24 A Yes, sir.

25 Q What did he reply?

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1 A He paused again for a few moments and stated about
2 12:00.

3 Q Again, what about that pause that's suspicious that may
4 be a person like myself wouldn't recognize without your type
5 of training or experience?

6 A Again, that's a hesitation and could be someone trying
7 to develop a story or create an answer.

8 Q Did you have any feelings about the defendant's story
9 as he's telling it to you at this point, his travel
10 patterns, and who he met and where he went?

11 A Yes, sir, 2007, this was the year that the economy
12 began to go bad, gas prices are high. It's supposedly had
13 been working that day and then just leave work to go to
14 Atlanta, the price of fuel being high, renting a vehicle,
15 driving to Atlanta for a turnaround trip, it just wasn't
16 plausible to me.

17 Q Wasn't adding up for you based on your experiences, am
18 I correct?

19 A Yes, sir.

20 Q And also, based on your experiences, this was adding up
21 towards something else, am I correct?

22 A Yes, sir, again, this was more than just a normal
23 traffic stop.

24 Q All right. Trooper, I'm gonna continue to play on.

25 (WHEREUPON, another portion of the video was played for

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1 the jury at this time.)

2 Q During that exchange with the defendant, you were
3 asking him about what he did in Atlanta, am I correct?

4 A Yes, sir.

5 Q What were you specifically asking him about?

6 A Asking him what did he and his cousin do while they
7 were in Atlanta.

8 Q What did he reply?

9 What did the defendant reply?

10 A He stated that they just hung out with some girls and
11 stuff like that.

12 Q Did he -- did the defendant indicate how long he stayed
13 in Atlanta?

14 A I asked him if they went anywhere. He stated, he
15 stated that they just shot the breeze and he came back
16 because he had something to do.

17 Q Did you ask him where he went at when he got to
18 Atlanta?

19 A Yes, I asked him where he met his cousin at.

20 Q And how did he respond to that question?

21 A And, again, he paused and, and pondered a few seconds
22 for an answer and then stated that they met at Exit 240 he
23 believes.

24 Q So, he even conditioned his own statement with he
25 believes?

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1 A Yes.

2 Q Did that seem like he was searching for an answer in
3 your opinion?

4 A Yes, sir.

5 Q Trooper, so, at this point you've learned that he's now
6 left for Atlanta at noon, stayed there for a couple of hours
7 on the roadside at Exit 240 he believes, and talked about
8 girls and stuff like that with his cousin, am I correct?

9 A Yes.

10 Q Did the defendant -- did you have -- did you feel the
11 defendant was being honest with you about what was going on
12 at this point?

13 A No, sir, again I believe that he was creating a story.
14 As we went along, he just trying to give me an answer that
15 would fit the question that I was asking him and I could see
16 his nervousness continue to grow.

17 Q Was there anything about his body language or how he
18 was, how he maintained himself in speaking with you that
19 through, again, through your training and experience, you
20 were able to look at him and gather any information about?

21 A Again, having the look of nervousness in his face. I
22 could visibly see that he was nervous and at one point here
23 he became unsteady on his feet and had to lean on my
24 vehicle.

25 Q Do you ever have people just prop themselves up against

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1 your vehicle normally?

2 A No, sir.

3 Q Okay. Trooper, I'm gonna continue to play on just for
4 a little bit more here.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q Now, at that point you explained to him that you're
8 gonna have to give him a warning, and no, no points, no
9 fine, am I correct?

10 A Yes, sir, that's correct.

11 Q And Mr. Falls continued to engage you in conversation,
12 am I correct?

13 A He went back to talking about the trucks.

14 Q So, he didn't ask you about the warning at this point,
15 did he?

16 A No, sir.

17 Q So, he was trying to explain his situation.

18 would you describe that as nervous chatter by the
19 defendant?

20 A Yes, sir, again, rambling on about something that
21 wasn't asked.

22 Q All right. And, again, is that, based on your training
23 and experience, something that's suspicious to you?

24 A Yes, sir.

25 (WHEREUPON, another portion of the video was played for

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1 the jury at this time.)

2 Q Now, I want, I want to go back and touch on something.

3 You had, you had already called Trooper English, am I
4 correct?

5 A Yes, sir.

6 Q And Trooper English, your partner, are a member of the
7 A.C.E. Team that patrols with you, am I correct?

8 A That's correct.

9 Q When you called him initially, did you call him
10 thinking he's got the dog, I need that, or were you calling
11 him for a different purpose initially?

12 MR. THOMPSON: Object to the leading, Your Honor.

13 SOLICITOR McCARTY: I can rephrase.

14 THE COURT: Please rephrase that question.

15 Q When you initially made a call to Trooper Wilson at
16 about four minutes into the stop, what purpose were you
17 calling trooper or Trooper English at that point?

18 A Myself and Trooper English were the only two troopers
19 from the A.C.E. Team working that night shift that night and
20 we were in the same general area. So, my first immediate
21 thought was just to call him cause we worked so close
22 together.

23 Q Is that based upon officer safety or another reason?

24 A Again, I initially called him on my second approach to
25 the vehicle when I seen Mr. Falls reaching under the seat.

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1 So, just an officer safety reason.

2 Q But as you conversed with the defendant here on the
3 roadside, and at this point, and where it's, I paused the
4 video at 2111:40, we're approximately 11 minutes into this
5 stop, am I correct?

6 A Yes, sir.

7 Q I know we've paused and gone on for about 40 minutes,
8 but the stop right here is only lasted about 11 minutes, am
9 I correct?

10 A Yes, sir.

11 Q And includes the initial stop asking him to pull up
12 beyond the guardrail, getting back out and speaking with him
13 again, am I right?

14 A That's correct.

15 Q Is 11 minutes approximately an average amount of time
16 for you in a normal traffic stop?

17 A It's close to it.

18 Q What would you estimate your normal traffic stop to be?

19 A Anywhere from five to seven minutes depending on the
20 speed of the dispatcher and the amount of radio traffic.

21 Q And now let me ask again about dispatch.

22 You had called the defendant's license in earlier, am I
23 correct?

24 A Yes.

25 Q And you've been listening to this here today, the

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1 State's Exhibit No. 1, am I correct?

2 A Yes.

3 Q Have you heard the defendant's license or any
4 information concerning his driver's license come back over
5 the radio to you at this point?

6 A They still have not responded to my request.

7 Q So, at this point, at 20 minutes or at 2111:40, you
8 still did not have any information from dispatch concerning
9 the driver's information about license?

10 A I did not.

11 Q But you had a story about going to Atlanta, leaving
12 from Charlotte at noon, am I correct?

13 A Yes, sir.

14 Q Staying for a couple hours at maybe Exit 240 with a
15 cousin, talking about girls and a party, and then heading
16 back towards Charlotte, am I correct?

17 A That's correct.

18 Q Was any of that adding up in your mind?

19 A It's not making any sense in my mind.

20 Q At this point you asked the defendant to search his
21 vehicle, am I correct?

22 A I did.

23 Q Is that a consensual question that you asked, may I
24 search your vehicle?

25 A Yes, sir.

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1 Q How did the defendant respond to that question?

2 A He began to stutter saying I mean, I mean, I didn't do
3 anything.

4 Q And how did you respond to that?

5 A I told him that you didn't do anything or is there
6 anything that you want me, wanted to tell me about.

7 Q And what did the defendant say?

8 A Bear with me just a second.

9 (Pause.)

10 A He said he had not been anywhere. I told him that I
11 did not say he went anywhere, and I asked again to search
12 his car, and, again, he stated that he did not do anything,
13 and I advised him, I explained to him that it was a yes or
14 no question.

15 Q Trooper Wilson, was the defendant's not granting you
16 permission or not consenting to a search the reason why you
17 decided to search that vehicle?

18 A I was gonna search his vehicle based on the information
19 that I had gathered, initially seeing him place something
20 under the seat, and listening to his story.

21 Q And you felt that something more than just the traffic
22 stop was afoot, am I correct?

23 A I had a firm belief that there was some type of
24 criminal activity going on inside that vehicle.

25 Q And when, when you were telling him here on the video

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1 when a K-9 unit is coming, you anticipate that being Trooper
2 English, am I correct?

3 A That's correct.

4 Q And you know Trooper English from working with you as a
5 K-9 handler, am I correct?

6 A Yes.

7 Q All right. Trooper, I'm gonna play on here just for a
8 second. I'm gonna kind of fast forward a little bit. This
9 sort of ends your engagement with the defendant while
10 Trooper English is here on the roadside.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q But I want to -- all right. This gentleman coming up
14 here on the screen, is that Trooper English?

15 A Yes, sir.

16 Q Okay. And I'm looking at the camera or the time there
17 and it's about 2113:32 on State's Exhibit No. 1. From the
18 time you explained the warning citation to the defendant to
19 where Trooper English arrived, that's about two minutes and
20 seven seconds, am I right?

21 A Yes, sir.

22 Q Approximately?

23 A Yes, sir.

24 Q So, Trooper English gets there fairly quickly?

25 A Yes, sir.

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1 Q Play on a little bit again. Just fast forward a little
2 bit to get through. We'll talk with Trooper English here in
3 just a minute, but just to get to an action that you perform
4 a little bit later here.

5 Now, trooper, as I'm fast forwarding if I can just ask
6 you, as Trooper English is using his K-9 here and then
7 conducting a search of the vehicle, did he indicate to you
8 that his K-9 had alerted positively or given a positive
9 alert?

10 A Yes, sir.

11 Q At that point did, as you're standing there, did
12 Trooper English begin a search of the vehicle?

13 A He did.

14 Q Trooper Wilson, as Trooper English was searching that
15 vehicle, what's your primary responsibility with the
16 defendant?

17 A To keep my eye on the passenger or occupants of the
18 vehicle for safety.

19 Q You did not participate in the search of the vehicle
20 itself?

21 A No, sir, not initially.

22 Q And, again, I'm just gonna fast forward here to get to
23 another point.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

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1 Q Now, at this point in the video I see Trooper English
2 turn around. It's about 2118:52.

3 To your understanding, is that the point at which
4 Trooper English found the cocaine in the vehicle?

5 A Yes, sir, it was.

6 Q And, again, you didn't participate in the hand search
7 of that vehicle, but where is it your understanding did
8 Trooper English locate that cocaine?

9 A In the driver's side door, the compartment at the
10 bottom of the door.

11 Q Once that was located there, you guys were taking the
12 defendant into custody at this point on the video, am I
13 correct?

14 A That is correct.

15 Q And you're detaining him based upon the belief that
16 that substance you found is powder cocaine or crack cocaine,
17 something like that?

18 A Yes, sir.

19 Q All right. Continue to fast forward here just for a
20 second. I'm actually gonna fast forward a little bit more,
21 but let me do ask you this, we're about at this point in the
22 video, 2119:26. We're a little bit more than 19 minutes
23 into this stop to the point where you initially stopped him
24 to the discovery of these drugs, am I correct?

25 A Yes, sir.

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1 Q So, it's a little bit more than 19 minutes at this
2 point or right there around 19 minutes.

3 Let me back-up one quick second. There is Trooper
4 English carrying the substance.

5 Is that what the substance that's marked here in
6 State's Exhibit No. 2.

7 If I may approach, Your Honor?

8 THE COURT: You may.

9 Q Is that the same substance there, trooper?

10 A Yes, sir.

11 Q You placed that on the hood of your cruiser, am I
12 correct?

13 A That's correct.

14 Q As he placed it there, what type of packaging is it in?

15 A A plastic baggy.

16 Q Like a Ziploc style baggy?

17 A Yes.

18 Q Do you see that same Ziploc style baggy in State's
19 Exhibit No. 2?

20 A Yes, sir, Ziploc bag.

21 Q All right. I'm gonna fast forward just a little bit
22 more, and I'll stop it and ask you a couple more questions
23 here.

24 Right there, trooper, appeared to be a little other bag
25 there, am I correct, beyond the plastic bag with the cocaine

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1 in it?

2 Was there, looked like a little toiletry style bag on
3 the video?

4 A Yes, sir.

5 Q What was that?

6 A I do not recall what type bagging that was.

7 Q Was that the bag in which the cocaine was found in or
8 was the cocaine just in the packaging inside the door or do
9 you, or do you know?

10 A I do not recall.

11 Q Okay. We see you here pick up the cocaine and place it
12 into looks like a larger plastic bag, am I correct?

13 A That would be the evidence, the B.E.S.T. Kit.

14 Q The B.E.S.T. Bag inside State's Exhibit No. 2. If you
15 would look at State's Exhibit No. 2.

16 Do you see your, any type of identifying information to
17 make sure, make certain that that is that item that you
18 retrieved on the roadside there that night?

19 A Yes, it has my signature on it.

20 Q With the date?

21 A Yes, date and the serial number of the B.E.S.T. Kit.

22 Q Okay.

23 A Bag.

24 Q Trooper, you eventually sealed that item up and turned
25 it into the Spartanburg County Sheriff's Office, am I

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1 correct?

2 A I did.

3 SOLICITOR MCCARTY: If I may approach, Your Honor, with
4 State's Exhibit No. 3.

5 THE COURT: You may approach.

6 Q Trooper, I'm gonna ask you to look here at Page Number
7 3.

8 Do you recognize what Page Number 3 is?

9 A Yes, sir.

10 Q will you explain to the jury what that is when they,
11 when they have a chance to view that?

12 A Inside the B.E.S.T. Kit is a chain of custody. One
13 being the initial chain of custody, the Form B Rule 6, which
14 is this one here that I completed and signed.

15 Q Does it say to whom or to where you turned that item
16 over to?

17 A I made delivery of it above described substance to B.
18 Vaughn of the Spartanburg County Sheriff's Department.

19 Q And, and Lieutenant Vaughn, now Lieutenant Stuart, she
20 was the lady who testified here earlier, am I correct?

21 A Yes, sir.

22 Q And you hand delivered that to her on that date?

23 A Yes, sir.

24 SOLICITOR MCCARTY: All right. Your Honor, at this
25 time I would offer State's Exhibit No. 2 for admission into

D.G. Wilson - Direct examination
by Solicitor McCarty

1 evidence.

2 THE COURT: Objections?

3 MR. THOMPSON: None, Your Honor.

4 THE COURT: Okay. Without objection it will be
5 admitted.

6 (WHEREUPON, State's Exhibit No. 2 was received into
7 evidence at this time.)

8 SOLICITOR MCCARTY: Thank you. And, Your Honor, I
9 believe that's all the further questions I have.

10 well, let me ask you this, trooper, just -- and the
11 jury can see this at their convenience if they'd like.

12 As we continue to play this video on, it's just simply
13 the transport of Mr. Falls from booking purposes, purposes,
14 am I correct?

15 A That's correct.

16 SOLICITOR MCCARTY: All right. Then I have nothing
17 further, Your Honor, remaining for Trooper Wilson.

18 THE COURT: Mr. Thompson, your witness.

19 MR. THOMPSON: Please the Court, Your Honor.

20 THE COURT: You need the lights up or down?

21 MR. THOMPSON: I guess we'll keep them down.

22 THE COURT: All right. That will be fine. You may
23 proceed.

24 CROSS-EXAMINATION

25 BY MR. THOMPSON:

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Trooper wilson, you called Trooper -- I forgot his
2 name.

3 A English.

4 Q English. At 21:04, correct?

5 A Thereabout, yes, sir.

6 Q At that time all you knew was that you saw somebody
7 making some movements under the seat, right?

8 A I knew there was something not normal about this
9 traffic stop, yes, sir.

10 Q At 2104, right?

11 A Thereabout, yes, sir.

12 Q And you're calling the other trooper, Trooper English,
13 was because of the fact that he or you saw this movement
14 under the seat, right?

15 A Yes, sir.

16 Q Okay. And you knew very little about Mr. Falls at that
17 time, right?

18 A That's correct.

19 Q Now, later on you engage in a series of questions to my
20 client, correct?

21 A Yes, sir.

22 Q Okay. After you make that initial call.

23 And you called Trooper English knowing full well he is
24 a K-9 unit officer, right?

25 A We work together, yes, sir.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Okay.

2 A I had knowledge of that.

3 Q Okay. And you know that that dog is a drug dog,
4 correct?

5 A Yes, sir.

6 Q Okay. Now, let me go back to the beginning of this,
7 and I, Your Honor, I will be quicker today.

8 THE COURT: Beg your pardon?

9 That's okay. You're fine.

10 MR. THOMPSON: All right.

11 Q All right. Now, this is the beginning of the tape,
12 right?

13 A Yes, sir.

14 Q At that time you had positioned yourself behind
15 Mr. Falls' car, correct?

16 A That's correct.

17 Q All right. So, right there's the beginning?

18 A Yes.

19 Q So, while you're behind him, the only time he goes over
20 the fog line is when he signals and is getting off the road
21 in response to your blue lights, correct?

22 A That's at the point I activated my blue lights, yes,
23 sir.

24 Q So, you've testified earlier you can turn that camera
25 on at anytime, right?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A That's correct.

2 Q But you didn't turn it on until the blue lights came
3 on, right?

4 A They come on automatically.

5 Q Automatically.

6 Okay. So, you don't have any video footage of
7 Mr. Falls going across that fog line, do you?

8 A No, sir.

9 Q In fact, you testified that you were beside him when
10 you noticed he went over the fog line, right?

11 A That's correct.

12 Q Okay. So, it's your testimony that you could see his
13 tires go over a line in another lane when you're beside him?

14 A Yes, sir.

15 Q Okay.

16 A I was not directly beside him. I was traveling partly
17 behind him.

18 Q Okay. How far behind him?

19 A At least two, three, four car lengths before I caught
20 up to him.

21 Q Okay. Now, did he pass you at anytime?

22 A No, sir, I was going along with the flow of traffic.
23 Again, he was driving slow in the slow lane. So, I would of
24 been passing him at the time. I guess I'm driving faster
25 than he is.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Okay. So, you put in your statement now that you
2 encountered him at about the 60-mile marker, correct?

3 A Yes, sir.

4 Q Okay. And you pulled him over at the 62-mile marker,
5 correct?

6 A Thereabout, yes, sir.

7 (WHEREUPON, another portion of the video was played for
8 the jury at this time.)

9 Q Okay. Now, do you -- your testimony was that you
10 believed he was white lining is what you call it, right?

11 A Yes, sir.

12 Q Okay. So, you believe he could of got closer to that
13 guardrail?

14 A Absolutely. I walked in-between his vehicle and mine,
15 yes, sir.

16 Q Okay. Well, it's pretty tight when you walked through
17 there, and you're a good -- you guys are in good shape. So,
18 you're not overly big.

19 It's pretty tight in there, is it not?

20 A I had plenty of room.

21 (WHEREUPON, another portion of the video was played for
22 the jury at this time.)

23 Q Your leg's almost on the, on the guardrail, isn't it?
24 Right?

25 A That would of been a tight squeeze. I guess I would of

D.G. Wilson - Cross-examination
by Mr. Thompson

1 had to slide in there, but I was able to walk straight.

2 Q But from looking at that angle right there, your feet
3 are together, right?

4 A I think I could of stand another person beside me.

5 Q Okay. So, it's your belief that he's pulling over
6 there on purpose to make you go on the passenger side,
7 correct?

8 A I'm not sure what his thinking was, but --.

9 Q I asked what your belief was.

10 A At that point, not exactly.

11 Q Okay. Normally do you go to the passenger side of the
12 car or the driver's side?

13 A It all depends on the circumstance.

14 (WHEREUPON, another portion of the video was played for
15 the jury at this time.)

16 Q Okay. So, you received his driver's license and
17 registration right here, correct?

18 A I received -- if he handed it to me already I'm not
19 sure.

20 Q Trooper Wilson, now you're part of Rolling Thunder. I
21 pointed this out yesterday.

22 They're several different flashing lights up and down
23 I-85 in your camera range, right?

24 A Yes, sir, I see lights.

25 Q And I think I counted nine counting you that appeared

D.G. Wilson - Cross-examination
by Mr. Thompson

1 to me to be people pulled over by police officers.

2 Do you, do you recall if there were many cars pulled
3 over at that time?

4 A I disagree that all those lights that you see are law
5 enforcement lights.

6 Q Okay. So, you, you see those -- you don't think those
7 flashing lights are officers and I know you disagree with
8 that?

9 A Absolutely not.

10 Q What are those things -- what are all those flashing
11 lights up there do you think?

12 I mean this is Rolling Thunder I mean, and it's -- and
13 there's a lot more people pulled over in Rolling Thunder
14 than normal.

15 Would you agree with me?

16 A There's a lot more officers out there.

17 Q Okay. So, this is a Tuesday night in February, is that
18 correct?

19 A Yes, sir.

20 Q Okay. And that's a flashing light there, right?

21 That's rewinding on me, but in your experience in
22 Rolling Thunder?

23 SOLICITOR MCCARTY: Can I interrupt for one second?

24 THE COURT: Yes, sir.

25 MR. THOMPSON: I'm trying to get it to play right here,

D.G. Wilson - Cross-examination
by Mr. Thompson

1 stay right beside it I guess.

2 (Pause.)

3 Q Okay. All right. Now, you pulled him over already.
4 You received his license and his registration and you had
5 him pull up behind the guardrail, correct?

6 A That's correct.

7 Q Okay. All right. You agree with me he got over as far
8 as he can this time, correct?

9 A No, sir, not as far as he could. There's plenty of
10 grass over there.

11 Q I mean as far as the pavement would go, right?

12 A Yes, sir.

13 Q You're gonna make a passenger side approach again,
14 right?

15 A That's correct.

16 Q This is his head right here, isn't it?

17 A That's a seat rest.

18 Q Seat rest.

19 Your Honor, if I could confer with co-counsel just a
20 second?

21 (Pause.)

22 SOLICITOR MCCARTY: Okay. Your Honor, we want to see
23 real quickly if we might with, maybe go substitute
24 Mr. Thompson's version of this. This might have a scratch
25 on the disk that's what's causing it to do this.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 THE COURT: Okay.

2 SOLICITOR MCCARTY: If you'll bear with me just a
3 moment.

4 THE COURT: We'll take a moment.

5 (Pause.)

6 Q Okay. You're about to call in his license number, is
7 that correct?

8 A That's correct.

9 Q All right. And before that we heard some things over
10 the radio.

11 Did any of that mean anything to you?

12 Did it -- was it in reference to this stop of
13 Mr. Falls?

14 A The only thing I said on the radio was call dispatch
15 and ask for 1029, 1027, 1029, which is a driver's license
16 and records check.

17 Q Okay. So, you had done that and did they give you any
18 feedback?

19 A No, sir.

20 Q Okay. So, you hadn't received any feedback on that
21 request yet, right?

22 A No, sir.

23 Q Okay. What is 3-6-0-7-1-9?

24 A That is his driver's license.

25 Q His driver's license number?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A Yes, sir, it's North Carolina driver's license.

2 Q All right. And you put that on the warning here,
3 right, 3-6-0-7-1-9?

4 That's my copy.

5 A Yes, sir.

6 Q Okay. And what do you expect to find out when you send
7 that information in?

8 A Whether or not his license was suspended, and whether
9 or not he had any outstanding warrants, whether or not he's
10 wanted for anything.

11 Q Okay. And you're gonna stay in this car for almost two
12 minutes waiting on that feedback?

13 A Yes, sir.

14 Q Okay. Is that right there anything -- did that mean
15 anything to you pertaining to this stop?

16 A That was another officer asking for a driver's license
17 check out of Virginia.

18 Q Okay. So---

19 A That had nothing to do with this stop, no, sir.

20 Q Okay. Officer, I believe, I hope it doesn't jump, but
21 at this point you still heard nothing back from the license,
22 right?

23 A No, sir.

24 Q Okay. And you requested that he step back. I'm gonna
25 go over through here.

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 why did -- did his allegedly reaching under the seat
2 lead you to ask him to get out of the car?
- 3 A Yes, that was, that was part of it.
- 4 Q Okay.
- 5 A Along with the traffic noise.
- 6 Q Okay. And can you show me at what point you see him go
7 under the seat?
- 8 A Is that -- as I approached the vehicle there you'll see
9 me duck down to look in the vehicle. I'm observing him
10 doing something. Right there.
- 11 Q Right there looking at him.
- 12 Now, you made a similar move the first time you
13 approached the car.
- 14 Is that---
- 15 A Looking inside the car.
- 16 Q The first time?
- 17 A Yes, sir.
- 18 Q Okay. So -- but you, this time you say it's because
19 he's moving?
- 20 A Yes, sir.
- 21 Q Going under the seat?
- 22 A Yes, sir.
- 23 Q All right. Now, can you, can you show me in the car
24 where his, where his head's moving or can you see that?
- 25 A I don't think we can see that from this view.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q It's your testimony earlier that it was something under
2 the seat, right?

3 A In that area.

4 Q How -- right here you're about to radio, right, and
5 sought backup?

6 A Again.

7 Q Huh?

8 A For the second time.

9 Q For the second time?

10 A Yes, sir.

11 Q Okay. So, your, your testimony is that you've already
12 sought backup?

13 A I, I've already called Lance Corporal English's call
14 number, and, again, I was trying to get on the radio there
15 to -- cause I didn't hear him respond.

16 Q Okay. So, so, you had already called him prior to
17 getting out of the car?

18 A No, sir, as soon as I approached the car I was looking
19 in the window, you'll see me get on the radio and call, call
20 his number on my initial approach. I think that's right
21 there.

22 Q All right. I'm having trouble understanding where you
23 called him. I'm sure it's---

24 A Right there before it paused.

25 Q Before you leaned down or after?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A After.
- 2 Q Here you're peering in.
- 3 A Right there.
- 4 Q Right there.
- 5 You're making the call there, right?
- 6 A Again.
- 7 Q So, it's your testimony, testimony that's your second
- 8 call to Trooper English, right?
- 9 A Second attempt, yes, sir.
- 10 Q Okay. You're reaching into his car right here, are you
- 11 not, right there?
- 12 A No, sir.
- 13 Q You're not?
- 14 A My hand may be, may be on the window sill, but I'm not
- 15 reaching in.
- 16 Q All right. You didn't return his license to him right
- 17 here?
- 18 A I did not.
- 19 Q You did not. Okay.
- 20 A No, sir, I would of needed his drivers's license to
- 21 complete the warning.
- 22 Q You got -- here in your hand is the, the documentation
- 23 you retrieved from him earlier, right?
- 24 A I'm not sure what all is in my hand, but I'm sure
- 25 that's some type of paperwork he gave me.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q All right. Now, all right -- you just -- is that when
2 you made a call there maybe?

3 A Saying 21, yes, sir, whatever his call number was, yes,
4 sir.

5 Q There you make another call, right?

6 A Yes, sir, Trooper English.

7 Q So, you're basically calling Trooper English cause you
8 seen movement in the car based upon maybe something going
9 under the seat, correct, and do you -- did you testify
10 earlier you had prior experience with this?

11 A Concern for my safety, yes, sir, I'm calling for
12 backup, yes, sir.

13 Q Okay. Okay. Now, he's discussing the pulling over.

14 Is that not normal for people to maybe argue with you a
15 little bit when you pull them over?

16 A Sometimes.

17 Q And you don't dispute you've already told him he would
18 be receiving a warning, right?

19 A That's what I told him, yes, sir.

20 Q Okay. Now, you still have not heard back from his
21 driver's license, correct?

22 A Have not.

23 Q Okay. And I'll show you a copy of the ticket, what we
24 marked as Defendant's Exhibit 1 yesterday.

25 Does that look like an accurate copy there?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A Yes, sir.

2 Q Okay. Now, you put his driver's license, you called it
3 in at 2-3-6-0-7-1-9, correct?

4 A Whatever his driver's license number is, yes, sir.

5 Q Okay. And that's Mr. Falls' driver's license, the
6 license of the person you pulled over, right?

7 SOLICITOR MCCARTY: Your Honor, I would object to him
8 showing the trooper the license at this point. I don't know
9 if it's the same license shown to him that night. I don't
10 think the trooper's testified he seized Mr. Falls' license
11 on that night. I don't know, I don't know if it's been
12 amended or changed.

13 THE COURT: Well, I'm gonna allow the officer to
14 testify if he thinks it's an authentic document or not. So,
15 I'll overrule the objection.

16 SOLICITOR MCCARTY: Okay.

17 THE COURT: He can, he can take a look at it and tell
18 us what it---

19 SOLICITOR MCCARTY: Thank you.

20 Q Is the, is the same address on that license that's on
21 that warning ticket?

22 A I can't make out the picture on there, but---

23 Q Same name?

24 A Jeffrey Falls, yes, sir.

25 Q Same address?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A There's no address on the warning.
- 2 Q No address on the warning?
- 3 A Let me look at my report.
- 4 Q Okay.
- 5 A And I can see where you're going with this, there was
- 6 a---
- 7 Q I ask you is that the same address.
- 8 A No, sir.
- 9 Q Huh?
- 10 A No, sir, there's no address on the warning.
- 11 Q Okay. And -- but is it from, from North Carolina?
- 12 A Yes, sir.
- 13 Q Okay. And do you see why you didn't hear back from
- 14 dispatch on that driver's license number?
- 15 Read the jury that, that driver's license number.
- 16 A 3-6-0-7-1-7-9.
- 17 Q All right. You left out a digit when you called it in,
- 18 didn't you, when you wrote it down?
- 19 A I would have to listen back to the---
- 20 SOLICITOR MCCARTY: Your Honor?
- 21 THE COURT: Just---
- 22 SOLICITOR MCCARTY: Just respectfully note requesting
- 23 my objection. The trooper called in the number he stated
- 24 and has testified on the night thereof. It's on the video.
- 25 That was the number he called again. I don't know if this

D.G. Wilson - Cross-examination
by Mr. Thompson

1 was the same license or not provided to the trooper that
2 evening.

3 THE COURT: I, I understand the objection, and the
4 trooper can, again, testify as to whether or not he believes
5 that an authentic document from what he saw that night.

6 SOLICITOR MCCARTY: Thank you.

7 THE COURT: So, I'm gonna overrule the objection.

8 SOLICITOR MCCARTY: Thank you, Your Honor.

9 Q So---

10 THE COURT: And he hasn't tried to introduce the
11 document itself at this point in time.

12 You may proceed.

13 Q What is that driver's license number?

14 A This number is 3-6-0-7-1-9. On my report here I have
15 that same driver's license number.

16 Q Okay. What's the, what's the number on this license?

17 A 3-6-0-7-1-9.

18 Q Does it not say 3-6-0-7-1-7-9?

19 A 7-1-7-9.

20 Is that not what I said?

21 Q You said 3-6-0-7-1-9 like you have on the warning here,
22 right?

23 A Okay.

24 Q What does that say I mean?

25 A 3-6-0-7-1-9, 7-1-7-9.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Right.

2 So, that's a six digit number you wrote on the warning,
3 right?

4 A Yes, sir.

5 Q How many digits is that number?

6 A Seven.

7 Q Seven digits.

8 So, basically your error in calling that number in is
9 what's led to all these delays on, on this stop, has it not?

10 A I'll say we go back to the video and see exactly what I
11 called in. I'm not sure.

12 Q Okay. Now, was that a six digit number you called in?

13 A That was an error on my part, yes, sir.

14 Q Okay. So, you would agree with me that this error
15 could of led to this undue delay on this traffic stop,
16 correct?

17 A I wouldn't say undue. It would have caused a delay in
18 getting his driver's license information back.

19 Q Sure.

20 You sure you didn't call that number in wrong on
21 purpose?

22 A Absolutely not.

23 (WHEREUPON, another portion of the video was played for
24 the jury at this time.)

25 Q That mean anything to you?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A That's another officer.

2 Q Another call.

3 Okay. At this point, what do you have right now?

4 All you have is his registration or that rental
5 agreement and his license, correct?

6 A Yes, sir.

7 Q Okay. And you've already called the K-9 unit?

8 A I called Lance Corporal English, yes, sir.

9 Q You have.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q That means nothing to you there, right?

13 A Another officer.

14 Q Okay. At that point you get out, correct?

15 A Yes.

16 Q And was there anything over the radio that prompted you
17 to get out of the car or was that just you?

18 A Well, I noticed that the, the radio traffic was, was
19 busy and it was taking unusually long to get the information
20 back. So, I decided to go on and proceed with my, finish
21 conducting my traffic stop until they gave me that
22 information back.

23 Q Okay. But -- and you testified earlier when Mr.
24 McCarty was talking to you that he, he was getting searched?

25 I mean you decided that already, correct?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A I didn't say he was getting searched. I said that I
2 had the belief there was some type of criminal activity
3 going on with inside that vehicle.

4 (WHEREUPON, another portion of the video was played for
5 the jury at this time.)

6 Q Okay. Did you just ask him if he worked today?

7 A I did.

8 Q Okay. Didn't you tell -- Mr. McCarty, when he asked
9 you, he had a different answer, didn't you?

10 Didn't you tell Mr. McCarty that right when you walked
11 up to the truck he said he just got off work or something?

12 Didn't you tell him that?

13 A No, sir, let me refer to my report here. After he told
14 me about the trucks I asked him did he work today. He
15 stated that he had a towing service, start talking about a
16 towing service or something.

17 Q And -- but---

18 A And I asked again if he worked and he stated yes.

19 Q Okay. Didn't you testify earlier though right when you
20 went in there he said I just got off work?

21 A Don't think so.

22 Q Okay. Okay. And my notes say that you said that he
23 told you he was just getting off work.

24 Do you not recall testifying to that?

25 A Asked if he had worked today, talked about the towing

D.G. Wilson - Cross-examination
by Mr. Thompson

1 service, asked again if he worked, stated yes, he -- yes, he
2 got off work.

3 Q Okay. So, you, you prompted the question about work
4 then, right?

5 A I asked, asked him if he worked today, yes.

6 Q Okay.

7 A After he told me about his towing service, yes.

8 Q And he'd got work clothes on, right?

9 A Appears to be.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q Trooper, you got the pad here to write the warning
13 ticket, correct?

14 A Yes, sir.

15 Q What's in his hand?

16 A That appears to be his wallet.

17 Q Okay. And it's 2104:34, correct?

18 A Yes, sir.

19 Q I'm gonna let this thing play through and let's see how
20 long it takes you to write the ticket.

21 You remember we went over the ticket yesterday, and you
22 agree there's nine words written on that warning, right?

23 A That's what you said you came up with, yes, sir.

24 Q Maybe ten, ten numbers.

25 And your, your normal traffic stop takes you about five

D.G. Wilson - Cross-examination
by Mr. Thompson

1 to seven minutes, right?

2 A Approximately.

3 Q All right. And we're gonna watch your hands and you
4 look. Let me know what you're doing here.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q Okay. Now, originally you told me you were pulling him
8 over because he was going slow, right?

9 A No, I didn't tell you I was pulling him over -- I said
10 he was driving kind of slowly. That is what I said.

11 Q Okay. He had stopped talking. He said sinus problems
12 and sat on your car, and then you asked him if he worked,
13 right?

14 A Yes, asked him if he was just getting off work.

15 Q Okay. So, at this point here -- you testified earlier
16 that he was rambling on, but he's -- you're the one firing
17 the questions away right here, right?

18 A We, we were having a conversation together, yes, sir.

19 Q Well, I mean you're questioning and he's answering, is
20 that right?

21 I mean that's what I'm trying to get to.

22 A We're talking.

23 Q All right. But that's -- he's not really rambling.
24 He's just answering your questions, right?

25 A I mean if you pull out some specific points, I mean

D.G. Wilson - Cross-examination
by Mr. Thompson

1 he's asking him questions. But at other points he's
2 creating questions or answers or making conversations that I
3 did not ask him.

4 (WHEREUPON, another portion of the video was played for
5 the jury at this time.)

6 Q All right. You're returning to the car now, right?

7 You still don't have the warning completed, right?

8 A No, sir.

9 Q Okay. You got to go in the car and get the longitude
10 and latitude you said, right?

11 A Yes, sir.

12 Q All right. So, other than that, you know the driver's
13 license number, you know his name, you know what you're
14 gonna charge him with, correct?

15 A Yes, sir.

16 Q Okay. Okay. Now, you went through a series of
17 questions about his trip from Charlotte to Atlanta back to
18 Charlotte, correct?

19 A I asked him about his days travel, yes, sir.

20 Q Okay. And he testified or he, he told you he worked
21 till twelve o'clock in Charlotte, correct?

22 A He left around 12:00, yes, sir.

23 Q All right. And then he went to Atlanta, correct?

24 How long would that take him based upon your experience
25 as a trooper?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A I'm assuming four, four and a half hours, something
2 like that. I'm not sure.

3 Q Okay. Then he said he hung out with this cousin for a
4 couple of hours, correct?

5 A Correct.

6 Q And then he's coming back, he's in Spartanburg.

7 So, he would be from Spartanburg to -- I mean from
8 Atlanta to Spartanburg would take him how many hours?

9 A I never drove from there. I'm not sure.

10 Q All right. But if it takes him four hours from
11 Charlotte, it would probably take three hours from Atlanta
12 to Spartanburg, right?

13 A Fifty something miles I guess depending on traffic,
14 yes, sir.

15 Q So, this timeline's pretty accurate, correct?

16 A Yes, sir.

17 (WHEREUPON, another portion of the video was played for
18 the jury at this time.)

19 Q All right. Do you recall in your report where you said
20 his lips turned white at some point?

21 A White, cotton mouth, yes, sir.

22 Q Okay. Your testimony is that gentleman over there, his
23 lips turned white?

24 A Yes, sir.

25 Q And why doesn't it show up on this video?

D.G. Wilson - Cross-examination
by Mr. Thompson

- 1 A I guess you got blue lights flashing, shining in his
2 face. It's not high def. But you can see him constantly
3 licking them. So, they definitely are dry.
- 4 Q You say he's licking his lips?
- 5 A Yes, sir.
- 6 Q Okay. February 20th, right?
- 7 A Yes, sir.
- 8 Q Middle of winter?
- 9 A I don't remember the temperature.
- 10 Q Possibly with that he could have chapped lips, couldn't
11 he?
- 12 A It's possible, yes, sir.
- 13 (WHEREUPON, another portion of the video was played for
14 the jury at this time.)
- 15 Q All right. And what was that call?
- 16 A I didn't get to hear it all.
- 17 Q Oh, sorry.
- 18 A Any unit near 62 north, myself.
- 19 Q Okay. So, you're calling---
- 20 A I'm calling.
- 21 Q ---somebody else to come around?
- 22 A Yes, sir.
- 23 Q Okay.
- 24 A It's taking a long time for Lance Corporal English to
25 respond.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q All right. So, but, in fact, it is Mr. English that
2 shows up, right---

3 A Yes, sir.

4 Q ---later on.

5 Okay. He's putting his wallet back in his pocket,
6 correct?

7 A Yes.

8 Q Okay. And it's your testimony you did not return his
9 driver's license to him?

10 A Yes, sir.

11 Q well, is it normal that people have their wallet in
12 their hand and put in their pocket without their license
13 through your experience as the trooper?

14 A Yes, sir, sometimes they hand us these, we call them
15 get out of jail free cards, attorney cards. I don't know
16 what he's looking for in his wallet. I don't know what he's
17 got in his wallet with him at this time.

18 (WHEREUPON, another portion of the video was played for
19 the jury at this time.)

20 Q Okay. Okay. Looks like fog's coming out of his mouth,
21 it's cold, he's wanting his hat, correct?

22 A He's wanting to get his hat, yes, sir.

23 Q And, and he didn't ask to go to the car and get it?

24 He asked you to get it, right?

25 A No, sir, he asked could he get his hat. I advised him

D.G. Wilson - Cross-examination
by Mr. Thompson

1 that I could get it for him.

2 Q So, you got to finish filling that warning out, right?

3 A That's correct.

4 Q You're five minutes into this, writing this warning,
5 you still haven't written it, is that what you're telling
6 us?

7 A No, sir, I do not.

8 Q What are you looking for right there?

9 You look up the road.

10 A I'm sorry?

11 Q What were you looking for when you looked up the road?

12 You testified you got to keep your eye on Mr. Falls,
13 but you're looking up the road.

14 What are you looking for?

15 A Maybe a vehicle ran off the road behind us. I'm not
16 sure.

17 (WHEREUPON, another portion of the video was played for
18 the jury at this time.)

19 Q All right. So, you're giving the warning back to
20 Mr. Falls, correct?

21 A In the process, yes, sir.

22 Q Okay. And then you pull it back when he says you can't
23 search the car, right?

24 A Well, he never says if I could or if I couldn't.

25 Q But -- okay. But that, that receiving that ticket,

D.G. Wilson - Cross-examination
by Mr. Thompson

1 this stop's over as far as the violation goes with the, the
2 fog line, correct?

3 A If you're asking me if I wrote him a warning for
4 failing to maintain his lane, yes, I did.

5 Q And, and the purpose of that stop is done at this
6 point, correct?

7 A I'm, I'm not getting what you're saying, what you're
8 asking.

9 Q The reason you want to search that car is it's got
10 nothing to do with a fog line violation, right?

11 A The reason I want to search that car is because I
12 believe there's some type of criminal activity going on.

13 Q Okay. But the fog line issue is done now?

14 A No, that would have nothing to do with the fog line if
15 that's what you're asking me.

16 Q Okay. That's what I'm asking you. Thank you.

17 (WHEREUPON, another portion of the video was played for
18 the jury at this time.)

19 Q All right. He said if I say no can I leave, right?

20 A Correct.

21 Q And you basically said he can't leave until the dog
22 does a walk around, correct?

23 A I told him I had a K-9 officer in route. I was gonna
24 employ his dog around the car, yes.

25 Q Okay. So, he's not free to leave then?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A No, sir.

2 (WHEREUPON, another portion of the video was played for
3 the jury at this time.)

4 Q Okay. Now, Officer, Trooper Wilson, you indicate that
5 you had a dog on the way, right?

6 A Yes, sir.

7 Q All right. I thought you testified earlier you called
8 any unit?

9 Was -- any unit that it had a dog?

10 A I testified initially that I called Lance Corporal
11 English.

12 Q Right.

13 Had you given up on him, hadn't you?

14 A He is a K-9 officer, yes, sir.

15 Q Okay. And, so, it would be known if he's a K-9 officer
16 in Rolling Thunder he's probably getting calls up and down
17 the road, right?

18 A There were numerous K-9 officers there. I don't know.

19 Q All right. So -- but when you made the call for any
20 unit, that could of been a person with or without a dog,
21 correct?

22 A That's possible.

23 Q Okay. Well, you, you're, you're holding my client was
24 contingent upon that dog going around the car, wasn't it?

25 A No, sir.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Didn't you just say that on the tape?

2 A I told him that I had one in route.

3 Q Okay. And that --?

4 A That being Lance Corporal English.

5 Q Okay. Well -- but when you summoned any unit, you
6 could of had somebody show up that didn't have a dog, right?

7 A That's possible and I would of felt much safer not
8 knowing what he had in his vehicle.

9 Q Okay. And let's say -- but if the, if a unit shows up
10 with a dog, you -- were you gonna search that car anyway?

11 A We would of called for another K-9.

12 Q Okay. So that whatever you got to do, you're gonna
13 prolong that stop until a K-9 shows up, correct?

14 A No, sir.

15 Q Well---

16 A I had not made a decision to search this car or to call
17 a K-9 until he refused the search.

18 Q So, you didn't decide that you needed to search his car
19 until he said you couldn't search his car, is that your
20 testimony?

21 A I didn't decide whether or not I needed a K-9 until he
22 couldn't make up his mind whether or not he wanted to allow
23 me to search his car.

24 Q Okay.

25 A Does that answer your question?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q well, it really doesn't.

2 You summoned any unit, right?

3 A At one point, yes, sir.

4 Q At -- that's the last call you made, right?

5 A Yes, sir.

6 Q And -- but you weren't gonna let him leave until a K-9
7 showed up is what you're saying, is that correct?

8 A He wasn't gonna leave until I searched his car. That's
9 what I'm saying.

10 Q Okay. So, wouldn't you need a warrant to search his
11 car?

12 A Without his consent, a warrant or probable cause.

13 Q Okay. And without that dog, you don't have probable
14 cause, right?

15 A The dog allowed me to do a free air sniff, yes, sir.

16 Q So, that rises to the level of probable cause, right?

17 A Yes, sir.

18 Q Okay. So, you're basically telling the jury and the
19 Court today that he could not leave until a dog showed up,
20 correct?

21 A What I'm telling the jury is that there was criminal
22 activity in that vehicle and I was gonna find out what it
23 was.

24 Q Okay. Regardless of whether you, regardless if you had
25 to hold him on the side of the road for another 30 minutes,

D.G. Wilson - Cross-examination
by Mr. Thompson

1 right?

2 A I wasn't gonna do anything illegal, immoral, or
3 unethical.

4 Q But you do admit my assumption that you're, you're
5 holding him waiting on that dog, right?

6 A Not on the dog. I'm waiting on Lance Corporal English.

7 Q All right. Okay. And Lance Corporal English had the
8 dog?

9 A Just happens to be a K-9.

10 Q Oh, okay. So, you -- but you told him you had a K-9 on
11 the way?

12 A That was Lance Corporal English.

13 Q Okay. So, I'm not understanding this. You're---

14 WITNESS: Your Honor, I believe the question's been
15 asked and answered I feel.

16 THE COURT: Well, your lawyer can make an objection.
17 He hasn't, he hasn't done that at this time.

18 Q Did you tell Mr. Falls a dog was on the way?

19 A I told him I had a K-9 in route, yes, sir.

20 Q You just said he could not leave, is that correct?

21 A I said that he was not gonna leave until I found out
22 what type of criminal activity was in that vehicle.

23 Q Okay. And you said you made that first call to Lance
24 Corporal English right when you, when you went to that car
25 the second time, correct?

D.G. Wilson - Cross-examination
by Mr. Thompson

1 A That's correct.

2 Q Based upon the seat action, correct?

3 A Yes, sir.

4 (WHEREUPON, another portion of the video was played for
5 the jury at this time.)

6 Q Okay. All right. It's a free air sniff, correct?

7 Is that a free -- is that what he's conducting, a free
8 air sniff?

9 A Right, he deployed the dog in the vehicle, yes, sir.

10 Q Okay. Couple things I want to go over right here with
11 you.

12 Your job is to watch him, right?

13 A Yes, sir.

14 Q Where do you go right here?

15 A My job is also to look out for my officer. Lance
16 Corporal English is running the dog around the vehicle.
17 we're close to the roadway. So, I have to go also to watch
18 the traffic coming to make sure that nothing happens. We
19 don't want a K-9 struck by oncoming vehicle.

20 Q That's what you---

21 A That's what I'm doing.

22 Q Going, going where you're positioning yourself now?

23 A Right towards the roadway facing Mr. Falls where I can
24 look down the roadway and keep an eye on him at the same
25 time to make sure no vehicle's oncoming.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q You can't do that right here when the camera can see
2 you?

3 wouldn't that be a better spot to look at him and also
4 correct---

5 A That would of been the perfect scenario---

6 SOLICITOR MCCARTY: Your Honor, I object. He's asking
7 an argumentative question.

8 THE COURT: Sustained.

9 Q But you don't go in the, into the car here, right?

10 A No, sir, I'm standing at the roadway.

11 Q Okay. And you remember this statement you gave, the
12 detailed statement of investigation?

13 A Yes, sir.

14 Q Okay. You said, Line 3, Trooper English deployed Zena
15 on the scene and obtained a positive alert by scratching on
16 the driver's door of the vehicle.

17 Is that what that says in your report?

18 A Yes, sir.

19 Q Okay. Please tell me when this dog scratches on the
20 driver's side door?

21 SOLICITOR MCCARTY: Your Honor, I'm gonna object at
22 this point to this question to Trooper Wilson. Trooper
23 English can tell when the alert occurred.

24 MR. THOMPSON: Your Honor, it's in his report.

25 THE COURT: I understand that. Maybe we ought to first

D.G. Wilson - Cross-examination
by Mr. Thompson

1 ask him what the basis for that statement is in his report
2 or the foundation for it is. So, I'll allow you to do that
3 and then we'll -- if you want to continue your objection
4 after that question, I'll entertain it.

5 Q Okay. Did you put in your report that the dog alerted,
6 the dog, the vehicle and obtained a positive alert by
7 scratching at the diver's side door of the vehicle?

8 A That's what I wrote in my report, yes, sir.

9 Q Okay. What does that mean?

10 A Evidently I'm assuming that I got this information from
11 Trooper English as to where the dog alerted.

12 Q Okay. So, you didn't see the dog alert?

13 A I would of been paying attention to Mr. Falls and the
14 traffic. I can't say that I did see exactly where he
15 alerted other than looking at the video here.

16 Q Okay.

17 THE COURT: After that, I'll sustain the objection.

18 MR. THOMPSON: Okay.

19 THE COURT: This witness has no independent knowledge
20 of that.

21 MR. THOMPSON: Okay.

22 THE COURT: It would be hearsay.

23 Q On this video, does the dog scratch the driver's side
24 door?

25 A I'd have to see.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 (WHEREUPON, another portion of the video was played for
2 the jury at this time.)

3 Q And in your report where does it indicate, indicate the
4 drugs were found?

5 A In the driver's, driver's door of the vehicle.

6 Q Okay. And you testified earlier there was a little
7 cargo area or something in the driver's door, right?

8 A Yes, sir.

9 Q Okay. And that's where it was found, from in your
10 report, your report says it was found?

11 A Again, I would have to rely on information, information
12 that Lance Corporal English gave me.

13 (WHEREUPON, another portion of the video was played for
14 the jury at this time.)

15 Q Okay. What did he just do?

16 A Looks like he removed the rear cushion from the rear
17 seat, rear seat cushion.

18 Q Removed the back seat.

19 (WHEREUPON, another portion of the video was played for
20 the jury at this time.)

21 All right. All right. Trooper Wilson, in earlier
22 testimony you called Mr. English in very early on in this
23 stop, right?

24 A Yes, sir.

25 Q Basically all you knew you had a black male driver, and

D.G. Wilson - Cross-examination
by Mr. Thompson

1 you looked, and he looked like he was putting something
2 under the seat, and you, for officer safety, you summoned
3 the K-9 unit or officer, I can't remember his name again,
4 English?

5 A Lance Corporal English, yes, sir.

6 Q Okay. At that point you made up your mind to bring
7 that dog in, correct?

8 A At that point, no, sir.

9 Q That's who you summoned though, right?

10 A Yes, sir.

11 Q And at that time you could of made, you could of made
12 the call you made later, couldn't you, any unit would come
13 and show up, right?

14 A Yes, sir, at that time I worked with Lance Corporal
15 English on a day-to-day basis. We both were assigned to the
16 low state A.C.E. Team at that time. We worked as one unit.

17 Q You're partners, right?

18 A Yes, sir, team members.

19 Q Team members.

20 Okay. And watch each other's back, right?

21 A Yes, sir.

22 Q Okay. Now, the remainder of this tape -- let me see if
23 I can speed through this here.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Now, Trooper English searches the car further, right?

2 Is that what he's doing there?

3 A Yes, sir. He's getting ready to take a picture of what
4 he's found.

5 Q And, again, you're repositioning yourself to keep watch
6 on traffic---

7 A Watch traffic, yes, sir.

8 Q ---right?

9 You flash your light out or something for that?

10 A If, if they're not moving over, yes, sir.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q All right. 2108, you're arresting my client, correct?
14 I mean 2119:08?

15 A Nineteen, yes, sir.

16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)

18 Q Okay. Okay. A minute and 19 seconds later Officer
19 English's back on the camera, right?

20 A Yes, sir.

21 Q Okay. So, he's gone quite, for over a minute.

22 You agree with that, right?

23 A What was 119:08. Now it's 21, I mean 2119:08. Now,
24 it's 2120:17, yes, sir.

25 Q Little over a minute.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 (WHEREUPON, another portion of the video was played for
2 the jury at this time.)

3 Q Okay. And he's gonna search the car thoroughly, and
4 you'd agree with my assessment that nothing else is found,
5 right?

6 A No, sir.

7 Q Okay. And---

8 SOLICITOR MCCARTY: Your Honor, I'm gonna just object
9 to ask any continued line---

10 THE COURT: Just a second. He's gonna have to shut
11 that off.

12 Stop it for a minute, Mr. Thompson.

13 MR. THOMPSON: I didn't hear, Your Honor.

14 SOLICITOR MCCARTY: Your Honor, I'm just gonna object
15 and ask if there's any further continuing line of question
16 Mr. Thompson might have. He's asked the trooper if anything
17 else is found. State's Exhibit---

18 THE COURT: Are there some other questions concerning
19 the end of the tape?

20 MR. THOMPSON: Yes, Your Honor.

21 THE COURT: Beg your pardon?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: Okay. I'm gonna let him go forward.

24 SOLICITOR MCCARTY: Yes, sir.

25 (WHEREUPON, another portion of the video was played for

D.G. Wilson - Cross-examination
by Mr. Thompson

1 the jury at this time.)

2 Q All right. This is what the State introduced as
3 Exhibit 1, correct?

4 A Yes, sir.

5 Q Okay. And that's the Ziploc baggy, right?

6 A That's correct.

7 Q Okay. Why is -- the, the other bag, why was it not
8 turned in as evidence?

9 A The blue nylon bag?

10 Q Yes, sir.

11 A I don't know if it was turned in as evidence, but they
12 can't analyze a nylon bag. It could have been turned in for
13 safekeeping. I'm not sure.

14 Q Okay. Well, they could find residue on it, can they
15 not?

16 A It's possible.

17 Q So, you don't know what happened to the blue bag, is
18 that correct?

19 A No, sir, I do not.

20 (WHEREUPON, another portion of the video was played for
21 the jury at this time.)

22 Q Okay. Did you pull over anybody else that night,
23 officer?

24 SOLICITOR McCARTY: Objection, Your Honor. Relevance.

25 THE COURT: Sustained.

D.G. Wilson - Cross-examination
by Mr. Thompson

1 Q Let me go over your statement briefly and then I'll be
2 done.

3 Okay. I don't know how to turn this off.

4 THE COURT: Bring the lights up please.

5 Q Trooper Wilson, how long had you, had you been a
6 highway patrolman when you made this arrest?

7 A I came on the patrol May of 2002. So --.

8 Q How many drug busts would you say you've been involved
9 with prior to that?

10 A Drug arrests?

11 Q Yes.

12 A I'm not sure.

13 Q Hundreds?

14 A I'm not sure.

15 Q You don't know.

16 Okay. And at this time you were team members with
17 Agent English, I mean Officer English, correct?

18 A Yes, sir, I was assigned to the low state as is he.

19 Q And he's, he's always had a K-9 with him or most of the
20 time he was a K-9 officer, correct?

21 A Yes, sir.

22 Q All right. And they -- I guess those guys are over the
23 dogs then. Most people -- I wouldn't want to be a dog,
24 carry the dog around.

25 Now, you were talking about you believed that Mr. Falls

D.G. Wilson - Cross-examination
by Mr. Thompson

1 was giving you a story that didn't add up and that type of
2 thing is unusual I think is your wording in some of the
3 things he was saying, is that correct?

4 A Not what I see with the every day normal motoring
5 public, right.

6 Q Okay. The search of the, the car, have you, have you
7 witnessed that before?

8 A What you mean?

9 Q By Officer English.

10 A Have I witnessed him search a car before?

11 Q Yes.

12 A Yes, I've been his back-up officer, yes, sir.

13 Q All right. And is that unusual that he pulls the seat
14 out and does all that?

15 A Yes, sir, it all depends on the stop. Where -- like I
16 said, we're trained in false compartments, people hiding
17 stuff in natural voids, electronic traps. You name it we've
18 just about found it.

19 Q Okay. And so that you wouldn't consider that an
20 unusual search?

21 A Not unusual at all.

22 MR. THOMPSON: Okay. I may be done, Your Honor. I
23 apologize.

24 THE COURT: Yes, sir.

25 (Pause.)

D.G. Wilson - Cross-examination
by Mr. Thompson

1 MR. THOMPSON: No further questions, Your Honor.

2 THE COURT: Can you approach?

3 SOLICITOR McCARTY: Yes, sir.

4 (Whereupon, a bench conference was held at this time
5 out of the hearing of the jury.

6 THE COURT: Redirect.

7 SOLICITOR McCARTY: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY SOLICITOR McCARTY:

10 Q Sergeant Wilson, I'll gonna be brief and real quick.

11 This all occurred back in Spartanburg County back in
12 February of 2007, am I right?

13 A Yes, sir.

14 Q You've been a trooper at that point for at least five
15 years, but you had prior law enforcement experience,
16 correct?

17 A Yes, sir.

18 Q Mr. Thompson asked you about this delay, supposed delay
19 in writing this warning ticket out as you're talking with
20 the defendant. He's asking about putting your pen to paper.
21 why were you not head down writing?

22 A I was making sure that I was giving Mr. Falls my
23 attention. I didn't want to be disrespectful to him with
24 him answering my questions. I didn't want to ignore him. I
25 wanted to make sure I understood what he was saying.

D.G. Wilson - Redirect examination
by Solicitor McCarty

1 Q My next question involves briefly what we talked about
2 with Trooper English.

3 Your initial call was just for officer safety, am I
4 correct?

5 A That's correct.

6 Q Called your partner or your team member who happens to
7 be a K-9 handler, but that was the first person you called,
8 am I correct?

9 A Yes, sir.

10 Q At that very moment had you made a decision whether or
11 not you felt there was criminal activity---

12 MR. THOMPSON: I think that's been asked and answered
13 on direct, I mean in cross.

14 THE COURT: Well, it's been asked on cross. He's on
15 redirect. He can go into things that were gone in on cross.

16 Go ahead.

17 Q At the moment when you initially called Trooper English
18 after seeing the defendant reach down into the car, had you
19 made a decision at that point whether you would need to use
20 or deploy his K-9 for a search of that vehicle?

21 A No, sir, I did not make a decision on the K-9.

22 Q Thank you.

23 Nothing further, Your Honor.

24 THE COURT: Recross.

25 RECROSS EXAMINATION

D.G. Wilson - Recross examination
by Mr. Thompson

1 BY MR. THOMPSON:

2 Q You testified earlier you specifically summoned Officer
3 English, correct?

4 A That's correct.

5 Q And you stated earlier that you knew he had a K-9 with
6 him, correct?

7 A Working with him for a few years, I'm aware he is a K-9
8 officer, yes, sir.

9 Q Right.

10 And you -- you were aware that as long as you're
11 writing that ticket he could do a free air sniff, correct?

12 SOLICITOR MCCARTY: Your Honor, I'm gonna object. That
13 wasn't within the scope of cross-examination.

14 THE COURT: I'll let him ask him.

15 A In if I -- if my intent was to prolong the stop and
16 hold him there I would of never asked for a K-9 to come and,
17 and ask for consent to search the car. I would of prolonged
18 the stop even longer, and while I was still there, as he
19 said, delaying the stop, allowed Lance Corporal English to
20 run his dog around the car if that was my intent.

21 Have I answered your question?

22 Q I really didn't understand it.

23 Can you repeat it?

24 A If it was my intent to prolong the stop I would of
25 never summoned Lance Corporal English to come. I'm sorry.

D.G. Wilson - Recross examination
by Mr. Thompson

1 I would of never asked for consent to search the car. I
2 would of just, as you stated, prolonged the stop and allowed
3 Lance Corporal English to come and run his dog around the
4 car. That was not my intent to prolong the stop.

5 Q And I think my question was you're aware that if you're
6 writing that warning he, he has, he can go and do a free air
7 sniff?

8 A The law states that as long as an officer is conducting
9 business, yes, the free air sniff can be done if that's your
10 question.

11 Q Okay. And you knew that, right?

12 A Yes, sir.

13 Q You knew that when you summoned Officer English?

14 A That was not a thought in my mind.

15 Q But you knew that, right?

16 A I had knowledge of it, but I was not thinking about it.

17 Q Thank you.

18 No further---

19 THE COURT: Anything further?

20 SOLICITOR MCCARTY: No, Your Honor.

21 THE COURT: All right, sir. You may step down.

22 WITNESS: Thank you, judge.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, we'll break for lunch at this time. I'm gonna give
25 you the same instructions I gave you when you left the

1 courthouse last night, and that is not to try to gather any
2 information outside the courthouse. Don't listen to, watch,
3 or read any media reports. Don't discuss the case with
4 anyone. Don't allow anyone to discuss the case with you.

5 We're gonna resume the trial at three o'clock this
6 afternoon. So, be back in the jury room at that time, and
7 you may retire at this time.

8 Have a good lunch.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. The trial of this case has
12 begun at this time. Therefore, the terms of the bond have
13 been satisfied. The defendant will be in custody during our
14 lunch break.

15 Court's in recess until two o'clock. Thank you very
16 much.

17 SOLICITOR MCCARTY: Thank you, Your Honor.

18 (WHEREUPON, Court was in recess for the lunch hour.)

19 THE COURT: All right. Mr. McCarty, is the State ready
20 to proceed?

21 SOLICITOR MCCARTY: State is, Your Honor.

22 THE COURT: Is the defense ready to proceed?

23 MR. THOMPSON: Yes, Your Honor.

24 THE COURT: All right. Bring the jury in.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. The record will reflect the
3 jury has returned to the courtroom.

4 I trust everyone had a good lunch.

5 Did anyone have any difficulty in following my
6 instructions during the lunch hour?

7 If you did, please stand.

8 (No response.)

9 THE COURT: It appears that everybody has been able to
10 follow the Court's instructions.

11 The State's in the process of presenting its evidence.
12 You may call your next witness.

13 SOLICITOR MCCARTY: Thank you, Your Honor.

14 Please the Court, I'll call Trooper Steve English.

15 THE COURT: Come forward to my left and be sworn.

16 A. ENGLISH, having been first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat please, and once you're seated,
19 sir, I'd ask that you state your name.

20 WITNESS: Steven English.

21 THE COURT: Mr. McCarty, your witness.

22 SOLICITOR MCCARTY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY SOLICITOR MCCARTY:

25 Q Trooper English, where are you employed?

A. English - Direct examination
by Solicitor McCarty

1 A For the South Carolina Highway Patrol.

2 Q Are you a member of any specialized units within the
3 Highway Patrol?

4 A Yes, sir, I'm currently assigned to the A.C.E. Team,
5 Aggressive Criminal Enforcement Unit.

6 Q And within the A.C.E. Team, do you have a specific
7 function?

8 A I'm a K-9 handler for the A.C.E. Team.

9 Q How long have you been a K-9 handler?

10 A I got my first dog in 1999. I worked for Colleton
11 County Sheriff's Office.

12 Q Okay. So, you have some prior law enforcement
13 experience other than just being with the Highway Patrol, is
14 that correct?

15 A Yes, sir, I started in 1997.

16 Q So, since 1997 you've been gainfully employed as a law
17 enforcement officer in this state?

18 A Yes, sir, that's correct.

19 Q All right. You stated you got your first dog when you
20 worked for Colleton County in 1999, correct?

21 A Yes, sir.

22 Q When did you join or became a K-9 handler for the
23 Highway Patrol?

24 A In 2003.

25 Q 2003.

A. English - Direct examination
by Solicitor McCarty

1 what -- at the time, what was the dog that you had?

2 what was the dog's name?

3 A My first dog I, I tragically lost, but his name was
4 Eris. I had him just a few months. He had some health
5 complications and passed. My second K-9 was K-9 Zena --

6 Q Okay.

7 A -- the dog in question today.

8 Q And Zena was the dog used on February 20th, 2007, am I
9 correct?

10 A That's correct.

11 Q And that was the same dog that was used to search the
12 defendant's vehicle on the night of that February 20th?

13 A Yes, sir.

14 Q Okay. And, of course, that K-9 search also occurred in
15 Spartanburg County, am I correct?

16 A Yes, sir.

17 Q All right. Trooper, what was Zena used -- are you
18 currently still working with Zena?

19 A Zena's been retired since late 2009. She's now a house
20 pet of mine. So --

21 Q Okay. So, she lives in your home?

22 A That's right.

23 Q What was Zena trained to do?

24 A Zena was trained in narcotics. She was trained to the
25 odor of cocaine, crack, marijuana, methamphetamines, and

A. English - Direct examination
by Solicitor McCarty

1 heroin. She was certified each year in those five drugs.
2 We certify through a national company called Hornbeck.
3 Every month we would do K-9 training with the dogs to keep
4 them up as well as their normal job functions in the
5 day-to-day traffic stops.

6 Q So, this certification, does it require a certain
7 amount of additional training every year with your dog?

8 A That's right. We have to go into a controlled location
9 where they put out contraband, five different drugs and
10 different scenarios. Some are in buildings, some are in
11 cars, and then we have to bring the dog in. They have to
12 make sure that I can recognize that the dog smells of the
13 odor of the drugs, and that the judge or the handler can
14 determine the dog knows the smell as well as recognizes it.

15 Q And you're taught to recognize these indications that
16 your dog would give, is that correct?

17 A That's correct.

18 Q How would, how -- explain to the jury what type of
19 indication a dog would give a handler to let them know that
20 they smell something they're trained to smell.

21 A Normally with the drug dogs there's two different types
22 of indications. A passive alert, which means once the dog
23 smells the odor of drugs or narcotics he will sit down, and
24 that's his sign that they smelled that odor.

25 In this case our dog, at the time, were aggressive

A. English - Direct examination
by Solicitor McCarty

1 alert, which means they will bite, scratch, bark, anything
2 of that nature. It's, it's more the -- they, they really
3 get excited, scratching things. There's different reasons
4 for using both dogs. If you worried about damaging property
5 or damaging certain things, you might want that passive dog
6 such as a bomb sniffing dog. You obviously wouldn't want
7 him scratching stuff. So, you have -- but now we have more
8 and more of our dogs are becoming passive dogs, yes.

9 Q All right. Trooper, when you had, when you had Zena
10 and you were training and working with her, how often would
11 you train with her beyond her, your normal day-to-day use
12 with her out on the roadways?

13 A We would try to train, within reason, at least twice a
14 month every other week, and normally that would be an eight
15 hour training day where our master handler would come in,
16 hide drugs on cars at a lot. We'd bring the dogs not
17 knowing where they were, and our master handler would watch
18 us and the dogs and make sure everything was on track. And
19 if there was any work needed in any particular area we'd do
20 that.

21 Q And in addition to all this training, Zena also worked
22 with you on the roadside day-to-day, am I correct?

23 A Yes, sir.

24 Q Did you deploy her frequently during the course of your
25 duties as being a Highway Patrolman?

A. English - Direct examination
by Solicitor McCarty

1 A Yes, sir.

2 Q So, the night of February 20th, 2007, that wasn't her
3 first deployment to look for -- and I'm saying her, Zena is
4 a female, am I correct?

5 A Correct.

6 Q Okay. That was not her first deployment, was it?

7 A No, sir, I had her myself since 2003 and she had had a
8 previous handler before that. So, she had been around for
9 quite a while. I'm not sure of her exact age, but --.

10 Q Let me ask you about practical experience.

11 what, if you recall, probably about the largest amount
12 and type of drugs she found and what's probably the smallest
13 amount and type of drugs that she had indicated on, and I
14 say indicated, not found.

15 A I know she found 350 pounds of marijuana. I know she
16 found seven kilos of heroin, and she's found over a million
17 dollars in currency in one stop. So --.

18 Q And is she trained to sniff for currency, for money?

19 A No, she's trained to sniff for the odor of drugs coming
20 from the currency. Most of the time the same compartments
21 and packing used to move the drugs is where they move the
22 money, and that's where the dog will alert from.

23 Q Now, with Zena, I said -- I wanted to say indicate as
24 opposed to find.

25 Is there a difference between being able to indicate

A. English - Direct examination
by Solicitor McCarty

1 about the presence of an odor and being able to necessarily
2 zero in on an odor that you---

3 A That's correct. The dog indicates to the odor of the
4 drug. Not the drug itself. For example, if you had a car,
5 you had drugs in, you took the drugs out, drove the car down
6 the road, the dog will still indicate because the odor's
7 still in the car, but it's -- the drugs may not necessarily
8 be there. You have to go on the scent base coming from the
9 car.

10 As far as where the dog might indicate on the car, it
11 would be similar to bringing a bag of popcorn. If I held
12 the bag up here, the scent's still gonna be in the back of
13 the room. The dog may come in and indicate in the back
14 because the wind may be taking the smell or whatever from
15 that direction. The dog never tells us exactly where it's
16 at. Just that he smells, he or she smells an odor, and then
17 they will indicate accordingly.

18 Q Okay. Have you testified about your use of Zena before
19 in other Trial Courts?

20 A Yes, sir.

21 Q And has she been found reliable in those other courts?

22 A Yes, sir.

23 Q Trooper English, it's a good point you just brought up
24 about the smell or the odor using the example of popcorn.

25 So, what you're saying is that the dog -- can the dog

A. English - Direct examination
by Solicitor McCarty

1 sometimes specifically find where the drugs are zero and in
2 on them?

3 A Sometimes. It just depends on the permeation of the
4 odor. In other words, how strong that odor's coming out of
5 one certain spot. If everything's pretty well sealed off,
6 for example, the trunk and the only place that air is
7 seeping out is right around the trunk seem, the dog may hit
8 there and start scratching. It might even pop the trunk and
9 there it is.

10 However, with the air blowing by on the cars and stuff,
11 sometimes the dog will alert up at the front, the hood, and
12 the dope or the contraband is actually in the front. That
13 air is just pushing through that car and the dog can't
14 specify where it's coming from. I just know I smell it.
15 They'll get as close as they can and then they'll indicate.

16 Q So, the traffic like you see on the video here, and I'm
17 not gonna play it back, but the traffic---

18 A Yes, sir.

19 Q ---on that interstate can affect how---

20 A Absolutely.

21 Q ---that dog indicates if it does indicate?

22 A Yes, sir.

23 Q Have you ever had Zena indicate falsely to the presence
24 of something?

25 A Not that I'm aware of because, like I say, she's

A. English - Direct examination
by Solicitor McCarty

1 indicating to the odor of the drugs. whether we not --
2 whether we found the drugs or not or found residue or that
3 kind of thing, but she indicated to it. She never gives me
4 any problem in training.

5 Q And you've had instances where she may indicate, like
6 you said, on the trunk of a vehicle, but maybe something's
7 found in a different area of the vehicle, am I correct?

8 A Correct.

9 Q And that's why, as we saw on the video, you're required
10 to go in and do a search of the vehicle, am I correct?

11 A That's correct.

12 Q So, specifically to this case, you did bring Zena
13 around the vehicle, am I correct?

14 A That's correct.

15 Q Tell the jury how you present the dog to the vehicle,
16 what you're doing, what you're showing the dog or not
17 showing the dog, or anything like that.

18 A Normally I'll bring the dog up to the front of the car
19 to try to start the same place every time. I'll start at
20 the front of the car and this is just how we were trained,
21 and we'll normally make two counter clock wise rotations
22 around the car. You present areas of the car to the dog,
23 and what I mean by present is I'll hold my hand down to
24 certain areas of the car and just -- I keep moving, but I
25 present certain areas like door seams, around the hood, or

A. English - Direct examination
by Solicitor McCarty

1 anywhere that air can, can escape from that car.

2 Okay. And that's the areas you want that dog's nose to
3 be, and that way he's got the best chance, he or she, of
4 smelling the odor coming from the car, and in this case,
5 when I went around the car, when we got to the passenger
6 side door as I recall, Zena scratches, bites, you know, up
7 on the passenger door area. So, that was his, her
8 indication. I'm sorry. I have a male dog now. That's why
9 I keep saying he.

10 Q No problem.

11 So, the fact that she alerted on the passenger side
12 door, that tells you that she did indicate that she, that
13 she smelled the odor of some type of narcotic?

14 A Correct.

15 Q Does she give a different indication for what type of
16 different drugs it was?

17 A No, sir.

18 Q So, marijuana would be the same as cocaine, the same as
19 heroin, the same as methamphetamine?

20 A Yes, sir.

21 Q And by her locating on the driver's or the passenger's
22 side door, did that necessarily mean to you, based on your
23 experience as a handler, that the drugs would be found right
24 there in, in the passenger side door?

25 A No, sir, we've found drugs in numerous places from

A. English - Direct examination
by Solicitor McCarty

1 engine fire walls to transmissions on cars, everything.

2 It's wherever that air seeps out, the dog alerts, and then

3 we have to take the whole car as a whole.

4 Q Now, trooper, I -- we watched the video. I'm not gonna

5 play it back, but we kind of flipped through with Trooper

6 Wilson when he was on here and saw you go through with your

7 dog around the vehicle. Your search began approximately

8 2114:40 on the video. So, the beginning of the search and

9 discovery of the cocaine, once the dog alerted is about four
10 minutes.

11 Now, in that four minutes on the video, you're doing a

12 hand search of the vehicle. Could you explain to the jury

13 what you're doing at that point, what you're required to

14 look for after your dog alerted?

15 A Right. Once the dog alerts, of course, I'm gonna put

16 the dog back in my truck. The dog is given a reward, which

17 is his, his, I don't remember at this time, whether it was a

18 rubber pong or a ball or something, but they get their toy,

19 they get rewarded. I put him back in the truck and then

20 I'll go back up with a flashlight and then actually look in

21 the area where he showed the most interest. That's where

22 I'll start.

23 If I don't find anything there, then I'll do a

24 systematic search around the car. The reason we do a

25 systematic search is if you -- the dog alerts to the

A. English - Direct examination
by Solicitor McCarty

1 passenger door and I go to the trunk first cause it's the
2 biggest area to conceal something. I may get side tracked
3 on something else and forget to go back and look a certain
4 place.

5 So, I always start the same place, no matter what it
6 is, and we rotate around the car. In this case, I started
7 on the passenger door, and as I recall, went around to the
8 driver's side I think to pop the trunk or something, and
9 that's when I discovered the contraband.

10 Q Are you trained to find things like what, what's
11 commonly known as a trap in the car?

12 A Absolutely.

13 Q And what is a trap?

14 The jury may not know that term.

15 A A trap or a compartment is something that's been
16 mechanically constructed to a vehicle. Not like a natural
17 void like an area where you can just pull carpet back and
18 hide something. This is something that's actually been
19 welded or constructed to a car, and normally it's operated
20 with a hydraulic piston.

21 For example, an air bag on a car. If the trap's behind
22 that, the piston will actually open after you do a few
23 sequence of events in the car like maybe put your foot on
24 the brake and turn the air conditioning on and then you turn
25 a left turn signal on and all of a sudden that whole left

A. English - Direct examination
by Solicitor McCarty

1 glove box will come out of a piston. Those are mechanical
2 traps versus a, just a concealment of something where you
3 can just pull the carpet back or, you know, taking the back
4 off your seat and just stuff some stuff back in there. So,
5 we're trained to find both of them.

6 Q So, when you begin your search, you're trained to look
7 for both types of things?

8 A Absolutely.

9 Q Every day concealment and maybe somebody put something
10 under the seat or stuffed it down in the back of the seat or
11 in the pocket behind the back of the seat as well as look
12 for weld marks, bondo, that type of stuff?

13 A Yes, sir.

14 Q At the point where you began your search, we did see on
15 the video the passenger side doors were opened, both the
16 front and the back, do you recall searching both of those
17 area?

18 A Yes, sir.

19 Q Mr. Thompson pointed out that it looked like a bench
20 seat on the back of this Lincoln was removed by you and set
21 to the side of the car.

22 A Yes, sir.

23 Q Do you recall doing?

24 A Yes, sir.

25 Q Why would you do that?

A. English - Direct examination
by Solicitor McCarty

1 A Every---

2 Q To me, to me that might seem excessive, but, again,
3 what are you or what are you trained to see that we can't or
4 wouldn't see?

5 A In today's times with terrorists and drug activity and
6 these people moving things, they will go to extreme measures
7 to hide their stuff. This is a business to them, it's a
8 profit, and they will use any means necessary to hide
9 whatever they can on the vehicle. We've gotten dope out of
10 drive shafts on a car that's actually driving on a road or
11 out of tires. There is no limits.

12 If there's an area on the car that we can't see with
13 our physical eyes and account for a check, we're gonna
14 remove the seats, be careful as we can. If we don't find
15 anything, we're careful to put everything back the way it
16 was or better. But we're gonna check everything on that car
17 from front to back.

18 Q And let me just ask you about the removal on that seat.
19 Is that something that you know how to do safely
20 without damaging the vehicle further?

21 A Absolutely.

22 Q So, you wouldn't be out there and just ripping seats
23 out of a car nonchalantly damaging vehicles, would you?

24 A No, sir, we're professionals and I've been since --
25 interdiction work since 1999. I've never had a complaint

A. English - Direct examination
by Solicitor McCarty

1 for damaging someone's car.

2 Q If you had to do something that would require maybe
3 cutting into a vehicle or removing something that's
4 physically bolted down in a vehicle, what's your typical
5 procedure for doing that type of thing?

6 A At that time we probably would take that vehicle off
7 the roadside. We're gonna get several opinions, myself, my
8 sergeant, a few other people before we do something like
9 that. Our training and experience is shown us what's normal
10 and what's not on a car, and if the driver of that car, if
11 he owns it, he says, you know, he doesn't know anything
12 about it, we'll figure out some way, if it takes us hours to
13 get into it, but if a dog's alerted, we'll find what we can,
14 a compartment, we'll take our time, we usually find the
15 wires, and then we'll open it, bypass it, and open it up.

16 Q So, is it something that you can remove the vehicle
17 from the side of the road if you feel there's something more
18 to it?

19 A Absolutely.

20 Q Now, we saw in the video it looks like you're looking
21 around obviously with a flashlight, it's at night, and once
22 you got the back seat removed, it looks like you're looking
23 around the seam going into the trunk area on that back seat,
24 am I correct?

25 A It's been a while, but yes, sir, that's normal for me.

A. English - Direct examination
by Solicitor McCarty

1 Q We can play it if you'd like, but---

2 A That's normal for what I do. I'm trying to account for
3 everything on that car.

4 Q You then walk around to the driver's side of the door
5 and open the driver's side door.

6 A Yes, sir.

7 Q Do you recall doing that?

8 A Yes, sir.

9 Q Tell the jury at that point what your observations were
10 and what happened next.

11 A As I go around and open the driver's side door, there
12 was a, for lack of a better word, like a map, pocket, or
13 something right there, and I noticed a blue nylon bag in
14 there, and I think, as Trooper Wilson testified to earlier,
15 we hadn't seen anything in the car at this point. Not even
16 a drink cup. So, the bag sort of caught me off guard.

17 As I moved the bag, I could see the, I think a white
18 powder inside of it. At that time I went back and told
19 Sergeant Wilson to detain or arrest the subject. I can't
20 remember the specific wording I used at that time, and then
21 I went back to my vehicle and got my camera and my gloves to
22 photograph the, what I believed at that time to be evidence.

23 Q I think we saw you putting on your rubber gloves and go
24 back up there and that's when you did a hand search, is that
25 right?

A. English - Direct examination
by Solicitor McCarty

1 A Yes, sir.

2 Q Cause at this point you don't know exactly what this
3 substance is?

4 A Certainly. That's part of our training as well as
5 evidence preservation.

6 Q And I do want to show you this marked as State's
7 Exhibit No. 2.

8 A Yes, sir.

9 Q What is inside of that is a little Ziploc bag.
10 Is that the same bag that you found as you recall?

11 A Yes, sir, best I can tell.

12 Q Okay. Did you do, yourself, any type of field test on
13 the drug?

14 Do you recall doing, performing anything like that?

15 A I don't remember it. I may have. Sergeant Wilson and
16 I are both, were partners at the time, and we worked close
17 together. So, we're all helping each other out. I take
18 pictures, he takes pictures. One of us would test the
19 stuff. So, I don't specifically remember, in this case, who
20 tested it.

21 Q All right. Let me ask, ask you this cause you did say
22 about partners. I think it's a question worth asking.

23 When you're called by Trooper Wilson or another trooper
24 --

25 A Yes, sir.

A. English - Direct examination
by Solicitor McCarty

1 Q -- and they're calling for you to come to assist, do
2 you have any indication, usually when they immediately call
3 you, whether or not you're coming there because for officer
4 safety or whether you're coming there because you're gonna
5 search a vehicle or anything like that?

6 A No, sir, I am -- I have a K-9, but when we work
7 together, like I said, Sergeant Wilson and I are partners,
8 and when he calls me, like I said, I don't know whether he
9 needs me for backup or he needs my dog or anything like
10 that. All I know is it's my mission to get over there to
11 him. We work very close together, and as he testified to
12 earlier, we try to stay in close proximity to each other.
13 It's a very dangerous thing we do. So, we try not to get
14 too far. I think this particular night I was actually ahead
15 of him. So, I had to go down, turn around, come back, and
16 then -- that's why it took me a little bit of while to get
17 to him.

18 Q When you arrived on the scene February 20th, 2007, and
19 walked up to Trooper Wilson, you were exiting your patrol
20 vehicle, at that point did you know that you are going to
21 need to deploy my dog?

22 A No, sir.

23 Q Did you have to speak with Trooper Wilson at that
24 point?

25 A Yes, sir.

A. English - Direct examination
by Solicitor McCarty

1 Q And at that point did, were you advised that he'd like
2 you to bring your K-9 to the vehicle?

3 A Yes, sir, I can't remember the exact wording he used,
4 but he indicated he wanted me to run the dog, run Zena on
5 the car. So---

6 Q So, when you arrived, you just know that a fellow
7 officer had called for assistance?

8 A That's correct.

9 Q You didn't know whether it would be standing there
10 helping with multiple suspects or standing there or possibly
11 using your dog, am I correct?

12 A Yes, sir.

13 Q And ultimately you did run your dog and found a quarter
14 of a kilo of powder cocaine, am I correct?

15 A Yes, sir.

16 Q Thank you. Nothing further.

17 MR. THOMPSON: Please the Court, Your Honor?

18 THE COURT: Yes, sir, your witness.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q Trooper English, you been with law enforcement since
22 1999, is that correct?

23 A I started in 1997 for Colleton County Sheriff's Office
24 and spent five years there.

25 Q Okay. And you been working with dogs since 1999, is

A. English - Cross-examination
by Mr. Thompson

1 that your testimony?

2 A Off and on, yes, sir.

3 Q Okay. And you are or were, at the time of this
4 incident, partners with Officer Wilson, correct?

5 A Yes, sir, we were both assigned to the low state unit
6 working I-95.

7 Q Okay. And you were in Spartanburg for the Rolling
8 Thunder, correct?

9 A Yes, sir.

10 Q Okay. And were you instructed by anybody to make sure
11 you had your dog with you or was---

12 A That's part of my issued equipment. I would of been in
13 trouble if I didn't have my dog, yes, sir.

14 Q You had a dog at all, at all times?

15 A All the time. He comes home with me and sleeps at my
16 house.

17 Q Okay. And you say Zena's your pet now, right?

18 A Yes, sir, she's been retired since '09.

19 Q Okay. Now, unfortunately I'm gonna look at the video a
20 little bit and go over some things with you.

21 Okay. I'll turn this thing on. I'm gonna go all the
22 way to the point where you bring Zena.

23 (WHEREUPON, a portion of the video was played for the
24 jury at this time.)

25 Q There you are with Zena, correct?

A. English - Cross-examination
by Mr. Thompson

1 A Correct, sir.

2 Q All right. Is that you there?

3 A Yes, sir, it was.

4 Q Okay. Now, did you correspond any with Trooper Wilson
5 about his report?

6 A I, I don't remember, sir. I'm sure we talked about the
7 stop.

8 Q Now, I don't recall if you were in here, but I asked
9 him about the dog scratching and he indicated the dog
10 scratched on the driver's side door, and, in fact, it was
11 the passenger side, correct?

12 A The dog indicated on the passenger side, yes, sir. You
13 see it on the video.

14 Q I apologize.

15 A The dog did indicate on the passenger side. You can
16 clearly see it on the video.

17 Q Right.

18 Okay. Do you know if you're there yet?

19 A I'm pretty sure I am, sir. I just see -- that was me
20 on the video a few minutes ago. I was up checking the car
21 for hazards for my dog.

22 Q Okay. Checking for what?

23 A Hazards for my dog. In other words, if the dog does go
24 inside, gets in the window or something, make sure he
25 doesn't ingest anything so it won't kill or hurt him.

A. English - Cross-examination
by Mr. Thompson

1 Q People do that?

2 A Absolutely, sir.

3 (WHEREUPON, another portion of the video was played for
4 the jury at this time.)

5 Q We're not there yet because he said I got an officer
6 coming. You're still, still not there, right?

7 A Not sure if I'm on the scene yet or not, sir.

8 Q I think he indicated to Mr. Falls that you were on the
9 way.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q He said as soon as you get there he'll get you your
13 hat, isn't that what he said?

14 A No, sir.

15 Q Sounds like he told Mr. Falls as soon as you got there
16 he'd get his hat I think?

17 A Oh, I thought you were referring that I would get the
18 hat. He may of told Mr. Falls that, but I'm not on scene
19 yet, no.

20 Q Okay. That's my question. Thanks.

21 (WHEREUPON, another portion of the video was played for
22 the jury at this time.)

23 Q Okay. Now, your testimony that somewhere in your
24 passing him he indicated that he needed the dog or when did
25 he tell you he needed the dog?

A. English - Cross-examination
by Mr. Thompson

1 A Yes, sir, at this point I -- he's made me aware of it
2 either by hand gesture or something. I don't remember.
3 It's several years ago. But at this point he told me needed
4 the dog. So --.

5 Q All right. You said probably a hand gesture because
6 it's not on there I don't believe?

7 A Yes, sir, we have a common hand gesture whenever he, he
8 or myself have the dog. If we're on the stop where we do
9 like this, that means I need to run the dog around the car
10 for me.

11 Q Okay.

12 A So that could be very well what he did that night. I
13 don't remember.

14 Q Does he not say right there--

15 A I think I asked Mr. Falls how he was doing, sir. He
16 said all right.

17 Q You said that right there's more or less a little
18 protective sweep for the K-9, correct?

19 A Yes, sir, I'm just looking at those two windows on the
20 side to make sure nothing that will hurt him. Also make
21 sure there's nothing sharp sticking off the car when I run
22 him around. I just don't want to hurt my dog.

23 Q What's that in your hand?

24 A There's nothing in my hand but my flashlight, sir.

25 Q Flashlight and you're tapping the car with a

A. English - Cross-examination
by Mr. Thompson

1 flashlight?

2 A No, I run my hand along the edge of the car in certain
3 areas. Like I explained earlier, that trunk lid air would
4 be escaping out of the car.

5 Q Uh-huh. (Affirmative).

6 Then you got one hand on the dog, right?

7 A It appears that way.

8 Q Huh?

9 A It appears that way, yes, sir.

10 Q And your other hand -- you got a flashlight in the
11 other hand?

12 A I believe so. It looks that way in the video.

13 Q Okay. Now, I'm trying to understand what you're saying
14 about running your hand---

15 A Would you like for me to demonstrate on the wall over
16 here?

17 Q What hand -- I mean were you doing it with a flashlight
18 hand or each hand?

19 A Yes, sir.

20 Q Flashlight?

21 A My dog's gonna follow me with his nose with the
22 opposite hand of what I have it on.

23 Q Okay.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

A. English - Cross-examination
by Mr. Thompson

1 Q So, right here you're seeing him alerting here?

2 A No, sir, she doesn't alert till right then when she
3 gets to the passenger door when you see her jump up on the
4 door handle.

5 Q That's the behavior you say indicates an alert?

6 A That's correct, sir.

7 (WHEREUPON, another portion of the video was played for
8 the jury at this time.)

9 Q Okay. So now Trooper Wilson moves?

10 A Yes, sir, he was actually standing on the white fog
11 line to protect me and my dog. He has his flashlight out
12 moving cars over. That's customarily what we do. It's
13 nighttime and dangerous. When I run that dog, my mind is on
14 that dog. Not cars running me over. So, he's looking out
15 for me.

16 Q Okay. And what is an open air sniff?

17 Can you define that for me?

18 A I can't define that, sir. But my definition of a free
19 air sniff is anything that you don't have rights or privacy
20 over. In other words, the air outside of that car.

21 Q Okay. All right. So, your testimony is that the dog
22 had alerted, correct?

23 A Correct, sir.

24 Q Why do you need to put the dog in the truck, in the
25 car?

A. English - Cross-examination
by Mr. Thompson

1 A Once the dog alerts on the passenger side, then I have
2 the right, in the case law, to open that door and let the
3 dog inside to see if he can pinpoint that or even closer.

4 Q Okay. And that's what you're doing here?

5 A That's correct, sir. That's what I do every time.

6 (WHEREUPON, another portion of the video was played for
7 the jury at this time.)

8 Q Is that the dog's tail we see?

9 A It appears to be, yes, sir.

10 Q There's the dog's head, right?

11 Are you doing your hands inside the car?

12 A No, sir, once he gets inside the car, I basically shut
13 the door to keep him from getting hurt and I rather him just
14 to do his own thing or her own thing. She goes around the
15 car until she indicates. Once she indicates, I quickly try
16 to reward her to keep her from damaging the car because, as
17 I said earlier, her indication is always some type of
18 scratching or biting. I don't want to damage anybody's car.

19 (WHEREUPON, another portion of the video was played for
20 the jury at this time.)

21 Q All right. Now, has she pinpointed somewhere inside
22 the car for you?

23 A As I recall, the driver's seat area, but I don't
24 remember specifically where.

25 (WHEREUPON, another portion of the video was played for

A. English - Cross-examination
by Mr. Thompson

1 the jury at this time.)

2 Q You got a jacket on there?

3 A Yes, sir.

4 Q Okay. Now, Trooper Wilson won't, he won't have any
5 responsibility searching the car, right?

6 A He can. I normally help him search his cars for him.

7 (WHEREUPON, another portion of the video was played for
8 the jury at this time.)

9 Q All right. You checked the front seat.

10 There's nothing -- you -- nothing found yet, correct?

11 A Correct.

12 (WHEREUPON, another portion of the video was played for
13 the jury at this time.)

14 Q And completely down in the seat here?

15 A I can't tell, sir.

16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)

18 Q Now, you're completely gone from view, right?

19 What would you be doing there?

20 A I could be checking underneath the driver's seat. I'm
21 checking the floorboard area, whatever. I'm looking for
22 contraband, sir. He was parked.

23 Q Beg your pardon?

24 A The vehicle was parked close to the white line. So,
25 the more I can search the passenger side the better. So, if

A. English - Cross-examination
by Mr. Thompson

1 it's something closer to the driver's side. I'm not gonna
2 be able to open that driver's side door either or open the
3 front door or the back door and safely search that area
4 without moving.

5 (WHEREUPON, another portion of the video was played for
6 the jury at this time.)

7 Q All right. Nothing so far after about three and a half
8 minutes, right?

9 Sorry.

10 A Yes, sir, that's correct.

11 Q And you testified it's customary that you, not out of
12 the ordinary that you removed the back seat like that,
13 correct?

14 A Yes, sir, that particular four door sedan and the
15 Mercury Marquis is known for having a compartment built
16 underneath the back seat between the fuel tank and the back
17 seat. So, that's why I was trying to make sure it was not
18 in this car.

19 (WHEREUPON, another portion of the video was played for
20 the jury at this time.)

21 Q All right. You're about to arrest him, correct?

22 A It appears that way, yes, sir.

23 (WHEREUPON, another portion of the video was played for
24 the jury at this time.)

25 Q All right. So, right here you've determined that you

A. English - Cross-examination
by Mr. Thompson

1 have found the drugs, right?

2 A Yes, sir, through my training and experience.

3 Q Okay. And your training and experience.

4 All right. So, you were at that door probably three
5 seconds at that driver's side door?

6 A Not very long, sir. As you can see, I'm trying to
7 worry about somebody running me over.

8 Q All right. So, you open at 36 and 56 you made the
9 determination that you were gonna arrest Mr. Falls?

10 A Yes, sir, as I recall, the trunk latch on the Lincoln
11 Town Car is on the driver's door and that's where I was
12 opening whenever I discovered the package.

13 Q Okay. And exactly where did you find the package?

14 A As I recall, there was some type of map compartment or
15 something right there by the door or in the door that the
16 package was in.

17 Q Like a, just a, a normal pouch or something on the side
18 of a door?

19 A Something that was factory from the, from the
20 dealership, yes, for the car.

21 Q Okay. So, it wasn't -- so, you didn't -- it wasn't
22 inside the door, something you had to peel back something
23 and---

24 A No, sir.

25 Q ---it's stuffed in there---

A. English - Cross-examination
by Mr. Thompson

1 A No, sir.

2 Q ---correct?

3 So, it was just out there?

4 A Yes, sir.

5 Q And in that ten seconds you were able to open that
6 door, open that blue pouch, open that plastic ziploc bag,
7 close them back, and then close the door and come and---

8 A No, sir.

9 Q Exactly what did you do?

10 A When I opened the door to mash the button to release
11 the trunk I saw the blue nylon bag there, and I simply just
12 moved it back enough to where I could see the plastic bag
13 that---

14 Q Okay.

15 A ---inside containing the powder and I stopped at that
16 time and went back and basically give Trooper Wilson a head
17 nod, which, between the two of us, meant that I found
18 something. At that time we arrested and detained Mr. Falls
19 and got my camera and my gloves.

20 Q Okay. And, so, you opened the door, you're pulling
21 that knob to, I guess, release the hood?

22 A No, sir, I said the trunk. There's a button on the---

23 Q The trunk.

24 A ---driver's side door, yes, sir.

25 Q Okay. Now, you looked -- you did that --

A. English - Cross-examination
by Mr. Thompson

1 A Uh-huh. (Affirmative).

2 Q -- and went in that pouch.

3 A The pouch was opened.

4 Q Okay. Then went inside the blue bag?

5 A I simply just had to move the blue bag over where I
6 could see the powder inside of it.

7 Q Okay. You didn't field test the powder or anything at
8 that time?

9 A No, sir.

10 (WHEREUPON, another portion of the video was played for
11 the jury at this time.)

12 Q You say you give a signal?

13 A Yes, sir, I just nodded, just nodded my head at Trooper
14 Wilson.

15 Q You just told him you're going to get your camera and
16 gloves, right?

17 A Yes, sir.

18 Q Okay.

19 A Would you like me to show you the signal we use instead
20 of just saying arrest someone?

21 Q No, sir.

22 A Okay.

23 (WHEREUPON, another portion of the video was played for
24 the jury at this time.)

25 Q All right. What are you doing right here?

A. English - Cross-examination
by Mr. Thompson

1 A I've opened the driver's door, and I'm actually taking
2 pictures of the blue package in the driver's door.

3 Q Okay. And where, where did you go for that minute and
4 14 seconds?

5 A We have two safety, secure vaults in the back of our
6 trunks that have a combination on them. I would have to go
7 to my trunk, open the combination, get my camera out of the
8 package, get my gloves, and then walk back up to the car.

9 Q You got the gloves on you?

10 You had the gloves on now or do you put them on later?

11 A Sir, I can't tell from that video shot.

12 Q Are you taking photographs right there?

13 A Yes, sir, I'm not even having to lean over. Just
14 simply open the door and take pictures of the package in the
15 door.

16 (WHEREUPON, another portion of the video was played for
17 the jury at this time.)

18 Q All right. Where you guys going now?

19 A It looks like I asked Trooper Wilson for gloves. Maybe
20 I didn't have mine on me. Maybe I couldn't find mine in
21 that bag or whatever. It's a long time ago. You can see my
22 camera, I'm sitting it on the trunk, and I think, if you
23 back it up, I just asked Trooper Wilson for a set of gloves.

24 (WHEREUPON, another portion of the video was played for
25 the jury at this time.)

A. English - Cross-examination
by Mr. Thompson

1 Q Is this the blue bag we been talking about?

2 A It appears, sir.

3 Q Okay. And you -- this clear bag fits into that bag, is
4 that right?

5 A Yes, sir.

6 Q It's inside?

7 A Yes, sir.

8 Q It's pretty close to the same size, aren't they?

9 A I do not recall, sir. It's hard to tell from that
10 video at nighttime.

11 (WHEREUPON, another portion of the video was played for
12 the jury at this time.)

13 Q You had to unzip the bag to close it, right?

14 A I can't really tell, sir.

15 Q Right there you unzipped it?

16 A Yes, sir, it does appear that I do.

17 Q Okay. So, you had to unzip it when you went to the
18 driver's side door?

19 A Don't recall, sir.

20 (WHEREUPON, another portion of the video was played for
21 the jury at this time.)

22 Q Now, then the remainder's just, just continuing your
23 search of the car, correct?

24 A Yes, sir, I complete the search of the vehicle.

25 Q Okay. And you are very experienced in tracking down

A. English - Cross-examination
by Mr. Thompson

1 drugs on the highways, correct?

2 A I'd like to think so, yes, sir.

3 Q And probably because you have a K-9 unit you come in
4 contact with a lot more drugs than the average officer,
5 wouldn't you -- would that be a fair assessment?

6 A Yes, sir.

7 Q Okay. Will -- Trooper Wilson contacted you almost
8 immediately upon pulling him over.

9 Do you recall -- you said it took you a while to get
10 there, correct?

11 A That's correct, sir.

12 Q Okay. And when you're contacted by him, he's
13 contacting you, one, because you're partners, right?

14 A We were working together this particular night in close
15 proximity to each other, yes, sir. So, I would of been the
16 first one that he would of called. The same thing, if I'd
17 of gotten in trouble, he's the first call number I'm gonna
18 remember when I call for help.

19 Q Okay. And because -- and also he's well aware that you
20 have a dog with you, correct?

21 A I had a dog since I came on the team, yes, sir.

22 Q Okay. And your testimony, I think you told Mr. McCarty
23 that you were just called in a regular capacity, is that
24 correct?

25 A He called for assistance and I went to him, yes, sir.

A. English - Cross-examination
by Mr. Thompson

1 Q Okay. And the, the truth is he called for that dog
2 more so than you, right?

3 A I wouldn't say speculate, sir.

4 SOLICITOR MCCARTY: Your Honor, I object. The
5 trooper's testified that he called for assistance.

6 THE COURT: Well, I---

7 SOLICITOR MCCARTY: It's an argumentative question as
8 far as why he---

9 THE COURT: The question for why, the motivation of
10 someone else, why they did it, and I don't think he's
11 competent to testify as to that unless they expressed the
12 motive.

13 Q All right. Trooper, you and Officer Wilson have made
14 many arrests, correct?

15 A Correct, sir.

16 Q Okay. And when you go in here with, with, with him,
17 when he calls you, all right, did he indicate what the
18 urgency was when he called you?

19 A Are you through?

20 Q Yes.

21 A I'm sorry. He doesn't need to, sir. Once he called me
22 I'm coming. No matter who it is, whether it's him, another
23 supervisor, another officer for Rolling Thunder. We work
24 that way. When somebody calls I'm not gonna be asking him
25 what he needs.

A. English - Cross-examination
by Mr. Thompson

1 Q Okay. So, you never radioed back to him?

2 A I don't remember. There was so much radio traffic
3 going this particular night that I don't even know if I
4 acknowledged him. I think that's why he had called for a
5 second time. Honestly I can't -- that's speculation on my
6 part. But no, I don't remember.

7 Q Okay. And it's your testimony you didn't know you were
8 gonna search till you got there?

9 A That's correct, sir.

10 Q Even though you walked straight to that car and made
11 sure it was okay for your dog?

12 A At some point during the stop, like I said, either he
13 give me a hand gesture or something to let me know that he
14 wanted to run the dog around the car.

15 Q But he never acknowledged -- it's not on the audio, we
16 don't hear on the audio there?

17 We don't hear him tell you that?

18 A Not that I can hear, no, sir.

19 Q All right. And you went to that car and took a
20 photograph of that door in that compartment where the drugs
21 were supposedly found, right?

22 A It was a natural void in the driver's door, and, yes,
23 sir, I did photograph it.

24 Q All right. We don't have those photographs here today,
25 do we?

A. English - Cross-examination
by Mr. Thompson

1 A I'm not sure, sir.

2 Q Well, who would you have given those to?

3 A Normally I would make a copy of my pictures for Trooper
4 Wilson and he'll do whatever he needs to according with them
5 as far as file them for evidence.

6 Q All right. You know, you would agree with me that
7 would be a beneficial piece of evidence if we see that,
8 those drugs in that compartment in that car?

9 A I agree with that, sir, but at that time the South
10 Carolina Highway Patrol did not supply me a camera. That
11 was my personal camera I was using. So, I can't tell you
12 what I did with those pictures.

13 Q All right. You said normally you would give them to
14 Trooper Wilson, right?

15 A Yes, sir, the ones I took with my personal camera, yes,
16 sir.

17 Q Okay. So, did you give him the pictures?

18 A I can not recall, sir. It's been a few years ago.

19 Q All right. And you don't recall why that blue bag's
20 not in here today, do you?

21 A No, sir.

22 Q All right. It's your testimony is that you looked down
23 in that compartment, saw this, this cocaine, or you saw the
24 bag.

25 was this bag zipped or was it unzipped?

A. English - Cross-examination
by Mr. Thompson

1 A As I told you earlier, sir, I don't remember whether it
2 was zipped or unzipped.

3 Q Okay. But you saw a blue container and you opened it,
4 right?

5 A It was a bag. It appears from the video it had a zip
6 on it, yes, sir.

7 Q All right. And you brought that bag and put it on
8 there and a took photograph, right?

9 A Yes, sir.

10 Q All right. We don't have the photograph of the bag
11 though, is that right?

12 A No, sir.

13 Q Don't have the bag?

14 A No, sir.

15 Q We don't have the bag, do we?

16 A Not that I'm aware of, sir.

17 Q Okay. And I mean this is Rolling Thunder.

18 You're looking for drugs, right?

19 A We're trying to reduce traffic fatalities and increase
20 the safety of the motoring public on I-85 in Spartanburg
21 County.

22 Q And the search for drugs does that, doesn't it?

23 A If we come across something along the way so be it.

24 But our job is to be professional and enforce South Carolina
25 laws.

A. English - Cross-examination
by Mr. Thompson

1 Q Okay. So, your dog's not trained to find guns,
2 correct?

3 A That's correct.

4 Q Not trained to hit on currency, correct?

5 A It will hit on currency if it's been around the odor of
6 drugs, yes, sir.

7 Q If it has residue on it, right?

8 A That's correct.

9 Q Okay. So, you're on the highway, you're summoned to
10 come with your dog, who is strictly a drug dog, to this
11 stop, correct?

12 A And I have no other way to respond to this stop without
13 my dog because he's assigned to me and my vehicle everyday.

14 Q And you said you have a truck?

15 A A Tahoe, yes, sir. 2007, Chevrolet Tahoe.

16 Q Okay. So, basically your vehicle is equipped for a
17 dog, correct?

18 A Yes, sir, he has a cage in the rear seat.

19 Q Okay. And you testified also that when your dogs are
20 trained, that the, the officers that are doing the training
21 will hide drugs and the dogs will have to find them?

22 A Yes, sir, we have what's known as a master handler that
23 works the Highway Patrol, and during our training sessions
24 he will control the training site, the drugs that we are
25 using for the searching of the dogs, training the dogs. He

A. English - Cross-examination
by Mr. Thompson

1 will go into a controlled area with the dog, with the drugs,
2 hide it, and let it sit for a certain length of time.

3 Normally at least an hour so the smell can get back outside
4 the car, and then we'll bring each individual dog around to
5 the car, run blank cars that have nothing as well as cars
6 that have the contraband inside of it, and making sure that
7 the dog as well as us are kept up to speed.

8 Q Okay. And where do, where do you guys get those drugs
9 you use?

10 A As far as I know we get -- we have a DEA license to get
11 drugs for training purposes.

12 Q From the Federal Government?

13 A Yes, sir.

14 Q Now, when you searched this car, did you find anything
15 at all under that seat, the front seat?

16 A I don't recall finding anything underneath the seat. I
17 don't, no, sir.

18 Q Okay. And then there's nothing under the back seat,
19 correct?

20 A Nothing underneath the back seat.

21 Q And you'll agree with me that we could see the dog's
22 head and the tail while she was running around in there,
23 right?

24 A Yes, sir.

25 Q Okay. And when a dog jumps on something or bites,

A. English - Cross-examination
by Mr. Thompson

1 that's how you get, indicated it's alerting, right?

2 A That's correct.

3 Q And that's pretty much a common behavior for a dog,
4 right?

5 A No, sir, we train the dogs on cars with contraband and
6 without, and if we see them jumping on cars where there's no
7 contraband or nothing, the master handler's hidden, they're
8 quickly corrected to get off that.

9 Q Okay. And you're going around the car with your
10 flashlight in your hand, right?

11 A My flashlight is in my hand, yes, sir.

12 Q And the dog's taught to follow that, right?

13 A The dog's taught to follow my hand, yes, sir.

14 Q And is there any gesture you do that would make him
15 alert?

16 Is there any way you can test his alert response?

17 A No, sir, all I can do is present the area that I know
18 the air most likely to escape from the car and hope that
19 some of that air gets in his nose cause he's got passing
20 traffic and everything else.

21 Q Okay. But as you go through, the dog has some contact
22 with the car, does he not?

23 He's up against it?

24 A He's running along beside the car, yes, sir.

25 Q But yet he does touch the car with his nose and you

A. English - Cross-examination
by Mr. Thompson

1 touch it with your hand and all that, right?

2 A It varies from vehicle to vehicle, but he can, yes,
3 sir, of course.

4 Q You testified to a trap.

5 There's no trap in this car, right?

6 A No, sir, there's, there's a natural void in the
7 driver's door where that contraband was found. It was down
8 a seat level on the driver's side.

9 Q And then you went all the way in the, the passenger
10 side door even though you didn't look in that compartment
11 when you were doing that?

12 A I think, as you recall, when I go in the passenger side
13 door I'm in the back seat. The contraband was found in the
14 front.

15 Q Oh, you didn't go in both doors?

16 A That would of been pretty hard with somebody my size to
17 crawl through the front of those two seats to look in the
18 driver's door.

19 Q Okay. But you did, you did go in the passenger's side
20 door?

21 A Yes, sir, I checked the immediate passenger area once
22 by the glove box and places like that that are easily
23 accessible.

24 Q All right. Now, did -- you indicated at anytime to
25 Officer Wilson that the dog hit on the driver's side door as

A. English - Cross-examination
by Mr. Thompson

1 it says in his report?

2 A Not that I recall. Office Wilson is a previous K-9
3 handler. I believe he had been before this particular
4 traffic stop. So, knowing my dog, we worked together, he
5 observed the dog alert on the passenger side himself.

6 Q Okay. So, was that just an error on his part that he
7 put driver's side door in the report you think?

8 A I don't want to speculate, sir. I didn't, don't
9 remember telling him that. We both saw it on the passenger
10 side.

11 Q Are you still partners with Officer Wilson?

12 A He's currently my supervisor.

13 Q Okay. Y'all still work together fairly often then,
14 right?

15 A Yes, sir.

16 Q Okay. And I have no further questions.

17 THE COURT: Redirect.

18 SOLICITOR MCCARTY: If I may, Your Honor?

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY SOLICITOR MCCARTY:

22 Q Officer, I would like to know why you use hand signals
23 instead of telling your partner or somebody who's out on the
24 roadside to go ahead and hook him up.

25 A I -- normally, where there's drugs there's guns. It's

A. English - Redirect examination
by Solicitor McCarty

1 something we've seen over the test of time. I don't want to
2 say hey, arrest him, I found a package, what have you, cause
3 the first thing he's gonna do is bolt or, by bolting, I mean
4 take off running and you can go across the interstate. You
5 had them jump cars and lines of traffic, run in the woods,
6 what have you, or if he had a weapon or something on him
7 that we didn't know, he knows that the jig's up so to speak,
8 he's fixing to go to prison. Now, these are pretty serious
9 offenses. He may get that weapon out.

10 So, we're gonna do some type of signal. whether we
11 just -- I nod my head like that, which is unusual, he knows
12 and then some of the teams will scratch their badges and
13 that means we're fixing to put hands on this guy. It's just
14 a safety thing for us because it's dangerous---

15 Q Safety---

16 A ---situation.

17 Q Officer safety is a primary concern, am I right?

18 A Yes, sir.

19 Q So, when you're initially called by Trooper Wilson very
20 early on in this video for assistance, you're thinking, at
21 that point, officer safety is a primary concern?

22 A Absolutely.

23 Q Get there and assist a fellow trooper.

24 Now, to be fair to Mr. Falls, cause you did mention
25 guns, you didn't find a gun in this situation, am I correct?

A. English - Redirect examination
by Solicitor McCarty

1 A No, sir, we did not. But we don't ever know when a gun
2 is gonna be there. We're not gonna take a chance.

3 Q Thank you.

4 Nothing further, Your Honor. Thank you.

5 THE COURT: Recross.

6 MR. THOMPSON: No, no questions.

7 THE COURT: All right, sir. You may step down.

8 SOLICITOR MCCARTY: Your Honor, I would ask, if he'd
9 like to leave, Trooper English be excused.

10 THE COURT: Any objection to the troopers being
11 excused?

12 MR. THOMPSON: None, Your Honor.

13 THE COURT: They're excused if they'd like to be.
14 Thank you very much.

15 SOLICITOR MCCARTY: Thank you, Your Honor.

16 Your Honor, I believe I have previously marked and
17 admitted all three State's Exhibits for evidence. At this
18 time the State would rest its case in chief.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, at this time there's some matters that I need to take
21 up with the attorneys, and I'll do that outside of your
22 hearing. We're going to ask you, again, to step into the
23 jury room. Don't begin any discussions. As soon as I've
24 completed this, we'll bring you back into the courtroom.

25 Thank you very much.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Any motions?

4 SOLICITOR MCCARTY: None from the State, Your Honor.

5 MR. THOMPSON: You---r Honor, I would renew the motions
6 from yesterday. I think Trooper Wilson's testimony has been
7 back and forth, but today he basically made a statement that
8 he called the, the K-9 unit based upon the movement under
9 the seat solely. He made that -- he didn't put it in those
10 words, but he said that's why he called that K-9 unit, Your
11 Honor.

12 Go back to that Wisconsin case yesterday when he said
13 they didn't measure up. Two reasonable suspicions. Go back
14 to Tindall, Your Honor. But when he called that K-9, when
15 he informed my client he would be receiving a, a warning
16 ticket, he knew I think just a few things. He knew -- and
17 today he didn't go into the rental on his testimony.

18 So, basically today's testimony was that he saw
19 something, him move and that's why he called backup, and
20 then later on he goes into the questioning. And if you
21 recall, I think it was 2104, around that time, he says I'm
22 gonna write you a warning.

23 Tindall basically says once he tells him that, then he
24 needs to stop the questioning. But he went on and on.

25 My argument is, one, that he prolonged that stop in

1 order to gain information past the time that he had told him
2 he would be issuing a warning, and, secondly, that he called
3 that backup immediately, almost immediately, when he, when
4 he encountered that automobile in the, the, at the first, I
5 mean the second time he went to the car, and that he based
6 his decision to call the K-9 solely on the fact that he
7 went, that he indicated that Mr. Falls went under the seat.

8 I think the dog in the car shows clearly you can see
9 what's going on in that car. Mr. Wilson testified that he
10 can't tell what's going on. He---

11 THE COURT: Well, now---

12 MR. THOMPSON: We didn't see in the video---

13 THE COURT: ---I looked in the video myself for that,
14 and I think you asked him about something that was sticking
15 up and he said that was the headrest, and then I looked to
16 see -- I think you ran it back and forth a couple of times.
17 In the video, I could not -- of course, I'm a good ways from
18 it in the courtroom, but I could not discern his head. I
19 could see the headrest. But I couldn't see his head in the
20 video.

21 MR. THOMPSON: Going further, Your Honor---

22 THE COURT: I was looking for it.

23 MR. THOMPSON: Okay. Going further, I don't think it
24 shows -- it don't show up on the tape. You don't see his
25 head disappear and his shoulders disappear, and I think that

1 would basically show that Trooper Wilson's mistaken on what
2 he thought he saw going up to that car.

3 Also, Your Honor, he -- Trooper English and Wilson
4 verify that dog is nothing but a drug dog and Officer
5 Wilson---

6 THE COURT: Well, now, Officer English indicated that
7 the dog is assigned to him and is always with him everywhere
8 he goes.

9 MR. THOMPSON: Right.

10 THE COURT: His vehicle is built for the dog. I mean
11 that dog is always with him. So, I'm not sure that the fact
12 that he was called, if he called, if he called his partner
13 or his assistant for help, he's gonna get a dog --

14 MR. THOMPSON: well---

15 THE COURT: -- from what I heard.

16 MR. THOMPSON: I call the Court's attention to the fact
17 he called Mr. English twice. He could of called for
18 anybody.

19 THE COURT: Oh, I understand.

20 MR. THOMPSON: So, he specified his decision -- his
21 choice was Officer English.

22 THE COURT: Well, I don't know if he called for anybody
23 necessarily means he's calling just for English.

24 MR. THOMPSON: No, I'm saying the first two times were
25 specifically Trooper English---

1 THE COURT: Okay.

2 MR. THOMPSON: ---contact with him and he was with---

3 THE COURT: Again, that's who is was working with is
4 what I heard, but that's the testimony.

5 MR. THOMPSON: Right, and I think his third -- I think
6 his third call for any unit in the area shows that he can
7 call anybody he wants to, and it doesn't have to be Trooper
8 English. He made that choice to call Trooper English, and
9 he's, he's talking about officer safety. It's seems to me
10 that your first choice would be any unit around if you feel
11 like somebody has a gun. Then you're not gonna wait on just
12 your, your buddy. You're gonna call any unit available.

13 He's talking -- he's indicating he has past experience
14 with a shooter, and that he, officer safety, guided his
15 decision to call backup. But if you look at the video,
16 he's -- and he testified he's specified Officer English, and
17 I think that shows that he's calling for that K-9.

18 I think the whole incident here is a Rolling Thunder
19 incident and every arrest, every pull over is basically a
20 drug search, and, and they -- but they, they danced around
21 that. They're not gonna admit that. And -- but it's clear
22 to me that he called English with that dog in mind.

23 I'll also go into the fact that he has to have
24 reasonable articulable suspicion of a serious crime to hold
25 him past the time he did, past the time he informed him he

1 was gonna have that warning written.

2 Your Honor, he's been, he's been in a shooting. Okay.
3 I would argue that he can't be reasonable. He can't be
4 objective when he goes into these situations if he's got
5 that on his mind. I would say a reasonable officer would---

6 THE COURT: So, you're saying once an officer's been
7 involved in a shooting that he no longer can be reasonable
8 at a stop?

9 MR. THOMPSON: I'm saying it affects his ability to be
10 reasonable.

11 THE COURT: Well, that would be an interesting position
12 for someone to take.

13 MR. THOMPSON: Well, I think he brought it up. I
14 didn't elicit it from him. Mr. McCarty didn't---

15 THE COURT: Well, he just said he was cautious for that
16 reason.

17 MR. THOMPSON: Right. And, Your Honor, I'll just argue
18 that he didn't have a reasonable articulable suspicion even
19 outside of that. If you look at Tindall, Tindall says
20 there's four things that are going on. If I recall, I think
21 the guy was coming, maybe going to Atlanta or something
22 about a drug city, source city, and then that he may of been
23 in a rental car.

24 THE COURT: And a felony stretch.

25 MR. THOMPSON: And did the felony stretch, and was

1 seen---

2 THE COURT: which is, which is interesting, but I'm not
3 sure there's any science behind that.

4 Go ahead.

5 MR. THOMPSON: And did a -- I think it was some type of
6 a -- he appeared nervous and -- beg the Court's indulgence.
7 I think I was looking at -- I don't know if it's Provet or
8 Provet or what it is. Anyway, I don't -- I think this case
9 here is more in line with Tindall than it is the Provet.
10 You had a, you had a runner in Provet. You had a ticket
11 that was not completed yet in Provet.

12 Here you've got an officer clearly stalling on the
13 video. He's playing around with his pen. He does finish
14 it. He puts it in my client's hand, and at that time he had
15 already made three calls, I understand that. But he held my
16 client too past the point where he put that in my client's
17 hand. He put it in his hand, and today's testimony I think
18 he testified, one, that he called after he saw the supposed
19 going under the seat, and based upon that only, and that's
20 not enough, but then---

21 THE COURT: well, that was the first, that was the
22 first call.

23 MR. THOMPSON: That was my first, right, and then
24 his -- then I'll go back to this wisconsin case that clearly
25 states that's not enough, and even under Tindall I think

1 when he makes the second call, he still doesn't have as much
2 as the Court had in Tindall to go by. He'll have a
3 situation where he's writing the ticket. He's already told
4 my guy you'll get the warning, and he has nothing else to go
5 by. Today he, like I said, today he didn't offer any
6 testimony about a rental car, but that had anything to do
7 with his decision.

8 So, I think that's taken out, and then you have less
9 here to go on than the Tindall Court had to go on, and, for
10 that reason, I would argue that he was without reasonable
11 articulable suspicion and the drugs need to be suppressed.
12 I think a lot of his testimony basically goes on hunches.
13 He says his story wasn't adding up. That's way past the
14 time he's informed Mr. Falls that he'll be receiving a
15 warning ticket.

16 THE COURT: But now doesn't Provet use language saying
17 that we can't overlook the experience and the knowledge of a
18 police officer involved?

19 Isn't that one of the factors that they, they---

20 SOLICITOR MCCARTY: It is, Your Honor, I think and
21 specifically I handed to you and Mr. Thompson up to the
22 Court yesterday the Fourth District Court of Appeals from
23 1993. It was United States or, I'm sorry, yes, U.S. versus
24 Calvin Edwin Linder, and that one just focuses --
25 specifically found that the Court, Courts are not remiss in

1 crediting the practical experience of officers to observe,
2 on a daily basis, what transpires, what transpires on the
3 street, and they're talking specifically about officers who
4 knew the area they're patrolling, knew its propensity for a
5 high drug trafficking, and while defendant's presence in
6 that case may not be, in and of itself, reasonable
7 suspicion, given the officers particular knowledge about
8 that situation, and in here, Your Honor, I know I'm not to
9 the point where I might be able to argue, but I believe we
10 have that.

11 Trooper Wilson has nine plus years in law enforcement,
12 prior military, with a member of the A.C.E. Team, extensive
13 traffic interdiction, highway interdiction, specific
14 training on these types of, for lack of a better word,
15 indicators that he's trained to observe during the course of
16 the normal traffic stop, Your Honor, and I'll sit down. I
17 don't want to interrupt him.

18 THE COURT: What it says is a reasonable suspicion is
19 not readily or even usefully reduced to a neat set of legal
20 rules, but rather entails common sense. Non technical,
21 technical conceptions that deal with factual and practical
22 considerations of everyday life on which reasonable and
23 prudent persons, not legal technicians, act. And then it
24 went on to say, therefore, Courts must consider the totality
25 of the circumstances, and give due weight to the common

1 sense judgments reached by officers in light of their
2 experiences and training.

3 That's what Provet says.

4 MR. THOMPSON: Right, and I, I'm looking at Pichardo,
5 Pichardo.

6 THE COURT: Which is what kind -- where's that case
7 from?

8 MR. THOMPSON: That's State -- that's South Carolina
9 367 SC 84. The term reasonable suspicion requires a
10 particular, a particularized and objective basis that would
11 lead one to suspect another of criminal activity. Burdens
12 of the State---

13 THE COURT: What year is that case?

14 MR. THOMPSON: ---to articulate those facts. 2005.

15 THE COURT: Provet was this year.

16 MR. THOMPSON: I understand, Your Honor.

17 THE COURT: Well, I'll go by the most recent ones. I
18 think most people do.

19 MR. THOMPSON: well, I -- well, I know. I argue and I
20 don't, I don't---

21 THE COURT: well, you're just saying that you can't go
22 on officer's hunches. But now I'm just -- I'm just saying
23 that hunches -- this is -- what you're going by is what is a
24 reasonable suspicion, and I can't, in any way particular --
25 I can't sit down and give you a two plus two four, equals

1 four answer as to what a reasonable suspicion is and they
2 don't try to. They say you've got to look at the totality
3 of the circumstances that existed at the time the officers
4 you know -- and one of the things you consider is officer's
5 experience, his judgment. I'm just reading what they say to
6 consider.

7 MR. THOMPSON: Right.

8 well, does Tindall not say that a point he tells the
9 defendant he's gonna receive a warning ticket that, that he
10 needs to stop his questioning at this point?

11 THE COURT: well, see here's what we got and you're
12 compartmentalizing this stop, and I understand why you're
13 doing that.

14 MR. THOMPSON: I understand.

15 THE COURT: And let me, let me tell you what I, the
16 way, the way I view it one more time. We've got a stop.
17 We've got an officer who approaches the car. His testimony
18 is that he sees something suspicion going on that could
19 endanger him. He makes a call for backup, and what, who he
20 calls is his partner that he's worked with for years who's
21 here on this particular situation with him to come and give
22 him assistance who he believes to be reasonably close to
23 him. They say they only work a couple of miles apart at any
24 given time. That's what his testimony is.

25 And from that point now -- the stop continues. I

1 didn't expect him, as soon as he made that call, to write,
2 write the ticket and, and turn it in because he had to go
3 back to call in the information. He had to go back and get
4 a GPS coordinate. They were discussions that went on
5 between your client and, and the officer, and he said,
6 during those conversations, he heard things that didn't add
7 up, that didn't make sense to him.

8 So, I think you're trying to compartmentalize it like
9 as soon as that call went out that's it. He can't talk
10 anymore. He can't develop any more suspicion.

11 Now, the call went out, I realize, because he says
12 officer safety. That's his testimony. That's what's in the
13 record.

14 Now, that doesn't keep him from later on, while he's in
15 the process of legally issuing a warning ticket, from
16 continuing to consider and develop, and develop the
17 situation. I don't see anything in these cases that
18 compartmentalizes it to the point.

19 Now, I looked at Tindall, and I still look at Tindall
20 from the prospective that there you had a warning done, the
21 ticket was in a position or was delivered, and then he
22 continued to question him and develop the suspicion after
23 that.

24 Here, the way I saw it, that suspicion actually came
25 about before that ticket was passed over and I talked --

1 that was the ruling I gave yesterday. I don't know that's
2 changed from what I've heard today.

3 Am I making your argument for you?

4 I don't mean to, Mr. McCarty.

5 SOLICITOR McCARTY: That, Your Honor, I appreciate
6 you -- it might save me a little bit of an argument. I do
7 respectfully request that you don't reverse yesterday's
8 holding, and I know Mr. Thompson has it exactly right to
9 this point, but I would respectfully request that you don't
10 grant a directed verdict and allow the State's case---

11 THE COURT: Oh, I understand that, but I don't mean --
12 and I don't mean -- I'm not trying to talk you down, but I'm
13 trying to explain the ruling that I gave yesterday.

14 MR. THOMPSON: I understand.

15 THE COURT: And I don't read the cases quite as
16 compartmentalized as far as bam, bam, bam, here's how things
17 happen. Now, I agree that Tindall took the position that
18 once that ticket was issued, that warning ticket was issued,
19 the reason for the stop had ended, but the officer continued
20 to investigate thereafter. Here we've got a call for help,
21 then a investigation going forward, and the officer says he
22 already made a decision to search that car before he got
23 finished with that warning ticket because he developed other
24 suspicions in the conversation.

25 I see that as a little different from Tindall. But I,

1 you know, I could be wrong. You know, this is influx
2 obviously. We got, we got two cases. We got Tindall out
3 there, we got Provet, and if you read them on their face,
4 when I first read them, I thought they just went in opposite
5 directions. So then you try to read it to make some sense
6 out of it.

7 MR. THOMPSON: I didn't argue for that, yes, sir.

8 THE COURT: I know you didn't because I think they go
9 in opposite -- when you first -- the first time I read them
10 in the case I did earlier this year, I thought they were at
11 odds, and I couldn't imagine the Court of Appeals turning
12 around and trying to overturn the Supreme Court decision
13 basically that year. That was strange, first time I read
14 it. So then I tried to look for some rationalization as to
15 how that worked. This is the best I can do.

16 MR. THOMPSON: And my, my other argument, Your Honor,
17 would be that if, if -- in light of especially what you're
18 saying, that's your opinion of the holding, I'm argue, I'm
19 gonna argue that second detention, and whereby he would --
20 he pulls that ticket away, my client's not free to go. I
21 think yesterday he said yeah, he could of walked up the
22 road. He, he obviously detained and held my client and then
23 solely for an invalid reason.

24 THE COURT: I think the testimony was yesterday that,
25 that the car wasn't going anywhere. That's what I heard him

1 say.

2 MR. THOMPSON: Right.

3 THE COURT: And I don't know. That's what he said.

4 MR. THOMPSON: And, and I think, you know, I think Mr.
5 McCarty would agree that refusing the search doesn't create
6 more suspicion, a reasonable suspicion, and I would argue
7 that he detained anew there, and he held him against his
8 will on that, and that he still---

9 THE COURT: Well, now even today his testimony was
10 though was that the, the search was never refused. He never
11 gave an answer is what the testimony was, one way or the
12 other.

13 MR. THOMPSON: I, I---

14 THE COURT: He asked a question back. He said can I
15 search your car. I think your client said can I go if you
16 do, and they never got to the point where your client said
17 no, I'm not gonna do it. He never, he never consented, but
18 he never said no.

19 MR. THOMPSON: He---

20 THE COURT: Am I, I misstating what happened on the
21 tape?

22 MR. THOMPSON: My client said if I say no can I go.

23 THE COURT: That's what he said. That's what he said.

24 MR. THOMPSON: And he let it be known that no, you
25 can't go until his dog does a walk around.

1 THE COURT: Okay.

2 MR. THOMPSON: And I consider that a secondary
3 detainment that -- and once, like I said, he was given his
4 ticket back, and apparently later my client, makes my client
5 think he's free to go, and that, that, in my opinion,
6 creates a secondary detainment that he had any reason to
7 other than him denying the search, he had no reason to hold
8 him after that.

9 THE COURT: Unless he had developed a reasonable
10 suspicions at that point in time.

11 MR. THOMPSON: well, and I guess his way of going about
12 it was a little bit confusing not only to my client, but,
13 but to me too. I mean if he's gonna hold him, why not say
14 we're gonna search the car.

15 THE COURT: well, I agree it's an unusual detainment,
16 and, like I say, this may be the case that falls in the
17 middle of the two. I don't know.

18 MR. THOMPSON: All right. Your Honor, I'll make one
19 more motion. I believe that Office Wilson's error in
20 reporting my client's driver's license number, if he called
21 in an improper number, that led to a delay in this case.
22 Had he done -- if he had done that correctly, he would of
23 gotten feedback immediately, and I think it would of
24 expedited the entire stop.

25 THE COURT: well, now, that, that could be speculation

1 on your part. Now, I realize that's possible. But the --
2 I'd heard no evidence from the dispatcher saying that. I
3 heard no evidence from anyone who indicated that's, in fact,
4 what did happen. I do know that, that I agree. The
5 evidence that I've heard indicates that the number was
6 called in wrong. Whether that was the reason for the delay
7 or not, I haven't heard evidence to that effect.

8 MR. THOMPSON: All right. And I don't think you'll
9 ever hear back from the license. I think that was---

10 THE COURT: Again, there were a lot, apparently a lot
11 of stops going on that night. I don't know if that's the
12 reason for the delay. Certainly you could of presented
13 evidence on that point, but I didn't hear it. So, it would
14 require me to speculate as to what caused that delay. I
15 realize that's a possible cause, and, you know, what could
16 of happened, once the -- what could of also happened, once
17 the dispatcher got to it and ran it and realized it wasn't a
18 proper number for a North Carolina license, could of called
19 right back and said that won't work, that's not a proper
20 number for a North Carolina license.

21 I don't know how that works. See, I don't have any
22 evidence. So, I'll be speculating as to whether that was
23 the cause of the delay. I realize it's a possible cause of
24 the delay. I, I can -- I'll recognize that.

25 MR. THOMPSON: And, again, Your Honor, I think that's

1 all I would argue. That would be my last argument.

2 THE COURT: All right. Mr. McCarty, I'll hear from
3 you. I want you to put it on the record, whatever you want
4 to say about it.

5 SOLICITOR MCCARTY: Your Honor, I do appreciate your,
6 your line of reasoning. Again, I stated that would, that
7 would be my argument towards not reversing any previous
8 ruling you made towards the motion for suppression and
9 asking you maintain that same holding from yesterday and
10 apply it to today's testimony.

11 Your Honor, in fact, I would like to address the issue
12 involving the second detention. Again, I think Mr. Thompson
13 here is compartmentalizing the information used. I believe
14 aptly described, Trooper Wilson has, throughout his
15 testimony, described what he believes can be reasonable
16 suspicions, articulable to specific instances of
17 conversations or visual, physical appearance of the
18 defendant that he is recognized that, through his training
19 and experience, have taught him that something else is afoot
20 here. That just isn't a guy who's fatigued and is failing
21 to maintain his lane.

22 Now, I will agree with Mr. Thompson that the denial of
23 a person to consensually, consensually allow an officer to
24 search his vehicle is not grounds to hold that person and
25 detain them. We don't have that here. We don't have any

1 point here where the officer walks up to his car, license
2 and registration, hey, can I search your car, no, you're
3 gonna sit right here until I get a K-9 because throughout
4 all of this, and I want to refer back to my notes, I think I
5 have the time, from the initial point of this stop, where
6 the warning ticket is explained, which you saw kind of a
7 simultaneous asking of you care if I search your car, it's
8 ten minutes and 53 seconds as I read the tape. So, a little
9 bit shy of 11 minutes.

10 During the course of the 11 minutes, he conversed with
11 the defendant, talked to the defendant, saw the defendant
12 place something possibly under the seat or in the door area
13 as we learned where this cocaine was discovered. It's a
14 physical indicator cues, cues about where he comes from, his
15 trip, his length of his trip, who he was with, who he may
16 not of been with, who we may all know, what they were doing
17 there, what they were talking about, all those types of
18 things Trooper Wilson's trained to recognize as possible
19 deceptive type indicators.

20 So, he had all that going on up to 11 minutes into that
21 stop where he asked the defendant do you care if I search
22 your car. If the defendant has consensually agreed to it,
23 he would of -- we would of probably have the search, and I
24 would argue, it's not in testimony, but I would argue
25 probably still waited for another officer to get there for

1 officer safety so that we don't have a trooper in a car with
2 a defendant standing freely on the side of the road to be
3 able to hit him over the back of the head. We still
4 probably had to wait for another officer to arrive, but
5 we're not to that point.

6 But we do have all that going on. When he denies that
7 consent to request, that's fine. He does have the ability
8 to hold him on that reasonable suspicion until a free air
9 sniff can be conducted. If a free air sniff produces
10 nothing, the defendant would be on his way I'm certain of
11 it.

12 THE COURT: All right. I'll, I'll -- my ruling will
13 remain the same. Motion denied.

14 SOLICITOR MCCARTY: Thank you, Your Honor.

15 THE COURT: Let me ask the State if there's any
16 convictions that you might plan to use should the defendant
17 testify.

18 SOLICITOR MCCARTY: There is, Your Honor, and I've
19 previously shared, through discovery, Mr. Falls' criminal
20 record, and just to make sure I have the most accurate one,
21 I asked my assistant to run it at today's date, August the
22 11th at 1456, so 2:56 this came back from SLED. It does
23 show, Your Honor, a conviction in the State of North
24 Carolina, when I applied his information to the system,
25 Mecklenburg County Superior Court charged with trafficking

1 in cocaine. It is listed as a felony. The disposition date
2 was October 24th, 2003. It is indicated as a trial by a
3 judge, and the verdict as guilty.

4 Your Honor, it further goes down through, when he
5 cycled through the system, it does say confinement of eight
6 to ten months. I don't know if that was an actual
7 confinement for cocaine sentence or what, but it does list
8 that. The only other issues I would have, Your Honor, is
9 Mr. Falls, for conviction purposes for that, does, that
10 does, is the only conviction. There are, just for Court's
11 purpose, other arrests on his record, and I would indicate
12 to the Court that, again, using the information that we have
13 concerning Mr. Falls, there is an arrest.

14 At 2000, out of Tyler, Texas, which is out near Dallas,
15 Texas, charged with money laundering greater than a hundred,
16 greater or equal to a hundred thousand dollars.

17 THE COURT: All right.

18 SOLICITOR MCCARTY: But I don't show a disposition of
19 that charge.

20 THE COURT: No disposition. All right.

21 If you would please swear the defendant.

22 (WHEREUPON, the defendant was placed under oath at this
23 time.)

24 THE COURT: Sir, you can be seated. You can be seated,
25 sir. Thank you.

1 Now, Mr. Falls, at this time I'm going to explain to
2 you certain of your legal rights. I will tell you, if you
3 don't understand what I tell you at this time or you want
4 additional information, when I finish, I will give you an
5 opportunity to ask for that. We have now reached the
6 stage -- you understand what we're doing?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right. We've now reached the stage of
9 the trial---

10 MR. THOMPSON: Your Honor?

11 THE COURT: Yes.

12 MR. THOMPSON: I'm sorry for interrupting.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: Can I talk to him just a minute and
15 maybe, maybe give him a foundation for what you're about to
16 ask him.

17 THE COURT: Sure. That's fine. I'll wait right here.

18 MR. THOMPSON: I'm a little concerned he might not
19 understand fully what's going on.

20 THE COURT: I understand.

21 (Pause.)

22 THE COURT: Are you, are you ready to proceed,
23 Mr. Falls?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. We've reached the stage of this

1 trial where you have the right to present your defense in
2 this case. At this time you have the right to claim the
3 protections that are given to you under the Fifth Amendment
4 to the United States Constitution. That particular
5 amendment reads, in part, that no person shall be compelled,
6 in any criminal case, to be a witness against himself.

7 Now, what that means is that you can not be required or
8 made to testify in this case. You have the right to testify
9 on your behalf. However, you also have the right not to
10 testify. No one can make you testify in this case. The
11 right to remain silent is a personal right, and in -- no one
12 can waive that right or give up that right except you.

13 Now, I will tell you that, if you decide to testify,
14 your testimony will be governed by the same rules that
15 govern any other witness who might testify. What that means
16 is that you would be examined by your lawyer. You would
17 also be cross-examined by the State's attorney, and I will
18 tell you that should you have any convictions on your record
19 involving dishonesty or false statements or for crimes which
20 were punishable for more than one year, and the Court
21 determines that the probative value of admitting this
22 evidence on the question of credibility outweighs its
23 prejudicial effect to you, the solicitor would be able, in
24 that case, to introduce that record to attack your
25 credibility.

1 Now, if you decide to testify, the decision on your
2 part must be made freely and voluntarily and intelligently.
3 That means that you have to understand and have knowledge of
4 the protections given to you by the Fifth Amendment, and
5 also have knowledge of the consequences that could result
6 should you decide to testify.

7 I will also advise you that if you should decide not to
8 testify that it's my obligation and I will instruct the jury
9 that they can not give the fact that you did not testify any
10 consideration whatsoever in reaching a verdict in this case,
11 and that there's absolutely, to be absolutely no prejudice
12 to you because you did not testify.

13 Now, the decision to testify is left entirely up to
14 you. You have the right to discuss that decision with your
15 lawyer, family, with family, friends, or anyone else you
16 want to discuss it with, but the final decision is yours.

17 Now, do you understand, Mr. Falls, what I told you?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions that you want me
20 to give any further explanation to you about?

21 DEFENDANT: I have a question as far as arrest and
22 charges are different. So, since I might had an arrest
23 don't mean I was ever charged.

24 So, can that be held against you too?

25 THE COURT: No, sir.

1 MR. THOMPSON: Oh.

2 THE COURT: Go ahead.

3 SOLICITOR MCCARTY: Your Honor, the only argument I'd
4 like to request is just the leave that he, if he should---

5 THE COURT: Oh, if you were to get up, for example,
6 during your testimony and say I've never been in any trouble
7 and nobody's ever accused me of anything, oh, yeah, then it,
8 then it comes in to directly refute that statement. So, if
9 you were on the stand to say something about the fact you've
10 never been charged with a crime, I've never been in trouble
11 before, then oh, yes, then it would come in directly to
12 refute that statement. But as long as you don't make what
13 appear to be false claims, then it would not come in. Only
14 convictions.

15 DEFENDANT: Oh.

16 THE COURT: Any other questions?

17 DEFENDANT: Not at this time.

18 MR. THOMPSON: Your Honor, could we go ahead and make
19 a, argue that motion over whether that prior conviction
20 would come in under, I think it's 404?

21 Maybe that would -- you know, that would have some
22 bearing on his decision.

23 THE COURT: Well, I'll be glad to hear from you.

24 Do you have any objection to us discussing that at this
25 time?

1 SOLICITOR MCCARTY: I'm sorry, Your Honor?

2 THE COURT: Do you have any objection to us discussing
3 that at this time?

4 SOLICITOR MCCARTY: No, sir, Your Honor.

5 THE COURT: All right. Yes, sir.

6 MR. THOMPSON: Your Honor, I would argue it's an '03
7 conviction and not related here to the '07 case. I don't
8 think there's enough of a nexus between that conviction and
9 this charge. He's supposedly coming from Atlanta on this.
10 This is a Charlotte case. I'm not -- it seems awful odd
11 that it's a trafficking case and he got an eight to ten
12 month sentence. I'm not a hundred percent sure what went on
13 with that case.

14 THE COURT: Well, it's a North Carolina charge and
15 conviction. I'm not sure I understand what levels they
16 start calling it trafficking at or, you know, it did appear,
17 from what Mr. McCarty's told me, that it did carry more than
18 one year.

19 MR. THOMPSON: It does, Your Honor. I would just argue
20 that there's not enough of a nexus between an '03 conviction
21 and an '07 arrest such that it should be brought in and used
22 against him.

23 THE COURT: All right. Mr. McCarty, I'll hear from you
24 on the other side of that.

25 SOLICITOR MCCARTY: well, Your Honor, based on what the

1 nature of the charge is, as listed in his NCIC report, it
2 says trafficking in cocaine, Your Honor, I think that 404(b)
3 I think although we're not offering that necessarily to
4 prove the conformity of any action here, but I think it
5 would go towards the absence of mistake, accident. It might
6 even go towards intent, Your Honor, if there was evidence
7 through his testimony to the contrary. I think that calling
8 it by its name would be an appropriate thing as opposed to
9 just simply asking, inquiring about a felony conviction to
10 the defendant.

11 THE COURT: Well, here's, here's my problem with ruling
12 on it right now. I'd probably need to hear his direct
13 testimony as to -- I don't know if he would be testifying
14 that this was a mistake or he had no knowledge or I -- since
15 I don't know what his testimony's gonna be, it's difficult
16 for me to, to really say whether or not this is evidence of
17 some type of lack of mistake or lack of, anyway, mistake on
18 his part. I will say that I would admit the conviction
19 without calling the name of what it was. In other words,
20 you asked him if he has a felony conviction previously. I
21 would allow you to ask that question. Whether I would allow
22 you to identify the convictions as trafficking cases would
23 largely depend upon the nature of his own testimony on
24 direct.

25 So, we -- I would rather take that issue up when he's

1 completed his direct testimony.

2 SOLICITOR MCCARTY: And, Your Honor, it's not marked,
3 but I apologize, it does have my highlight on it, but I'm
4 happy to pass this up to show the Court what I'm referencing
5 here if you'd like to see this.

6 THE COURT: I'll just let you put that into the record.
7 I trust that you've correctly stated it. That will be a
8 Court's Exhibit not to go to the jury.

9 MR. THOMPSON: We have the same thing, same thing on it
10 provided to us through discovery.

11 THE COURT: All right.

12 (WHEREUPON, the NCIC was marked as Court's Exhibit No.
13 1 for identification purposes only at this time.)

14 THE COURT: Now, sir, do you wish to discuss this
15 decision with your lawyer further in light of my comments
16 and rulings?

17 DEFENDANT: Yes, sir.

18 THE COURT: All right. I'm gonna take about a five
19 minute break. We'll be back.

20 Court's in recess during that time.

21 If you wish to go to the restroom or something, he's in
22 custody. So, you'll need to get the police to help you. I
23 don't know what you want to do during the break. So, five
24 minutes.

25 MR. THOMPSON: Okay.

1 THE COURT: Five minutes.

2 SOLICITOR McCARTY: Thank you, Your Honor.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: All right. Mr. Falls, have you had an
5 opportunity to discuss your decision with your lawyer?

6 DEFENDANT: Yes, sir.

7 THE COURT: Anything else you need to discuss with him?

8 DEFENDANT: I want to ask one more question.

9 THE COURT: Yes, sir.

10 (Pause.)

11 THE COURT: All right. Mr. Falls, Mr. Falls, have you
12 now had an opportunity to discuss this with your lawyer?

13 DEFENDANT: Yes, sir.

14 THE COURT: Anything else you need to talk with him
15 about now?

16 DEFENDANT: No, sir.

17 THE COURT: Do you intend to testify in this case?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right, sir. Are we ready to go
20 forward?

21 MR. THOMPSON: Your Honor, we have one issue. I was
22 telling him I want to add one witness to the witness list.
23 Mr. Falls daughter came with me today, and basically just to
24 verify there's a cousin in Atlanta, and---

25 SOLICITOR McCARTY: I would object to that, Your Honor.

1 Mr. Falls has the ability to testify about a relative in
2 Atlanta. Especially the one he tells the trooper he's there
3 to visit. Number one, I think it would be cumulative, and,
4 number two, is she wasn't prepared as part of the witnesses
5 to the jury panel. I would hate if somebody possibly
6 recognized her and know it's her. I mean I know we have an
7 alternate to strike, but that wasn't presented at the
8 initial phase of the trial.

9 I certainly know -- like I said, I believe it's
10 cumulative testimony and Mr. Falls has the ability to
11 testify and his travel plans especially with a relative.

12 THE COURT: Well, it does present a little bit of a
13 problem because, you know, we qualify the jury by going over
14 witnesses with them.

15 Where is she from?

16 MR. THOMPSON: She's from Charlotte, Your Honor. No
17 ties here to Spartanburg County.

18 THE COURT: Okay. You want me to inquire of the jury
19 as to my normal inquiries?

20 SOLICITOR MCCARTY: I would ask just out of an
21 abundance of caution, yes, sir.

22 THE COURT: Beg your pardon?

23 SOLICITOR MCCARTY: I would ask, yes, sir, just out of
24 an abundance of caution.

25 THE COURT: What is her name?

1 MR. THOMPSON: Erica Falls.

2 THE COURT: I've heard two different names.

3 MR. THOMPSON: Kelissa Falls.

4 THE COURT: Spell that for me please.

5 WITNESS: It's K-E-L-I-S-S-A. Last name Falls.

6 THE COURT: Now, the only subject of her testimony will
7 be concerning --?

8 MR. THOMPSON: The cousin.

9 THE COURT: The existence of a cousin?

10 MR. THOMPSON: There is the existence of a cousin and
11 possibly that it's not out of the ordinary for him to make a
12 day trip to Atlanta.

13 THE COURT: well, now---

14 MR. THOMPSON: I think that, that---

15 THE COURT: Now we've gone a little further.

16 MR. THOMPSON: well, that may -- I mean that may take
17 place in his argument, in his argument that, that he made an
18 issue of that. It may bolster his case. I mean that's kind
19 of what I was thinking when she told me that, whether or not
20 I asked her about that. I need to confirm it.

21 THE COURT: I'll ask the attorneys to approach.

22 (WHEREUPON, a bench conference was held at this time.)

23 THE COURT: All right. Anything -- and her name is
24 Kelissa, is that right?

25 WITNESS: Yes.

1 THE COURT: Kelissa Falls.

2 All right. State ready?

3 SOLICITOR McCARTY: We are, Your Honor.

4 THE COURT: Defense ready?

5 MR. THOMPSON: Yes, Your Honor.

6 THE COURT: Bring the jury in.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. The record will reflect that
10 the jury panel has returned to the courtroom.

11 Ladies and gentlemen, during the break a witness has
12 been identified as a potential witness in this case, and
13 this is a witness that was not listed when we originally
14 picked the jury, and I have to be sure that before I allow
15 this witness to testify, again, that this would not affect
16 your impartiality in this matter as I do when we normally
17 start the case.

18 The witness has been identified to me as a person named
19 Kelissa Falls from Charlotte, North Carolina.

20 Ma'am, if you'll stand so that they can place a face
21 with a name?

22 (Witness complies.)

23 THE COURT: You can be seated.

24 Now, as to Ms. Falls, had any member of the jury panel
25 ever been related by blood or are you related by marriage or

1 have you ever had a close personal or a social relationship
2 with that individual, if that's true, I'd ask that you now
3 stand.

4 (No response.)

5 THE COURT: Now, if that person were called as a
6 witness in this case, would this, would that, in any way,
7 affect your ability to be fair and impartial in this trial?

8 If it would affect that ability, please stand.

9 (No response.)

10 THE COURT: Does the State wish for me to call, ask any
11 additional questions of the jury?

12 SOLICITOR MCCARTY: No, Your Honor. Thank you.

13 THE COURT: Any from the defense?

14 MR. THOMPSON: None, Your Honor.

15 THE COURT: All right. Then I'll allow Ms. Falls to
16 appear as a witness in this case on the issues that she's
17 been identified on.

18 At this time, ladies and gentlemen, the defense will
19 call its witnesses.

20 You may do so, Mr. Thompson.

21 MR. THOMPSON: Please the Court, Your Honor, call Jeff
22 Falls.

23 THE COURT: Come forward, sir, to my left and be sworn.

24 JEFF FALLS, having been first duly
25 sworn, testified as follows:

Jeff Falls - Direct examination
by Mr. Thompson

1 THE COURT: Have a seat please. Sir, state your name.

2 WITNESS: My name is Jeffrey B. Falls.

3 THE COURT: All right. Mr. Thompson, your witness.

4 MR. THOMPSON: Please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Jeff, how old are you?

9 A I'm doing fine.

10 Q I said how old are you.

11 A Forty-eight.

12 Q Okay. Where do you live?

13 A Charlotte, North Carolina.

14 Q Okay. And what do you do in Charlotte?

15 A I own a tow service.

16 Q A towing service?

17 A Yes, sir.

18 Q What's the name of it?

19 A Road Runner Towing.

20 Q Road Runner Towing?

21 A Yes.

22 Q Okay. And how long have you been in that business?

23 A Thirteen years.

24 Q Okay. Do you have to -- do you have to have any
25 special training for that?

Jeff Falls - Direct examination
by Mr. Thompson

1 A No.

2 Q Special driver's license or anything?

3 A Regular driver's license. You own your own tow truck
4 and license to operate in the State of Mecklenburg County.

5 Q And you have some items here.

6 what is this green item you have here?

7 A I got my license at the time of my arrest that proves
8 that I did have a towing service from 2006 to 2007. It
9 expired in 2007.

10 Q That's a business license?

11 A Yeah, that's a business license and this is my IRS tax
12 forms, ID.

13 Q And you got a tax number?

14 A Right.

15 Q Tax identification number---

16 A Yes.

17 Q ---for your business?

18 A Yes.

19 Q That's Road Runner Towing Service, correct?

20 A Right, the name's at the top.

21 Q All right. Now, you -- this towing service, does it,
22 does it restricted to Charlotte since you have a Charlotte
23 business license?

24 A No, all over the State. What, what they really count
25 on is your insurance, how much insurance you have. I have a

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1 million dollar coverage. So, I can go over any part of the
2 United States.

3 Q Okay. Now, your towing service, what do you tow?

4 Is it wrecks?

5 A Mostly repo.

6 Q Repossessions?

7 A Yes.

8 Q Okay. And how far would that, would you go?

9 What's the farthest you've been in the last few years
10 to pick up a car?

11 A I been to Miami. I been to Tampa, West Virginia,
12 Virginia, Maryland, Atlanta. That's probably about the
13 farthest. Maybe Tennessee.

14 Q Okay. And do you -- is there a specific company you're
15 contracted with to go and---

16 A No.

17 Q ---make pick-ups?

18 A Pretty much it's somewhat up in that area and somebody,
19 as far as car lots, somebody move to Charlotte and skip out
20 on their payment. They can call Charlotte repo companies
21 and find which one of them was able to find the car, and,
22 for a decent price, bring the car back.

23 Q Okay. So, really you're towing from Charlotte back to
24 where the car comes from?

25 A Right, most of the time.

Jeff Falls - Direct examination
by Mr. Thompson

1 Q Okay.

2 A But some time I go get the cars from other places too.

3 Q Okay. And you been doing that for 13 years, right?

4 A Yes, sir.

5 Q Okay. And do you -- have you seen the video and you've
6 seen Trooper Wilson here and we're here today concerning
7 that arrest from February 20, 2007.

8 You aware of what's going on with that?

9 A Yes, sir.

10 Q Okay. Now, you were in a rental car, correct?

11 A Yes, sir.

12 Q Okay. And what is this you have with you here?

13 A An Avis rental agreement.

14 Q Okay. And you -- when did you tell Trooper Wilson you
15 rented that car?

16 A For Valentine's Day.

17 Q Okay. And how long -- and what did you tell him as far
18 as that car?

19 When did you tell him -- did he inquire about when you
20 had to take it back or anything?

21 A I told him the next day. It was due back on the 21st.

22 Q Okay. And---

23 A At 12:30.

24 Q Okay.

25 A And what is that document you have here?

Jeff Falls - Direct examination
by Mr. Thompson

1 A That's my rental agreement.

2 Q Okay. Is that the, the, this---

3 A My---

4 Q ---rental agreement you received from Avis?

5 A Yeah, after I paid the bill.

6 Q Okay. And what does it indicate right here that you
7 have highlighted?

8 A I got the days it was due in. I got the highlighted,
9 how much gas I have at the time of the stop, and I had a
10 quarter of a tank of gas.

11 Q Okay. And that's what was turned in with?

12 A Yes.

13 Q Okay. Now, are you required to turn it in with a---

14 A Full tank of gas.

15 Q Full tank.

16 Okay. All right. Your Honor, I'd offer this as
17 Defendant's Exhibit 2.

18 THE COURT: Any objection?

19 SOLICITOR MCCARTY: No, Your Honor.

20 THE COURT: Without objection it will be marked as
21 Defendant's No. 2.

22 SOLICITOR MCCARTY: Actually, Your Honor, I know I said
23 no objection.

24 Could I ask to have that or that statement be
25 reconsidered for just a minute?

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by Mr. Thompson

1 THE COURT: Yes, sir, I'll allow you to reconsider it
2 at this time.

3 SOLICITOR MCCARTY: As I said that, it -- something
4 popped into my mind. But, Your Honor, I would, I would
5 object to the nature of the rental agreement being entered
6 as material because it is a hearsay document and argument on
7 that ground, Your Honor. I know Mr. Falls testified as to
8 its contents, and I believe he has the right to testify as
9 to what he did occur during that rental. The document
10 itself is a hearsay document that's purported by somebody or
11 something from Avis who's not here to testify.

12 THE COURT: Isn't he a party to that contract?

13 SOLICITOR MCCARTY: He, he is a party to the contract,
14 Your Honor, but he's not a party to the document production.
15 I mean he's not a maker or producer of the document.

16 THE COURT: Well, is it -- I don't know, is it a copy
17 of the original?

18 I haven't seen it.

19 MR. THOMPSON: Your Honor, it's the original, and it's
20 the, as you see, this perforated on the end where it runs
21 off the, where it's typed up, and I would argue that he paid
22 it and it's in his name, and---

23 THE COURT: Well, it's a business record as well.
24 Overruled.

25 SOLICITOR MCCARTY: Thank you, Your Honor.

Jeff Falls - Direct examination
by Mr. Thompson

1 (WHEREUPON, the rental agreement was marked as
2 Defendant's Exhibit No. 2 and received into evidence at this
3 time.)

4 Q All right. And, Jeff, did you -- you say you rented
5 that automobile, correct?

6 A Yes, sir.

7 Q Okay. Now, did you, in fact, go to Atlanta on the
8 20th?

9 A Yes, sir.

10 Q Okay. You indicated that you worked that day too, is
11 that correct?

12 A Yes, sir.

13 Q Do you recall what you did at work that day?

14 A By me being the owner of my company, I might did
15 deposit for what receipts I got. That was on a Tuesday.
16 Most of the times I repo at night. So, that next morning I
17 get paid for them. So, I would go and deposit the checks or
18 whatever into my business account.

19 Q Okay. And do you recall what time you left Charlotte?

20 A I left out, like I told the trooper, between 11:00 and
21 12:00.

22 Q All right.

23 A Closest to 12:00, possibly, something like that.

24 Q How long does it take you to get from Atlanta to
25 Charlotte?

Jeff Falls - Direct examination
by Mr. Thompson

1 A I roughly got there about 4:00, 4:15.

2 Q Okay. And you've indicated that you saw your cousin,
3 is that correct?

4 A Yes.

5 Q What business did you have in Atlanta with your cousin?

6 A I have no business in Atlanta with my cousin. We just
7 cousins.

8 Q Okay. Why did you go down that day?

9 A I went down there because they invited me down there
10 to, like I told the trooper, to discuss -- he was having a
11 party. He was inviting like 50 models there. He had two
12 friends that he want me to meet and just get my opinion on
13 what I think he showed me, the site, of where the party
14 would be, and then he's asking me about my daughter moving
15 to Atlanta.

16 Q Okay. Now, when you say party, now, we have a little
17 birthday party for a two year old or we have a big blow out.
18 What -- how would you describe this party?

19 A It's like a blow out. My cousin like in, like the
20 producing part as far as entertainment for movies and as far
21 as in records and stuff. Like he is -- his parties was
22 catered by Puff Ditty. I don't know if anybody know him.
23 Some of them might. But he cater in Atlanta for people like
24 Tyler Perry. He got my daughter a play, a part in The
25 Colored Girl Black Girl or something movie because he know

Jeff Falls - Direct examination
by Mr. Thompson

- 1 famous people.
- 2 Q Okay. So, this is a pretty big deal, correct?
- 3 A Yes.
- 4 Q And you said he wanted you to meet two people?
- 5 A Yes.
- 6 Q And were -- who -- those were the girls -- were those
- 7 the girls you referenced in the video I mean?
- 8 A Yes, one was named Rosa. She owned her own shop, own
- 9 design labels, and the other one was an investor for a real
- 10 estate stuff.
- 11 Q Okay.
- 12 A They both his friends and they make pretty good money.
- 13 For, for me, I never meet any women that make a hundred
- 14 thousand dollars. So, for him, that's common.
- 15 Q Okay. Now -- and you -- did you, in fact, go to
- 16 Atlanta three times in a year?
- 17 A Yes, I've been there three times.
- 18 Q Okay. And you said you didn't go to your cousin's
- 19 house, correct?
- 20 A Right.
- 21 Q Okay. Why would you not go to his house and visit?
- 22 A Because my cousin like be on the telemarket. He
- 23 meeting people all over. The first time I went to Atlanta I
- 24 met him at his business off Peachtree. The second time he
- 25 told me to go off 485. Once I get to 485 to call him, and

Jeff Falls - Direct examination
by Mr. Thompson

1 then he'll meet me there and he followed me to his house,
2 and the third time he just met me closer. He say, well,
3 it's gonna be traffic before you. I'm gonna let you come to
4 an exit. I'm gonna -- you can leave your car and you get in
5 the car with me and the two ladies. I'm gonna show you
6 where the party is gonna be at, and I want to go -- he has
7 a, like a book with full of girl picture and stuff like
8 that, and he was really trying to talk me into coming down
9 there for the party and like my daughter move down there as
10 like his assistant at the same time. I had told my daughter
11 earlier at the point that I wasn't gonna let her move down
12 there, but --.

13 Q Okay. Now, you -- what time did you leave to come back
14 to Charlotte, got back to Charlotte?

15 A I left -- traffic in Atlanta is real hectic. So, I
16 left there roughly about 6:00, 6:30. That's why I was
17 coming from the outskirts of the city so I can just get on
18 out of the city traffic.

19 Q Okay. And you don't dispute that's you in the video
20 coming down I-85 in Spartanburg County, do you?

21 A No.

22 Q At about nine o'clock, correct?

23 A Right.

24 Q Okay. And Trooper Wilson testified that you were going
25 over the fog line.

Jeff Falls - Direct examination
by Mr. Thompson

1 Do you remember how times you went over the fog line?

2 A No. Like I was -- no, I can't even remember. I can't
3 even remember if I ever went over the fog line.

4 Q Okay. Now, do you recall seeing Trooper Wilson on the
5 highway?

6 A Yes, I seen Trooper Wilson ahead of me on the side of
7 the highway probably at marker 6, 60---

8 Q Okay. Was---

9 A ---like he stated.

10 Q Was he pulled off to the side or was he moving?
11 What was he doing?

12 A Pulled off to the side.

13 Q Okay. Was his lights on, blue lights?

14 A No.

15 Q Okay. And you went past him?

16 A Yes.

17 Q What lane were you in?

18 A I was in the right lane.

19 Q Okay. Why were you in the right lane?

20 A Cause I was looking for an exit cause I had, just had a
21 quarter of gas. I was gonna -- I was planning on filling
22 up, get me something to eat, and kind of find something for
23 my allergies, sinus at the time.

24 Q Okay. And where did you next see Trooper Wilson?

25 A Huh?

Jeff Falls - Direct examination
by Mr. Thompson

1 Q where did you next see Trooper Wilson?

2 A where did he start following me at?

3 Q where did you, where did you see him next?

4 I mean you passed him, right?

5 A After I passed him, like a few seconds later he was
6 coming up behind me.

7 Q Okay. Is that when he pulled you over?

8 A No.

9 Q Okay. what did he do then?

10 A He got behind me, he followed me, and then he followed
11 me for a little bit, and then he got over to the third lane.
12 He didn't come exactly beside me. He came over to the far
13 end, and me and him was going parallel about a half a mile
14 or so, and then he pulled me over.

15 Q Okay. So then he worked in behind you and pulled you
16 over?

17 A Right.

18 Q Okay. And you heard his testimony that you parked
19 close to that white fog line.

20 Did you intentionally park close to that line to keep
21 him from coming to your door?

22 A No, I never heard of that before. I'm, I'm a civilian.
23 I never have heard of parking close to a line to stop
24 someone. I parked where I didn't want to scratch the car.
25 I knew I had to turn the car in tomorrow, the next day

Jeff Falls - Direct examination
by Mr. Thompson

- 1 after, and any damage I see, looking at the rental
2 agreement -- I don't sign up for insurance. So, any damage
3 done to a car I have to pay for it.
- 4 Q Okay. And, so, you, you deny you pulled up there in an
5 attempt to keep him from coming to your door, right?
- 6 A Yeah, I deny that.
- 7 Q What you testified to is correct?
- 8 A Right.
- 9 Q Okay. And then you got -- he -- do you remember his
10 testimony that your car was unusually clean?
- 11 A Yeah, I remember he said that.
- 12 Q Was the car clean?
- 13 A Yes, it's clean. See I get a discount with Avis
14 because I know the people there. You can look at the price
15 on there. She gave me like a price like for 250 cause I
16 have a deal that I get her car detail everytime I rent them.
17 I detail -- I have someone to detail it for me before I
18 bring it back. So, I always had it cleaned.
- 19 Q All right. Had that car been detailed?
- 20 A Yes.
- 21 Q When?
- 22 A That day.
- 23 Q What is detail?
- 24 A That morning.
- 25 Q What does detail mean?

Jeff Falls - Direct examination
by Mr. Thompson

1 A Detailing means cleaning up all the mess inside,
2 vacuuming the seats. If it need to be shampooed, shampoo
3 it, wash the outside. If -- sometimes it's depending who I
4 take it to. They put wax on the outside of the car. You
5 know, make it really like it's new and then I take it back
6 cause they give me a, give me -- the normal price of that
7 car is like 460 a week. I think she gave it to me for like
8 250 because I always get their cars detailed.

9 Q Okay. Do you drive the car for your work?

10 A Yes, cause by me in repo, I can't pull up to no one
11 house in a repo truck cause first thing they gonna do is say
12 get off my property. So, most of the time I have to go and
13 spot the car, and wait till later at night and come back and
14 with the truck and sneak in there, pick it up, and get out
15 without any confrontation. So, a lot of times we drive all
16 over the city, me, my other driver, and whoever. If he
17 driving the tow truck, I'm driving the car. If I'm in the
18 tow truck, he get a car. That's how I operate.

19 Q All right. You got pulled over. He told you to pull
20 up.

21 Do you remember that?

22 A Yes.

23 Q Okay. Did you put something under the seat to that
24 car?

25 A No. Me, I wouldn't never reach in front -- by me

Jeff Falls - Direct examination
by Mr. Thompson

1 reading on experience as far as being a black man, to be
2 honest, with a police with a gun, it's not gonna -- I'm not
3 gonna reach under no seat and risk getting shot.

4 Q Okay.

5 A Because then they got authority to shoot me.

6 Q Okay. So, he got you out of the car, correct?

7 A Right.

8 Q Do you recall the first thing he said to you

9 A He say he want to talk to me I think.

10 Q Okay. Did he tell you why he's pulling you over?

11 A He told me that I was driving too slow.

12 Q And did you -- what did you tell him?

13 why would you, why would you be driving -- did you
14 explain to him why you were driving slow?

15 A I was driving slow for one reason cause I seen him in
16 up front of me to be honest because with my experience with,
17 as far as getting tickets and stuff -- I haven't have no
18 ticket in like 18 years. So, whenever I see a police,
19 regardless of where I'm at, I'm gonna slow down
20 automatically. That's just my nature of -- that's, that's
21 how I drive.

22 Q Okay. And were your hands -- he testified that your
23 hands were shaking when, when you gave him your driver's
24 license.

25 were you shaking?

Jeff Falls - Direct examination
by Mr. Thompson

1 A No.

2 Q Okay. And were you nervous or even were you, even a
3 bit nervous from this pullover?

4 A I was curious to why he was pulling me over because I,
5 like I said, I drove down through there around about one
6 o'clock, and I had visually seen everybody on the side of
7 the highway been searched and everything on my way down to
8 Atlanta. So, I'm wondering why is he pulling me over.

9 Q Okay. Exactly what, what do you mean you saw people
10 being searched?

11 A I mean everybody out the car. I seen K-9. I seen
12 people taking from whatever in their cars as far as luggage,
13 whatever, I seen police in every car --

14 Q Where---

15 A -- going down the road.

16 Q Where did you see that?

17 A Between like 80 landmark to probably 60.

18 Q You talking about---

19 A I'm not saying it's a car on every exit because I seen
20 police at just about every exit.

21 Q Let me back up.

22 What do you mean by landmark, a mile marker?

23 A Yes.

24 Q Okay. So, what -- was that in Spartanburg County?

25 A I reckon. I didn't know where Spartanburg County

Jeff Falls - Direct examination
by Mr. Thompson

1 begins to be honest.

2 Q Okay. And about how many pulls-overs do you think you
3 saw when you were going to Atlanta?

4 A I think I seen about seven.

5 Q Okay. And that was between those two markers you just
6 said?

7 A Yes.

8 Q Sixty and eighty?

9 A That's like four and a half years ago. I can't
10 remember exactly.

11 Q Okay. And, so, you -- are you -- is it your testimony
12 you're well aware of that police presence when you came back
13 through?

14 A Yes.

15 Q Okay. Now, he gets you out and tells you you're
16 getting a warning, correct?

17 A Yeah.

18 Q Okay. At that point did you tell him anything or he
19 said -- he's indicated you're real nervous.

20 What were you trying to get across to him?

21 A I was trying to figure out why he stopped me in the
22 first place. Then he say well, I'm just giving you a
23 warning, you crossed the fog line. I'm thinking how did you
24 go from pulling me over for driving too slow to touching the
25 fog line.

Jeff Falls - Direct examination
by Mr. Thompson

1 Q Okay. And did you express to him any, anything
2 bothering you on the road?

3 A He asked me was I okay, steady on my foot and stuff
4 like that, you know. But I have been driving like three
5 hours and stuff. My legs get stiff. Most people just sit
6 around in they seats, you get stiff. So, my knees were
7 getting stiff as I was getting out the car. So, my -- I was
8 just stiff.

9 Q Now, he -- eventually this thing goes on for about ten
10 or eleven minutes, correct --

11 A Yes.

12 Q -- the stop.

13 Okay. And at one point he tells you to be safe,
14 doesn't he?

15 A Yeah.

16 Q Okay. What was your interpretation of his telling you
17 that and putting that warning in your hand?

18 A That it was okay for me to leave.

19 Q Okay. Now, had he given you your driver's license
20 back---

21 A Yes, cause I, I put it in my wallet.

22 Q Okay.

23 A And I put my wallet in my back pocket.

24 Q Okay. And when did he give those license back?

25 A He gave my license back when he came back to my car.

Jeff Falls - Direct examination
by Mr. Thompson

1 Q After you had pulled up from---

2 A Yes.

3 Q ---being on the guardrail?

4 A Yes.

5 Q When -- where were you when he handed you those
6 license?

7 A I was in the driver's seat the second stop.

8 Q You -- okay. So, is this when he handed you the
9 license?

10 A Yes.

11 Q What did he do with the rental agreement at that time?

12 A Kept it in his hand.

13 Q Okay. And what did you do with the license?

14 A I had it in my hand with my wallet while we was out
15 talking, and then once he went into the car I stuck it in my
16 wallet and then I eventually put my wallet in my back
17 pocket.

18 Q Okay. Okay. So, when he told you or when he asked you
19 to search your car, you -- do you recall what you said to
20 him in, in response to that?

21 A Yes, when I, when I was explaining to him like in my
22 mind is you stopped me from driving too slow, then you say
23 you give me a warning ticket, and then you going to
24 searching my car, and that's what I'm thinking, and I'm
25 saying for what reason, you know. I ain't -- I haven't done

Jeff Falls - Direct examination
by Mr. Thompson

1 anything to even warrant a search.

2 Q Okay.

3 A Not even warrant the stop to me.

4 Q Is that what, is that what you communicated to him?

5 A Yes.

6 Q Okay.

7 A That's what I was trying to anyway.

8 Q And you never gave him consent to search, did you?

9 A No.

10 Q And then you had -- and you were detained by him?

11 He wouldn't let you go anywhere, right, you felt?

12 A Right.

13 Q Okay. Now, the K-9 unit arrives?

14 A Yep.

15 Q And you still had not -- you needed your hat, right?

16 A Yes, it's cold.

17 Q Okay. So, that K-9 goes and hits on the car and finds
18 drugs.

19 You, you saw all that, right?

20 A Yes.

21 Q Okay. Now, did you have drugs in that car?

22 A No.

23 Q Okay. Were you aware of any drugs in that car?

24 A No.

25 Q That blue bag they pulled out and put on the hood of

Jeff Falls - Direct examination
by Mr. Thompson

1 that officer's car, had you ever seen that blue bag?

2 A No.

3 Q Okay. And where do you anticipate those drugs came
4 from?

5 A I, I don't really know. Either the officer is -- it
6 was already there or the officer put it in there.

7 Q Okay. You'd been driving the car for a week, correct?

8 A Right.

9 Q All right. And you -- and then -- the solicitor's
10 making the allegation you went to Atlanta and you probably
11 picked these drugs up.

12 Is that what you did?

13 A No.

14 Q Okay. So, what would you believe -- what's your
15 belief?

16 How do you think the -- what's your belief about where
17 the drugs, where, how they come from and where they got
18 there?

19 A My belief is they wasn't in that car until the officer
20 got there. I believe, like I said, they was stopping people
21 on every exit. So, I believe that if it was -- they had the
22 opportunity and they have me until they planted the drugs.

23 Q And -- now, Trooper Wilson has indicated that he needed
24 to watch you while Trooper English searched that car.

25 Do you recall that?

Jeff Falls - Direct examination
by Mr. Thompson

1 A Yes.

2 Q Okay. Now, did he keep his eye on you the entire time?

3 A No.

4 Q Okay. Do you recall anytime when he may of turned his
5 back to you or anything along those lines?

6 A He first turned his back when he told me to move my car
7 from the guardrail, move it up. See, if -- like if I had
8 known them drugs was in the car knowingly, knowing that I
9 had already visually seen them search everything, I would of
10 at least attempted to throw a bag out the window.

11 Q Okay. And any other times that you think he maybe
12 wasn't watching you completely?

13 A When he went back in the car to do whatever he was
14 doing -- I don't know what he was doing inside the car. He
15 was like talking on the radio or whatever he was doing.

16 Q Okay. And what about Trooper English, could you see
17 him the entire time this, this arrest was taking place?

18 A No, I seen on the side when -- when he first pulled up,
19 he pulled in behind us, behind the other officer car, and
20 then they came up and then they was talking on the side
21 while I was in front of the car, and then he went to look at
22 the car I was driving, and then he came back, and got the
23 dog, and then, as far as my knowledge is, he walked the dog
24 all the way around the car and then he stopped completely at
25 the driver's, at the passenger's door, and he was, he was

Jeff Falls - Direct examination
by Mr. Thompson

1 like pulling his hand like, and as he was moving his hand up
2 here, the dog was just at this hand -- he was then facing
3 the dog like he stopped completely, and he was like aiming
4 with his hand all the way up through the window and the dog
5 followed his hand the whole way.

6 Q You mean, you mean that is -- that is when the dog
7 jumped on that passenger side door?

8 A Yes, following his hand.

9 Q Okay. And that's what you saw from the roadside,
10 right?

11 A Yes.

12 Q Okay. And what did he do after that?

13 A He put the dog inside the car. The dog jump around the
14 car, jump to the back seat, and jump back to the front, and
15 jumped, came out the car.

16 Q Okay. And did -- what did he do next?

17 A He walked his dog back towards us and he told the other
18 officer that he got a positive result and then he put the
19 dog up.

20 Q Okay. And then when he put the dog up, where did --
21 where was he parked?

22 A He was behind the trooper car.

23 Q Okay. And how long did it take you to get back to your
24 car?

25 A I don't -- probably about two to three minutes.

Jeff Falls - Direct examination
by Mr. Thompson

1 Q Okay. Now, did you see him open his truck or any, or
2 what he had?

3 A No, I couldn't see it.

4 Q You couldn't see it?

5 A Hu huh. (Negative).

6 Q Okay. And then -- was this -- is this video accurate,
7 he's pulling out the back seat and all that stuff?

8 A Yes.

9 Q And did he -- was it accurate when Trooper English goes
10 and takes photographs of that car, the door, and all that?

11 Did you see him taking pictures?

12 A No, I didn't see them take pictures.

13 Q Okay. You didn't -- so, did you see a camera?

14 A I can't recall.

15 Q Okay. And it's your testimony that those -- I don't
16 know why you describe it, this bag of, of drugs right here,
17 have you ever seen those before?

18 A No.

19 Q Okay. Had you ever seen that blue bag that the trooper
20 put on that video on that hood?

21 Had you ever seen that before?

22 A No, I ain't see it till that night he put it on top of
23 the car.

24 Q Okay. And that car, when did you, when did you say you
25 rented it?

Jeff Falls - Direct examination
by Mr. Thompson

1 A valentine's Day, the 14th.

2 Q Okay. Were you aware that, of the hand signals and
3 the, the motions and all of the things the officers were
4 testifying, they testified to?

5 Were you aware that was going on?

6 A No.

7 Q Okay. And at what point during that arrest did, were
8 you aware that Officer Wilson had called someone else?

9 A The second time he came to the door, look like he was
10 on his right there. So, I was assuming that he was calling
11 someone else.

12 Q Okay. Now, he's testified that you were very nervous.
13 Were you -- would you agree with that assessment?

14 SOLICITOR MCCARTY: Your Honor, I'll object to asked
15 and answered. He asked him earlier about his nervousness.

16 THE COURT: I can't hear you. I'm sorry.

17 SOLICITOR MCCARTY: I'm sorry. I apologize. I'm gonna
18 object that this is been asked and answered to the
19 defendant. He did inquire of the defendant about the
20 trooper's observation about him being nervous and whether he
21 felt he was nervous earlier. I think it's---

22 THE COURT: I'm gonna allow him to ask it. Let's try
23 not to go over things cumulatively. But I'll allow you to
24 ask him at this time.

25 Q would you agree with his assessment that you were

Jeff Falls - Direct examination
by Mr. Thompson

1 overly nervous?

2 A No.

3 Q Would you agree with his assessment that you were
4 rambling on and on and talking?

5 A No.

6 Q Okay. What would cause you to speak to the trooper?

7 A If he asked a question.

8 Q Did you have any money on you when you were arrested?

9 A Yeah, I had \$1323.00.

10 Q Okay. And why were you carrying that much cash?

11 A For one thing, I was getting my truck back the next
12 day, which is \$900 cause the guy put a motor in my truck,
13 and plus I had to pay for the rental car.

14 Q Okay. Do you know where your -- do you know your
15 cousin's address in Atlanta?

16 A No.

17 Q And if you were, what -- how, how would you -- if you
18 go to Atlanta to see him, what was your usual way of meeting
19 up with him?

20 A As soon as I get close to the city limit, I would call
21 him. I locate, find out where he at. If he, if he near his
22 home, near his office, or where, and then, then that will
23 dictate which way I go.

24 Q Okay. I have no further questions. Mr. McCarty will
25 ask you questions and answer his.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 THE COURT: Mr. McCarty, your witness.

2 SOLICITOR MCCARTY: Thank you. If I may have one
3 moment please. Just want to review this for a quick second.

4 THE COURT: Yes, sir.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY SOLICITOR MCCARTY:

8 Q Mr. Falls, you own a tow truck service, am I correct, a
9 wrecker service?

10 A Yes, sir.

11 Q Repo business?

12 A Yes, sir.

13 Q Are you a former professional athlete?

14 A No.

15 Q Are you a music star?

16 A No.

17 Q Famous author?

18 A No.

19 Q Been in movies?

20 A No.

21 Q Rap videos?

22 A Nope.

23 Q Country music videos?

24 A Nope.

25 Q Any celebrity status that we don't know about?

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A None.

2 Q Okay. You lived in Charlotte your whole life?

3 A Yes.

4 Q Or around the Charlotte area your whole life at least?

5 A Yes.

6 Q Did you go to school up in Charlotte?

7 A Yes.

8 Q Do you have immediate brothers or sisters?

9 A Yes.

10 Q Are either one of those two individuals famous
11 athletes?

12 The name Falls doesn't hit me or strike me, but are
13 either one of them a pro football player, pro sports
14 players, movie star, actress, anything like that?

15 A No.

16 Q Okay. Did you do something prior to owning your
17 wrecker service business for the last, how long did you say
18 it was, nine years, am I correct?

19 A Thirteen years.

20 Q Thirteen years.

21 A I started in '97.

22 Q Okay. So, 13 going on 14 you were practically owning
23 that business.

24 What did you do prior to owning that wrecker service
25 business?

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 A I work at a printing shop.
- 2 Q At a printing shop.
- 3 A Uh-huh. (Affirmative).
- 4 Q With the person who you worked for in the printing
- 5 shop, were they a celebrity or somebody connected, something
- 6 like that?
- 7 A No.
- 8 Q Okay. So, this is what I'm trying to get my hand
- 9 around or my mind around rather.
- 10 Your cousin seems to be a fairly well connected person,
- 11 am I correct, down in Atlanta?
- 12 A Yes.
- 13 Q You describe him as somebody who is having a party
- 14 which he's gonna invite 50 models too.
- 15 A Yes.
- 16 Q You describe it as a big blow out party.
- 17 A For him it is.
- 18 Q Okay. Well, I mean -- if I went to a party with 50
- 19 models, that would be a big blow-out party for me too.
- 20 Maybe it's not for. It would be for me.
- 21 A I don't go.
- 22 Q well---
- 23 A I didn't have a chance at that time anyways.
- 24 Q well, you were there, you said, just to talk about it?
- 25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q Okay. So, it hadn't happened at that point, right?

2 A Right.

3 Q He wanted to talk to you about this party?

4 A Yes.

5 Q You said ask you some advice about it, am I right?

6 A Say that again.

7 Q I believe you told Mr. Thompson that he was asking you
8 some questions about it, asking your advice on some things.

9 A As far as -- he was talking about as far as some
10 pictures of the girls and stuff as far as inviting. He just
11 wanted to know my opinion.

12 Q Wanted to know your opinion.

13 Now, you said he's a producer for movies, records, that
14 type of thing?

15 A I say he's into that, yes.

16 Q Into that kind of stuff.

17 Why would a guy like that, with all those connections
18 to 50 models, to Puff Daddy -- that is who you said, am I
19 right --

20 A Yeah.

21 Q -- all these other big named people, want the opinion
22 of a tow truck driver who's from Charlotte, North Carolina
23 with no celebrity status whatsoever?

24 A Cause we family.

25 Q Cause you're family.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Mr. Falls, the economy's been bad the last couples of
2 years, hasn't it?

3 A Say that again.

4 Q Economic, economic client we're in the last few years
5 been pretty rough for everybody.

6 Has your business been okay?

7 A Yes.

8 Q Have you ever looked for other sources of income for
9 your business?

10 A As far as what?

11 Q Extra sources of income other than your business?

12 A Yes.

13 Q One of those extra sources of income running cocaine up
14 and down Atlanta, between Charlotte and Atlanta?

15 A No.

16 Q You're in a rental car that night, am I right?

17 A Yes.

18 Q And you had that rental for six days prior to this.

19 A Yes.

20 Q And actually the day of this event it was the sixth day
21 you had this car.

22 A Yes.

23 Q That car was immaculately cleaned as you described it
24 yourself. You've taken it to be detailed that morning or
25 had it detailed that morning as you were running your

Jeff Falls - Cross-examination
by Solicitor McCarty

1 deposits to the bank.

2 A Yes.

3 Q Okay. And while you're running your deposits to the
4 bank, that's from being up all night repoing cars, am I
5 right?

6 A Repoing cars don't take all night because it's someone
7 out spotting. You can sit, can sit at home and wait by the
8 phone. I, I could sleep. I could -- my phone's in vibrate.
9 I don't have to be out to repo it. It don't take but an
10 hour really to hook a car up and tow the car back. It don't
11 take but an hour. I'm not out all night.

12 Q Okay. That's good.

13 How many cars did you do the night before?

14 A Probably one.

15 Q Just one?

16 A Uh-huh. (Affirmative).

17 Q So, you only had to have one deposit dropped off that
18 morning.

19 Do you remember what time it was you repoed that car?

20 A Not exactly. That's four and a half years ago.

21 Q Okay. But the -- so, the day of the arrest, early that
22 morning, the night you were arrested for trafficking
23 cocaine, you don't remember what time it was you got up in
24 the middle of the night to, to repo a car?

25 A Say that one more time.

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 Q I'm just asking you, the day you get arrested and
2 charged with trafficking cocaine --
- 3 A Okay.
- 4 Q -- 15, 16 hours earlier approximately, you don't recall
5 getting up, what time it was in the middle of the night,
6 early in the morning, or when to go repo a car?
- 7 A No, not exactly.
- 8 Q But you know it was only one?
- 9 A One.
- 10 Q Where did you go to get it?
- 11 A I don't remember.
- 12 Q What kind of car was it?
- 13 A I don't remember. I got a sheet for it right here as
14 far as payments for repossession for the whole year of 2007.
15 It don't describe the car. It just, it just describes the
16 payment, how much I make for them. It don't describe, it
17 don't describe any of that information.
- 18 Q What does it show for February 20th --
- 19 A It just---
- 20 Q -- 2007?
- 21 A As far as February 20th, it don't show nothing. This
22 just for one company. For February 23rd I got a car and
23 they paid me \$225.
- 24 Q But I thought you told us that you have taken---
- 25 A I repossess, I repossess cars for a bunch of car

Jeff Falls - Cross-examination
by Solicitor McCarty

1 companies.

2 Q Okay.

3 A I'm just showing one of these receipts.

4 Q Where's the other receipt for what you repossessed the
5 car?

6 A I don't know.

7 Q You don't have that---

8 A You talking about---

9 Q ---with you?

10 A Huh?

11 Q You don't have that with you here today?

12 A No.

13 Q Okay. Well, let's talk about that, what's here.

14 You'll agree with me that at least some point starting
15 at midnight, which starts the 20th --

16 A Uh-huh. (Affirmative).

17 Q -- at 1:00 or 2:00, 3:00, 4:00, 5:00, 6:00, something
18 through there --

19 A Yeah.

20 Q -- probably start of the business hours, banker's
21 hours, about nine o'clock in the morning --

22 A Right.

23 Q -- you got up, you possessed, repossessed at least one
24 vehicle, am I correct?

25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q All right. Do you recall whether you went back home
2 and fell asleep?

3 A I probably did.

4 Q Okay. You got back up to handle your transactions for
5 your business that day, am I right?

6 A Just make a deposit, yes.

7 Q And then you got on the road to Atlanta?

8 A I had car detail. So --

9 Q Oh, you stayed with the car---

10 A No.

11 Q ---while it's getting detailed?

12 A No, I had dropped the car off, and then I -- my friend,
13 Jeff, detail it. He works right down the street from where
14 my shop at.

15 Q Okay. You dropped the car off down at Jeff's?

16 A Yes.

17 Q And then you went to the bank?

18 A Yes.

19 Q How did you get to the bank?

20 A His car.

21 Q So, Jeff let you borrow his car?

22 A Yes.

23 Q All right. You get the car, you head back to Atlanta,
24 it's immaculately cleaned, am I right?

25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q why would you detail a car and turn it in 24 hours
2 before you have to and make a four and a half hour trip or a
3 four hour trip from Charlotte to Atlanta?

4 why would you spend the time, the effort, the money to
5 detail the car, to wax it up, to clean it, to put it out on
6 the interstate highway to travel four hours to Atlanta, a
7 big city -- you agree with me Atlanta's a big city, right?

8 A Charlotte a big city.

9 Q well, Charlotte's a big city too, but Atlanta's a
10 little bit bigger, right?

11 A Yes.

12 Q Okay. They're both big cities.

13 So, now you got this car four hours on the highway.
14 The grime, the dirt, whatever else is gonna happen on that
15 roadway getting all over that -- it was a Lincoln, right?

16 A Yes, but---

17 Q A white Lincoln?

18 A Excuse me. Like your officer said, it was, at that
19 time it being nine o'clock, it was still clean. So, in the
20 morning I was -- the only thing I had to do was fill the car
21 up, drop it off.

22 Q I know, but I guess my question is doesn't it defy
23 sense, common sense to get a car detailed, take a long trip
24 in it -- I mean that -- it's approximately eight to nine
25 hours worth of being on the roadway, am I correct, between

Jeff Falls - Cross-examination
by Solicitor McCarty

1 the time it would take you to drive to Charlotte to Atlanta
2 and back?

3 Roughly eight to nine hours of being on the road?

4 A But it still be clean in an average car turning back
5 in. Regardless of how the road might do it, it wasn't
6 raining. It wasn't no bad weather. So, if, if I detail a
7 car that day, and if I drive around the city still doing
8 wear and tear on the car. I'm planning on turning it in the
9 next day. It's still gonna be clean than most regular cars
10 get turned in.

11 Q Let me ask you a question. This is your attorney's
12 exhibit, your exhibit, Defendant's Exhibit No. 2, right up
13 there where you got highlighted, the day it's suppose to be
14 turned in, am I right?

15 A Yes.

16 Q What date is that?

17 A The 21st of February.

18 Q And it says -- the 21st of February, due in at what
19 time?

20 A 12:30.

21 Q 12:30.

22 So, you had the whole morning of the 21st to get that
23 car redetailed, am I right?

24 A Yes.

25 Q You know probably---

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A Yeah, if I chose to, but I already had it done.

2 Q I understand.

3 But you still had that next morning to get that done
4 before that car would be back, am I right?

5 A No, because I don't know what my schedule gonna be.

6 Q Okay. Were you planning to work the night you got
7 arrested?

8 A The night I got arrested I was---

9 Q Were you planning to make it back to Charlotte and wait
10 for another call for a possible repossession?

11 A No, I had my driver's. So, I have two people helping
12 me out.

13 Q So, you wouldn't of needed to work the night you got
14 back?

15 A No.

16 Q But you do admit to working earlier in that morning?

17 A Yes.

18 Q Okay. You stated the trooper pulled up beside you in
19 the car, am I right?

20 A Yes.

21 Q Did you look over to meet him, to, to see who it was
22 who pulled up beside you?

23 How would you know it's a trooper?

24 A I looked at him like I could see her. It's like --
25 it's -- like this guy back there, I'm right here, I'm

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 driving down the lane. He could see me. I could see him.
- 2 Q So, you did look over to see him?
- 3 A Yes.
- 4 Q Okay. Knew he was traveling beside you?
- 5 A Right.
- 6 Q And you knew it was the same car that was traveling
- 7 beside you you described for a period of time, distance, am
- 8 I right?
- 9 A True.
- 10 Q Did you ever look back over at him again to see what's
- 11 he doing next to me?
- 12 A I looked at all the traffic.
- 13 Q Okay. So, you're looking around, would you believe
- 14 it's possible that, during that time when you looked over at
- 15 the officer, you drifted a little bit to the right, crossed
- 16 that fog line, and may come back?
- 17 Is it possible that that happened?
- 18 A It's possible he could of turned, looked over and done
- 19 the same thing.
- 20 Q Oh, I absolutely agree.
- 21 You agree it's possible that he could of drifted to the
- 22 other side. What I'm asking you is---
- 23 A ---it is possible.
- 24 Q Is it possible---
- 25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q ---that this could of happened with you?

2 A Yes, it is.

3 Q Thank you.

4 Now, Mr. Falls, you told Mr. Thompson that when you got
5 there to Atlanta to meet your cousin you met him at a
6 location, you got in his car, and you went to a potential, I
7 guess, party hall or a place where the party's gonna occur,
8 am I right?

9 A Club, yeah.

10 Q The club.

11 where was the club at?

12 A In downtown Atlanta.

13 Q All right. what's the name of it?

14 A I don't know.

15 Q You don't recall the name of it?

16 A No, it's four and a half years ago. My first time
17 there.

18 Q But not four and a half years ago the night you talked
19 to the trooper on this tape. we're talking four hours
20 earlier cause---

21 A Yeah.

22 Q Do you recall---

23 A But I did mention it to him.

24 Q Do you recall though the trooper asking you did you go
25 to the, your cousin's house, and you stated no, am I

Jeff Falls - Cross-examination
by Solicitor McCarty

1 correct---

2 A I said no.

3 Q ---in saying that?

4 Do you recall that the trooper asked you well, what did
5 you do, just stand on the roadway and talk?

6 Do you recall what your reply was on the video?

7 A I said we talked.

8 Q You said yeah, we did.

9 So, according to the trooper, you told him you stayed
10 on the side of the road for a couple hours and talked to
11 your cousin. You didn't provide any information that I
12 didn't go to his house, but I went to the club we were
13 looking at for the party?

14 A I didn't volunteer information.

15 Q You volunteered quite a bit of---

16 A I didn't---

17 Q ---information if we watch the video?

18 A Not really.

19 Q You don't think so?

20 A No.

21 Q Okay. I want to ask you about that reaching up under
22 the seat or reaching down.

23 A Okay.

24 Q You said you didn't do it.

25 A No, I didn't.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q And why did you say you didn't do it?

2 A why would I do it with a police beside me?

3 Q well, you said it's my experience as a black man, and
4 then you said something about getting shot by the cops for
5 doing it, am I right?

6 But that was your words, in my experience.

7 A Yeah.

8 Q Right?

9 A I mean my experience as far as watching on TV.

10 Q Oh, so, you have no personal experience?

11 A No, I ain't never been shot myself---

12 Q Okay.

13 A ---or beat up or nothing like that.

14 Q In fact, you said your last ticket was 18---

15 A Huh?

16 Q You said your last ticket was 18 years ago.

17 A I said probably 19 years ago. I'm not positive.

18 Q So, possibly 18 years ago?

19 A Yeah, I can't remember.

20 Q But based on your experience, you don't reach up under
21 that car because the cops will shoot you as a black man, am
22 I right?

23 A It's a possibility of being shot.

24 Q You see Trooper Wilson here, right?

25 A Yes.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q You understand he's another black male, am I right?

2 A It would make no difference as far as race is not. I'm
3 saying as far as police period. It could of been you. You
4 would of pulled me over, with a gun beside me, I'm not
5 reaching under no seat.

6 Q So, you have the belief that all police are out to
7 shoot motorists like you?

8 A No, I'm not saying that I believe that, but if, if
9 given an opportunity, they would have probable cause to
10 shoot.

11 Q I think you went so far as to allege that Sergeant
12 Wilson or Trooper English planted the drugs in this car, is
13 that correct?

14 A As far as my knowledge, the way I look at it is the dog
15 didn't jump on the same thing. One said the dog responded
16 to the passenger side. One saying it responded to the
17 driver's side.

18 Q But that's just a difference in opinion. That might be
19 an error on somebody's part.

20 Let me ask you this, this is State's 2 and 3.

21 A Okay.

22 Q I know you've seen this one up close, but this is a
23 copy of the report we've shared in discovery.

24 Have you seen that before, am I correct?

25 A No, I ain't never seen that.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q Okay. well, take a second and look at it. It was
2 shared in discovery to your attorney.

3 Lieutenant Stuart testified very first thing this
4 morning, she testified that's the findings on this report on
5 what this cocaine is, am I right?

6 A Oh, okay. Yes, sir.

7 Q You see it right there?

8 It's 254 point something grams, am I right?

9 A Yes.

10 Q Okay. So, that's a quarter of a kilo of powder
11 cocaine.

12 A Yes.

13 Q Is that right?

14 And you're saying the police officer planted a quarter
15 of a kilo of cocaine in your car?

16 A I'm saying they had opportunity.

17 Q Why?

18 You're a tow truck driver from Charlotte, North
19 Carolina.

20 How would they benefit by putting a quarter of a kilo
21 of powder cocaine in your car?

22 A Just like they benefit stopping everybody on the side
23 of the road during this, this sting they was having, drug
24 sting they was having.

25 Q All right. I believe they testified that they were

Jeff Falls - Cross-examination
by Solicitor McCarty

1 there to reduce traffic fatalities, slow motorists down,
2 people more alert. In fact, you noticed all those troopers
3 going down. You admitted to that.

4 Am I correct?

5 A I know everyone being searched going down too. I seen
6 that.

7 Q Well, there was a lot of cops out, right?

8 A Yes.

9 Q And let me ask you this, how did you know -- you said
10 when I came through on my way back and I looked up and I saw
11 Trooper Wilson---

12 A See---

13 Q ---out there in front of me, how did you know it was
14 him?

15 A I didn't say I know him personally. I say I seen a
16 police car on the side of the road. He -- my lawyer
17 mentioned his name personally. I never even knew -- I never
18 met the man before.

19 Q How you know it was the same car that pulled out behind
20 you?

21 A Because I seen the car. Once was I going forward I
22 seen him coming on to the traffic.

23 Q So, he pulled out as you passed?

24 A As a -- I was myself. I mean it was, like I said,
25 other cars on the road too.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q Right.

2 A So, it was cars passing me. My general idea, when he
3 pulled out, is that he was gonna get someone for speeding.

4 Q Cause people were passing him---

5 A Right.

6 Q ---right?

7 Fair enough.

8 But as you're traveling down the road, are you looking
9 up in your rear view mirror to see if he's coming up the
10 road?

11 A I'm looking in all my mirrors.

12 Q Okay. Looking in your rear view mirror, looking in
13 your driver's side mirror here, checking to see does he have
14 his blue lights on, is he getting behind me, making sure
15 that is not happening, am I right?

16 A I don't know what I was as far as I -- when he pulled
17 out, my general idea is that he might be passing going to
18 pick up someone for speeding. For me looking, thinking he's
19 coming after me, no, I did not think he was gonna get behind
20 me. But no, I didn't think he was gonna stop me.

21 Q Did you ever look in the rear view mirror just to see
22 if he was behind you?

23 A Yes.

24 Q So, you're distracted at that point, not keeping your
25 eyes on the roadway. So, it's possible, when you're looking

Jeff Falls - Cross-examination
by Solicitor McCarty

1 in the mirror, is it possible you drifted off that fog line
2 a little bit?

3 A It's possible.

4 Q It's possible.

5 Yes or is, is it possible?

6 A Yes.

7 Q Maybe you looked here, maybe you drifted a little bit?

8 A I didn't feel the car drift.

9 Q It's possible you could have?

10 A Yes.

11 Q Possible.

12 Now, what I, what I found interesting was the fact that
13 you said you knew if you had, what turns out to be near a
14 quarter of a kilo of powder cocaine you'd throw it out the
15 window.

16 A I say if I knew I would of at least tried to throw it
17 out the window.

18 Q At least tried to throw it out the window. We're
19 dealing with February. You've asked for your hat because
20 you said you're cold. I think your attorney pointed out at
21 one point you might of been able to see your breath as you
22 talked to the officers. It's a chilly night.

23 A Yes.

24 Q Am I correct that you probably drove that evening with
25 your windows up being in your vehicle?

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A Yes.

2 Q So, really the only other place to put it is down by
3 the door, am I right?

4 Not summertime, don't have those windows down, really
5 easy to just pitch it out?

6 A No.

7 Q It's pretty cold outside.

8 A I'm not saying -- I'm saying for one reason. If I'm
9 loading drugs in my car, I want to put it in the trunk or
10 somewhere else. I would at least try to hide it.

11 Q Go back to your cousin, your cousin who lives down in
12 Atlanta, the guy you went to see, now is he the guy who you
13 got the cocaine from?

14 A Say that one more time.

15 Q Is he the guy that you got the cocaine from?

16 A I didn't get the cocaine from no one.

17 Q You didn't get cocaine from no one, but you don't deny
18 that it was found in your car?

19 A I didn't deny that this, the other officer had it in
20 his hands.

21 Q Oh, he didn't ask that question. I'm asking you do you
22 not deny that you said the cocaine was found in your car
23 near the driver's seat, possibly in the door area of the
24 car?

25 A I can't prove it one way or the other was it found. It

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 might of been planted.
- 2 Q Might of been planted.
- 3 Your cousin plant it on you?
- 4 A Say again.
- 5 Q Did your cousin plant it on you?
- 6 A No.
- 7 Q How about Jeff, the detailer, did he plant it on you?
- 8 A No.
- 9 Q How about Trooper Wilson, did he plant it on you?
- 10 A No.
- 11 Q So, it has to have been Trooper English, right?
- 12 A He, he had the opportunity.
- 13 Q He had the opportunity.
- 14 A He found it.
- 15 Q Your cousin down in Atlanta, he's family, that's why he
- 16 wanted your opinion about these models he was gonna invite
- 17 to this party, am I right?
- 18 A Right.
- 19 Q Do you consider yourself a close family?
- 20 A We all right.
- 21 Q You all right.
- 22 You share Christmas cards?
- 23 A No, I don't share Christmas cards. I don't mail any.
- 24 Q You don't, you don't mail any Christmas cards?
- 25 A I don't share -- I don't mail no Christmas cards.

Jeff Falls - Cross-examination
by Solicitor McCarty

- 1 Q You ever mailed him a birthday card?
- 2 A No.
- 3 Q So, you've never had to write his physical address
- 4 down?
- 5 A No.
- 6 Q But you been to his house, right?
- 7 A Once.
- 8 Q Did he say what -- do you know what suburb of Atlanta
- 9 or where at in Atlanta he lived?
- 10 A No.
- 11 Q So, you don't know if he lived in Midtown?
- 12 A No.
- 13 Q Lived up in Buckhead?
- 14 A I never even heard of Buckhead really.
- 15 Q Never heard of Buckhead.
- 16 How about Marietta, Georgia?
- 17 A I'm -- I probably done heard of it.
- 18 Q Probably heard of it.
- 19 A I think I passed Marietta to come back to Charlotte.
- 20 Q You think you got to pass Marietta to come to
- 21 Charlotte?
- 22 A I think. I ain't too sure.
- 23 Q How about Gwinnett?
- 24 None of this ringing a bell to you?
- 25 A Huh?

Jeff Falls - Cross-examination
by Solicitor McCarty

1 Q You been down there three times though at least to
2 visit him in that year you've lived down there, right?

3 A Yeah.

4 Q You been to his house one time?

5 A Once.

6 SOLICITOR MCCARTY: Okay. Your Honor, if you'll give
7 me just a moment please.

8 THE COURT: Certainly.

9 (Pause.)

10 Q One of the topics you discussed with your cousin was
11 your daughter moving to Atlanta, am I right?

12 A Yes.

13 Q And your daughter, am I correct, is that Ms. Falls
14 sitting in the gallery?

15 A Yes.

16 Q Okay. What was she gonna do if she moved to Atlanta?

17 A She get her job transferred down there. She work at
18 Wachovia and they transfer her down there, and then she's
19 gonna be his assistant.

20 Q Where, where did you anticipate her moving to?

21 A Say again?

22 Q Where did you anticipate that she would move to?

23 A It's not my choice. I'm not familiar with Atlanta.
24 So, she would have to find that out. I mean --

25 Q When you're talking about it, were you asking your

Jeff Falls - Cross-examination
by Solicitor McCarty

1 cousin where the good areas of town were if she moved, good
2 for young folks, good for families, good for---

3 A The thing is he said he'd make sure and look out for
4 her.

5 Q He was gonna look out for her?

6 A Yes.

7 Q How did you know if he could look out for her if you
8 don't even know what town he lived in?

9 A Cause I trust his judgment.

10 Q All right. You said Atlanta's a big town, right?

11 A Yes.

12 Q So, she might be really unfortunate if he lives on one
13 side of Atlanta and she moves in on the other side and
14 you---

15 A That's true.

16 Q Can't do a whole lot of looking in on her, is that
17 right?

18 A I said look out for you. You don't have to lock her
19 up.

20 Q But you don't, you don't know where he lives?

21 A No.

22 Q Any landmarks stick out in your mind?

23 The Varsity, Turner ball field, Georgia Dome?

24 A No, he---

25 Q Atlanta Airport.

Jeff Falls - Cross-examination
by Solicitor McCarty

1 A Where he was over at, you had to go like 485 west and
2 then like hit another highway. I don't know if it's ten or
3 what. I don't, I don't know what's on the other side of
4 Atlanta.

5 Q Okay.

6 Okay. Your Honor, I think that's all the questions I
7 have for Mr. Falls.

8 THE COURT: Mr. Thompson, redirect.

9 MR. THOMPSON: Please the Court, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Jeff, you're in the repo business, right?

13 A Yes.

14 Q So, in a bad economy, does your business do better or
15 worse?

16 A Better.

17 Q Okay. Why is that?

18 A Because most people lose their cars before they lose
19 their homes.

20 Q Okay. And what kind of car do you drive now?

21 A F---

22 SOLICITOR MCCARTY: I object to the relevance of what
23 type of vehicle he drives at this very moment.

24 THE COURT: Sustained.

25 Q Do you keep your car clean that you drive now?

Jeff Falls - Redirect examination
by Mr. Thompson

1 SOLICITOR MCCARTY: Again, Your Honor, objection.

2 We've talked about the cleanliness of a rental car he turned
3 in for a discount, whether or not he keeps his personally
4 owned vehicle in the same fashion.

5 THE COURT: Overruled.

6 Q Do you keep your car clean now?

7 A Yeah.

8 Q You travel to Atlanta and all these places in the,
9 course of your business, right?

10 A Yes.

11 Q Okay. And when you go to a town and take a car, do you
12 make a habit of learning every neighborhood in that area,
13 every street?

14 A Say that one more time.

15 Q Do you make a habit of willing, learning every
16 neighborhood and every street in a city when you go there?

17 A No.

18 MR. THOMPSON: All right. I have no further questions,
19 Your Honor.

20 THE COURT: Recross.

21 SOLICITOR MCCARTY: No, Your Honor.

22 THE COURT: You may step down.

23 The defense may call its next witness.

24 MR. THOMPSON: We call, we call Kelissa Falls.

25 THE COURT: Come forward, ma'am, to my left and be

Kelissa Falls - Direct examination
by Mr. Thompson

1 sworn.

2 KELISSA FALLS, having been first duly
3 sworn, testified as follows:

4 THE COURT: State your name please, ma'am.

5 WITNESS: My first name is Kelissa Falls.

6 THE COURT: Mr. Thompson.

7 MR. THOMPSON: Please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Ms. Falls, what's your relationship to Jeff Falls?

12 A He's my father. I'm his daughter.

13 Q Okay. And where do you currently live?

14 A Right now I reside in Charlotte, North Carolina.

15 Q Okay. And how old are you?

16 A I'm 27.

17 Q And what do you do for a living?

18 A Right now I work for Vanguard as a trainer.

19 Q Okay. How long have you done that?

20 A I been doing that for the last year.

21 Q Okay. You've heard testimony today that your father
22 has a cousin in Atlanta.

23 Is that accurate?

24 A Yep.

25 Q Okay. And is he -- what type of business is your

Kelissa Falls - Direct examination
by Mr. Thompson

1 cousin involved in?

2 A He owes film production. He does the finances for
3 films and basically he does the budget analysis for film
4 productions.

5 Q Okay. And you've heard talk about a party that, that
6 your cousin had.

7 Did your cousin, in fact, have a party planned one time
8 like that?

9 A Yes, it was a celebrity party. He was inviting
10 celebrities and having some of the top models and what have
11 you. Basically it was a bunch of his film production that
12 he was being launched, that was being launched at that time.
13 So, basically that's something he was working on.

14 Q Was that in 2007?

15 A Yep.

16 Q Okay. Now, would it be rare for your dad to take a day
17 trip to Atlanta?

18 A Nope.

19 Q And, and you -- would you yourself consider this a
20 pretty big deal to go meet your cousin?

21 A Yes.

22 Q Okay. And you recall, in 2007, if there was a party
23 planned?

24 A Yes.

25 Q Okay. Did you attend it?

Kelissa Falls - Direct examination
by Mr. Thompson

1 A Unfortunately not.

2 Q And did -- and did you -- did the cousin, in fact,
3 discuss with you moving to Atlanta to work?

4 A Yes, I eventually moved to Atlanta to work.

5 Q You did?

6 A Uh-huh. (Affirmative).

7 Q How long did you live there?

8 A Three years.

9 Q And you came back to Charlotte now?

10 A Yes, but I moved to Atlanta.

11 Q Okay. Mr. McCarty will ask you some questions.

12 Okay?

13 A Okay.

14 THE COURT: Mr. McCarty, your witness.

15 SOLICITOR MCCARTY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY SOLICITOR MCCARTY:

18 Q Ms. Falls, I'll try to brief with you.

19 What's your cousin's name?

20 A What's my cousin's name?

21 Q Yes, ma'am.

22 A Arthur.

23 Q Arthur.

24 What's the last name please?

25 A Wylie.

Kelissa Falls - Cross-examination
by Solicitor McCarty

1 Q wylie?

2 A Yep.

3 Q How would you spell that please?

4 A W-Y-L-I-E.

5 Q And that's the cousin who your father went to visit, am

6 I correct?

7 A Yes.

8 Q How is Mr. wylie related to your family?

9 Is he on your father's side of the family or on your
10 mother's side?

11 A My father's side.

12 Q Is he, to your knowledge, your father's first cousin or
13 the second---

14 A Yes, he is.

15 Q So, you would be a second cousin?

16 A Yes, he is.

17 Q How old is Mr. wylie?

18 A Mr. wylie is approximately about 33.

19 Q About 33.

20 And we may not have asked this, but you're in your
21 twenties I'm assuming?

22 A I'm 27.

23 Q Twenty-seven.

24 Where does Mr. wylie live at in Atlanta?

25 Do you know?

Kelissa Falls - Cross-examination
by Solicitor McCarty

1 A He lives on the outskirts. He lives in Alpharetta,
2 Georgia.

3 Q Okay. Did you ever have the opportunity to visit his
4 home while you were in Atlanta?

5 A Yep.

6 Q You said he lives in Alpharetta.
7 what's the name of his business?
8 Do you know?

9 A It's Global Renaissance Entertainment Group.

10 SOLICITOR MCCARTY: All right. If I may, Your Honor,
11 just a brief second.

12 THE COURT: Yes, sir.

13 (Pause.)

14 SOLICITOR MCCARTY: Your Honor, I don't think I have
15 anything further for Ms. Falls. Thank you.

16 THE COURT: Redirect?

17 MR. THOMPSON: Briefly, Your Honor.

18 (Pause.)

19 MR. THOMPSON: I have no further questions, Your Honor.

20 THE COURT: You may step down.

21 WITNESS: Thank you.

22 THE COURT: The defense may call its next witness. You
23 may call your next witness.

24 MR. THOMPSON: No, no more witnesses. We rest, Your
25 Honor.

1 THE COURT: Does the State wish to call any witnesses
2 in reply or rebuttable?

3 SOLICITOR MCCARTY: No, Your Honor. Thank you.

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, that concludes the presentation of evidence in this
6 case. I also note that we're a little past five o'clock,
7 and as I told you on Monday, we sometimes go a little past
8 5:00, but we stop before 5:30. So, we're gonna, at this
9 time, break for the evening.

10 I'll give you the same instructions I've given you each
11 time that you've left the court house. That is not to
12 attempt to gather any information outside of the court
13 house. Don't listen to, watch, or read any media reports.
14 Don't discuss the case with anyone. Don't allow anyone to
15 discuss it with you, and please report should anyone --
16 report to the Court if anyone should attempt to do that.

17 Now, we have remaining in the trial, we have closing
18 arguments and I'll charge you concerning the law, and then
19 after that we'll submit the case to you for your
20 deliberations.

21 We'll start at nine o'clock or as close thereto as we
22 can. Be back in the jury room at that point in time and we
23 should be able to start shortly thereafter. I think the
24 rain storm is stopped and you can get out to the car
25 hopefully and have a good evening.

1 Thank you very much.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Anything further from the State
5 before we close?

6 SOLICITOR MCCARTY: No, Your Honor.

7 THE COURT: Anything further from the defense?

8 MR. THOMPSON: Your Honor, I'll just want to mention
9 Mr. Falls has abided by his bond for the last four and a
10 half years. I just ask that he be allowed to go home.

11 THE COURT: Well, the only problem is that, Mr.
12 Thompson, is that once the trial starts, his bond is no
13 longer in effect. The obligation of the bond is to return
14 him here for the start of the trial. Once the trial begins
15 he no longer is under bond.

16 MR. THOMPSON: I understand that, Your Honor. I was
17 just trying to figure a way so that he could maybe not have
18 to be in custody this evening.

19 THE COURT: I understand that, but I want to maintain
20 him in custody until the close of the trial. So, defendant
21 remains in custody at this point in time.

22 Court will be in recess until nine o'clock in the
23 morning.

24 SOLICITOR MCCARTY: Thank you, Your Honor.

25

(WHEREUPON, Court was in recess for the evening.)

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Friday, August 12th, 2011

THE COURT: All right. Is the State ready to proceed?

SOLICITOR MCCARTY: State is ready, Your Honor.

THE COURT: Defense ready to go forward?

MR. THOMPSON: Yes, Your Honor.

THE COURT: All right. Now, the defense presented evidence in the case. So, you'll be going first with your closing argument.

MR. THOMPSON: I am. Yes, sir.

THE COURT: All right. And then we'll follow that by the State.

SOLICITOR MCCARTY: Yes, sir.

THE COURT: Let's bring the jury in, Mr. Bailiff.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: All right. Good morning, ladies and gentlemen.

Did any of the jurors have any difficulty in following my instructions overnight, if you did, please stand.

(No response.)

THE COURT: It appears that all jurors are ready to go forward this morning.

When we closed yesterday the evidence had been completely presented to you and at this time the attorneys

1 will be making their final or closing statements.

2 Mr. Thompson, you may proceed for the defense.

3 MR. THOMPSON: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. THOMPSON: Ladies and gentlemen of the jury, I know
8 this has been three days we've stretched out here and I
9 appreciate your patience and we've been through that tape,
10 and it's, it's been a lot of tedious details that we've gone
11 into. I want to encourage you, as a jury, to go back there
12 and take that tape and, and watch it.

13 Don't -- you know, we stopped it, start, stop, start,
14 you know. Mr. McCarty, he's a great lawyer. He wants you
15 to look at the things he wants you to look at. I want you
16 to look at the things I want you to look at. Just watch it
17 all the way through, and you'll see that Mr. Falls was not
18 that nervous. He gets nervous there a little bit later on
19 cause he finally figures I'm getting set up here.

20 Okay. That's what he, that's what he starts figuring
21 out, and then that's why he tells you his cousin's alias
22 name and not his real name cause he doesn't want his cousin
23 to be getting brought into what he's gotten himself into.

24 But I want to go over the first thing Mr. McCarty told
25 you, that this is professional. These guys are

1 professionals, and they are. I won't dispute that. And I
2 think both officers displayed a great deal of
3 professionalism when they testified up here.

4 When I think about professionals though I think about
5 two other things. One, I think about competition. Watch
6 that tape and you can agree with me or agree with Mr.
7 McCarty. You look -- and you stop -- you can stop it or you
8 just look when he pulls up that second time he approaches
9 that car, and there's six or eight other cars pulled over.
10 You can either believe my assessment that this is Rolling
11 Thunder where we pull over every black and Mexican that
12 rides down the road and search their car or you can believe
13 Mr. McCarty's assessment that it's the big City of Duncan
14 out there, flashing lights.

15 I think about professions, think about egos. I'm a
16 lawyer. I got a big ego I guess. I don't know. When I
17 think professionals, that's what I think about too.

18 Think about Rolling Thunder. Small town sheriff. He's
19 got I-85 and 26 crossing through his county, and he
20 saturates it with police officers. Pulled over the people I
21 told you he's pulling over to boost his ego.

22 These officers, they seize cars. They seize weapons.
23 They seize tons of drugs. We have drugs even left over that
24 we can get them, the Highway Patrol can get them from the
25 government when they want to train dogs.

1 whose got access to the most drugs in the country?

2 Probably the law enforcement.

3 Think about the stop. I want to start with Mr. Wilson.

4 I'll go through his testimony. I'll go through

5 Mr. English's testimony. I'll go through Mr. Falls

6 testimony and then I'll finish up, and I'll try to be as

7 brief as possible.

8 Trooper Wilson tells you he's got a camera in his car.

9 He can activate that camera at anytime. He says my client's

10 going over a fog line. Pretty trivial. Pretty trivial

11 thing to stop somebody over. So -- and he tells you he's

12 beside my client, but he can see him go over the fog line.

13 All right. And he doesn't get behind my client and put

14 that on film for us. He decides to get behind my client and

15 pull him over. I mean my client's clearly not over the fog

16 line. Pulls him over and then -- watch the video all the

17 way through. He begins -- and Mr. Ryan McCarty's a great

18 attorney. He thoroughly cross-examined my client yesterday.

19 Mr. Wilson was pretty thorough with his questions. .

20 Boom, where do you work?

21 Boom, where you coming from?

22 why did you rent the car?

23 when did you get it?

24 when's it due back?

25 why is your car so clean?

1 okay. He keeps hitting, pounding him with questions
2 throughout this thing. Look at that.

3 Look at the driver's license number, a seven digit
4 number. He then calls in six. It leads to a longer delay
5 in this case. Look at what he does. When he first goes up
6 there he says I saw him put something under the seat.

7 Mr. Falls testified I got an armed policeman beside me.
8 You think I'm gonna be going under my seat.

9 Think about that dog running around in that car after
10 Mr. English closes the door. We can see the dog running
11 around.

12 Why don't we see Mr. Falls head go down if he's putting
13 something under the seat?

14 Think about beneath the seat.

15 What was found underneath the seat?

16 Both officers testified nothing.

17 Why?

18 Because he didn't go under the seat.

19 That's just something that was made up in order to get
20 a search of that car.

21 Look at the white line allegation. I forget what he
22 called it, white lining. Mr. Falls pulled up probably
23 closer to this than that guardrail. He's not pulling up to
24 cause the trooper any trouble. He's just pulling off the
25 road like he's, because he got pulled over.

1 Throwing up a smoke screen, guys. Trying to make you
2 believe this is a bad guy. One, that I got the reason to
3 stop him. Two, when I do stop him, and I find out he's
4 coming from Atlanta, in a rental car, and he's a black male,
5 I got, I got, I got to search his car. He told you at one
6 point that car wasn't going anywhere. He decided that right
7 when he got that license from Mr. Falls if not sooner when
8 he pulled up beside him and saw him.

9 Watch Officer Wilson write that ticket. That ticket or
10 warning containing ten words. Ten words and two of them
11 were D.G. Wilson. And he's gonna make, lead you to believe
12 it takes him almost ten minutes to write that warning
13 ticket. Watch his hand. It doesn't touch the pen for so
14 long, and a lot of it's because he keeps firing his
15 cross-examination questions at Mr. Falls.

16 He's stalling. He's waiting on his partner, his buddy
17 since 1999, that he knows has a drug dog in his car or
18 truck, whatever he's driving, and he's stalling waiting to
19 get him there.

20 Look at his testimony. Think about his candor up here,
21 the way he answered questions, and he, he can say one thing,
22 then go back to another. Well, I held his license. Well,
23 he could go, but his car wasn't going anywhere. Little bit
24 jumbled there. State wants you to overlook that.

25 Okay. Look at the fact he puts in his report well, the

1 dog hit on the driver's side door. The video, obviously the
2 dog didn't touch the driver's side door. He touched the
3 passenger's side door. The State wants you to say oh,
4 that's just a mistake.

5 But they want you to dissect every little thing
6 Mr. Falls does, every little thing he says, and they want
7 you to jump on oh, this man, this guy's guilty, he's
8 nervous. Oh, we can overlook the officer.

9 Go to Trooper Wilson. Trooper Wilson, he shows up and
10 you don't hear him say go get your dog, I need the dog.
11 Supposedly they got signals. I don't know what it was. But
12 he's -- there's no communication that we're aware of.

13 Okay. He goes in here, puts his dog in there. I think
14 his dog's named Zena. She goes around the car, and then she
15 goes in the front seat, in the back seat, then he decides
16 okay, gives another signal. Got some dope. So, he takes
17 the dog back. He's gone for two, maybe three minutes.

18 What does he tell you about where he goes?

19 He goes to his Suburban that has two lock boxes to
20 retrieve his camera and some gloves and put his dog up. Two
21 lock boxes. Three minutes. He returns with a big coat on.
22 He goes down in that car. You don't see him for several
23 seconds. He goes through the front seat, goes through the
24 back seat, looks everywhere, pulls the back seat out, puts
25 it on the front of the fender of the car. No drugs.

1 what did he tell you about that dog?

2 I love that dog, his -- now his pet. He's got a vested
3 interest in these dogs. He's trained them. He's been
4 working with them since 1999.

5 He pulls his ace drug dog up here and that thing makes
6 a hit and then he doesn't find any drugs, he's not looking
7 very good, is he?

8 Not looking good.

9 So, he keeps searching. Then he's gonna go to the car
10 door and, boom, there's the drugs. He's been through that
11 car three minutes. All of sudden it's right there in a
12 little pouch in the front door. So, he hooked my guy up,
13 which means he put him in handcuffs, gets his camera, and
14 goes back and takes pictures of the door, of the drugs, of
15 my client, and then goes and makes a more thorough search,
16 the hood, the trunk, all that.

17 All right. And he does this, come back, and he goes
18 back to the car. He brings out this bag here, a Ziploc bag,
19 a plastic bag with these drugs in it. He brings out a blue
20 bag. He brings out a blue bag and states this is what the
21 drugs was in. The blue bag, about the same size as this bag
22 here. He takes it -- he's got photographs of that too.

23 Trooper Wilson, asked him where that bag is?

24 Oh, well, can't process a vinyl bag.

25 Guys, well, we've got -- we running -- the Federal

1 Government is running tests on D.B. Cooper's DNA from 40
2 years ago.

3 We can't process a bag?

4 Is that what he wants us to believe?

5 We can charge people with rape 30 years later, but we
6 can't process a blue bag?

7 Guess what, guys?

8 That blue bag's awful small.

9 What's every defense attorney's dream?

10 They want to go in Court and say if it don't fit you
11 must acquit, right?

12 The old O.J. Simpson trial.

13 All right. Why is that bag not here, guys?

14 Why is that bag not in court?

15 Why are those photographs not in court?

16 They're right there on the roadside. He takes those
17 pictures. We've got the drugs here. We've got the
18 analysis, all different pieces of evidence. We don't have
19 that bag. But we don't have those photos.

20 Why not?

21 That's a question you got to ask yourself.

22 Mr. Falls told you he went to Atlanta to see a cousin.

23 He can back that up. The time line's perfect. He tells you
24 his -- he's got a tax ID number from the IRS. He's a
25 legitimate businessman. He's riding through. Like I say,

1 the time line's perfect. He gets pulled over, and then his
2 whole world starts to fall apart.

3 why?

4 Because of this thing called Rolling Thunder.

5 well, we pull people over. We saturate the highways.
6 Officer Wilson says well, to stop the DUI's and, and to cut
7 down on traffic fatalities. Bull. It's to pull people
8 over, search their cars for drugs, and seize whatever we
9 can. That's why they pull people over in Rolling Thunder.
10 That's why they have a breakfast. That's why they have a
11 final banquet to put all of what they got for the week and
12 take pictures of it and will give the cops awards for what
13 they seize during the week.

14 It goes back to competition. It goes back to ego.
15 That's what Rolling Thunder's about. It's not about DUI's.
16 If it's about DUI's, he's talking and somebody shaking and
17 stumbling around.

18 why -- he didn't give any -- you don't see any field
19 sobriety tests administered to my client. It's about drugs.
20 It's about a sting. It's about a set up.

21 Now, the judge is gonna instruct you on something
22 called reasonable doubt. Reasonable doubt means that you
23 have some doubt as to the guilt of the person accused of a
24 crime, and he'll explain that a lot better than I can. But
25 there's a lot of reasonable doubt in this case. And if you

1 got reasonable doubt in your mind, you got to come back with
2 a not guilty. And if you go in here and you vote not
3 guilty, tell your other fellow jurors why if they don't,
4 they don't agree with you. Cause evidence isn't adding up
5 guys.

6 We're pulling this guy over for nothing. We're
7 stalling, obviously stalling in this pull over. Got
8 Mr. Falls, what's to tape -- he's always on the tape. You
9 see him the entire time. The only people that disappear
10 from view and come back into view are the officers. Ask
11 yourself about that.

12 Now, I'll leave you with this, guys.

13 Where's that blue bag?

14 Where are, are those photographs?

15 Thank you.

16 THE COURT: Mr. McCarty, for the State.

17 SOLICITOR MCCARTY: May it please the Court, Your
18 Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR MCCARTY: Much like Mr. Thompson, I
21 appreciate your patience. I know we started this Wednesday
22 afternoon, and here we are on Friday morning.

23 I told you, in my opening remarks, I only had three
24 witnesses for the State. That's what I kept my promise to
25 you about. I didn't realize it would be as lengthy as it

1 would be, but that's what justice demands sometimes. Like
2 the judge told you in his opening comments, it's deliberate.
3 Sometime it takes a while to get there. But here we are at
4 that moment where we're about to ask for justice. We're
5 about to ask you, members of the jury, to go back and
6 deliberate on this offense and bring justice for the State
7 of South Carolina because Jeffrey Bernard Falls, ladies and
8 gentlemen, is guilty of trafficking more than 200 grams, a
9 quarter of a kilo, of powder cocaine.

10 I told you at the beginning of the trial that we're
11 gonna deal with some professionals here. Sergeant Wilson is
12 a professional law enforcement officer. He's been a highway
13 patrolman, Trooper of the Year, National Trooper of the
14 Year. This is his job. And just like anybody's job, you
15 learn things within your job that are specific to your job.
16 That's what Trooper Wilson has.

17 We've asked you folks to bring in something you also
18 have. That's common sense. Use common sense as you've
19 heard the testimony, as you apply it to the facts.

20 Now, Mr. Thompson's tried to spin the tables on us and
21 put our troopers on trial. He's tried to say that this is a
22 plant, that our troopers put a quarter of a kilo of powder
23 cocaine on Mr. Falls. Poor old tow truck driver from
24 Charlotte, North Carolina who happens to have a, what we
25 found out was a pretty well connected cousin that he went to

1 visit down in north or down in Georgia.

2 I do want to talk about the traffic stop. We're not
3 playing the video. I promise you that.

4 Trooper Wilson, I told you is a professional. He's
5 been trained on this. He's trained to look to things
6 subconsciously a normal motorist may not be aware of. That
7 you or I may not be aware of. But he's trained to look for
8 those things. He's also trained to follow up on those type
9 of things or be able to write those things off.

10 He admitted to you nervousness is a normal part of
11 being pulled over by the police. I'm a prosecutor, have
12 been for years. I can promise you that even I would be
13 nervous if I got pulled over. But what Trooper Falls told
14 you is that when he saw Mr. Falls -- I'm sorry. When
15 Trooper Wilson saw from Mr. Falls was an exaggerated amount
16 of nervousnesses. Something more than what he indicates
17 typically he sees in a normal motorist.

18 You know, when Trooper Falls -- we talked -- when we
19 talked to Mr. Falls yesterday, I asked him, you're driving
20 along the interstate. You're looking over to see the
21 trooper next to you.

22 Is it possible that you drifted out of your lane?

23 He said yeah, it's possible.

24 What Trooper Wilson testified to, he said I was beside
25 Mr. Falls at one point, and I see him leave his lane, that's

1 probably where it happened. Mr. Falls is looking over
2 saying gee, what's the Highway Patrol doing right up next to
3 me. He's not paying attention, over a drift, maybe looking
4 back again, looking up in my rearview mirror, maybe out of
5 it. It's nine o'clock at night.

6 Trooper Wilson, being a professional, is trained to
7 look for certain things. Fatigue on the roadway. Possible
8 DUI.

9 Now, he said, Mr. Thompson kind of made light of this,
10 but we're up here to reduce road fatalities. Well, that is
11 a part of a trooper's mission. That's a central part of
12 their mission. They're not out here for fishing
13 expeditions. They're not out here to hunt for black male
14 drivers, Hispanic drivers as Mr. Thompson alleges. They're
15 out here to, if somebody is being unsafe on those roadways,
16 they're protecting all of us who are driving on South
17 Carolina roadways.

18 If Mr. Falls is about to fall asleep behind the wheel,
19 we need to get him off the road. If Mr. Falls is impaired,
20 we need to get him off of the road. That's their mission.
21 That's their job.

22 Did it happen to occur during Rolling Thunder?

23 You bet.

24 But that's what he's looking for.

25 Mr. Thompson talked about these lights on 85. Look.

1 It's the State's position what you see is the exit up on
2 that video. Duncan Highway, 290, right there off Interstate
3 85. Again, that's a common sensical question. I'm gonna
4 ask you to view it and look at.

5 Assuming it is multiple lights from other cruisers,
6 from other police vehicles, ask yourselves this, can we
7 control how or when, how often, anyone commits a traffic
8 infraction?

9 Maybe they're all speeding violations. Maybe they were
10 all DUI violations. Maybe it was four or five gas stations,
11 the Cracker Barrel, and whatever else is out there at 290.

12 Trooper Wilson pulled Mr. Falls over for crossing that
13 white line at nine o'clock at night wondering about
14 Mr. Falls' ability to drive. He said he walked up to the
15 car. Upon initial approach, he sees the defendant wearing
16 work clothes. He also notices that that car is pretty much
17 unusually clean. Not a cup in it. No luggage. No baggage.
18 No food wrappers. Nothing like that. It's a very clean
19 car. Doesn't look lived in.

20 It's a North Carolina tag. We're traveling north on
21 Interstate 85 back towards North Carolina. And in that
22 brief set of conversations right there with him, this
23 defendant reveals to him that he's coming from Atlanta.

24 Again, these are things that you and I, common sense
25 wise, may be nothing to us, they're innocuous, and they may

1 be by themselves. But Trooper Wilson is trained to pick up
2 on those things, to look at those type of things, to
3 evaluate what he's got at that situation.

4 He comes back to the car. He asked, first, Mr. Falls
5 to pull up beyond that guardrail because it's a traffic
6 safety issue for Trooper Wilson. It's a personal safety
7 issue. He wants to go home at the end of the day. He
8 doesn't want to put himself in a position where if, let's
9 say, somebody else is driving under the influence comes by
10 and hits Mr. Falls' car, that he now is trapped between the
11 car and the guardrail. Asked him to pull up beyond the
12 guardrail.

13 It's about a minute that transpired between the initial
14 time he pulls over to where he gets to that next set of
15 stops. Trooper Wilson gets out of his patrol car after
16 calling the driver's license number in. Maybe there's an
17 error in the driver's license. We admit that. We found
18 that out yesterday. We called in a six digit number opposed
19 to a seven digit number. Errors happen. We're all human.

20 When he approached the vehicle, you can watch that
21 video, Trooper Wilson's body language changes when he's on
22 that video. There's a pause. There's the look into that
23 vehicle. Maybe you can, maybe you can't see Mr. Falls
24 having any type of body movement. Maybe he doesn't move
25 down. Maybe he doesn't reach up under his seat as well as

1 he reaches down into that doorway, and you to---

2 MR. THOMPSON: Your Honor, again, I don't think that's
3 in the record. I don't believe it is.

4 THE COURT: The fact, the fact that a movement took
5 place is on the record, and he can argue any inferences that
6 might be drawn from that fact.

7 MR. THOMPSON: All right.

8 THE COURT: I'll allow him to make that argument.
9 That's a possible inference that could be drawn from that
10 fact that's in the record.

11 MR. THOMPSON: Thank you, Your Honor.

12 THE COURT: You may proceed.

13 SOLICITOR MCCARTY: Thank you, Your Honor.

14 Maybe he reached down to put a quarter of a kilo of
15 powder cocaine right there on that driver's side door.
16 Trooper Wilson doesn't know what he's putting there.
17 Trooper Wilson testified that he himself has been in a
18 situation where a fellow officer was shot, and it was
19 Trooper Wilson who had to respond to that situation and see
20 a downed officer shot by somebody just simply as he was
21 approaching the vehicle. And he has to look out for
22 himself. He has to look out for his fellow officers.

23 Now, he does call for assistance. He calls Trooper
24 English, his partner, a member of the Highway Patrol who's
25 up in Spartanburg County patrolling with him. That's the

1 first call he calls out.

2 I know English is here. I know he's working tonight.
3 we work together. I'm gonna give him a call.

4 Mr. Thompson would have you believe that was because
5 Trooper English was a K-9 handler. But Trooper Wilson, at
6 this point, has already decided we're searching this car.

7 He's testified he doesn't know what he put under that.
8 He doesn't know if it's a quarter of a kilo of powder
9 cocaine. It could be a handgun. It could be a sawed-off
10 shotgun. It could of been anything. He's got to look out
11 for himself.

12 He calls Trooper English. It happened to be Trooper
13 English is a K-9 handler.

14 I ask, I ask, would this question be the same if
15 Trooper English had been the bomb disposal guy for the
16 Highway Patrol?

17 He's calling a fellow officer who happens to be his dog
18 handler when he gets here. Once we ask Mr. Falls to get out
19 of that car, bring him on back, tell him we're just giving
20 him a warning, he starts to tell you about the trucks, how
21 they're bothering him on the highway.

22 Again, subconsciously, it may not matter to us. It may
23 not even be anything we're even aware of it. Okay. He's
24 making conversation with him.

25 Trooper Wilson's a professional. They're trained in

1 all this. He knows that, wait a second, this guy's just
2 chattering now. He's asking him -- he's answering things
3 and responding to things I'm not even asking him.

4 why is he doing this?

5 Let's ask a few more questions about if you worked
6 today. He's got work clothes on. He says yeah, I worked
7 today. well, wait a second. When I first pulled you over
8 you told me that you had been coming from Atlanta.

9 which is it?

10 what, I've been down to Atlanta.

11 How long were you in Atlanta?

12 A few hours.

13 who were you with?

14 My cousin.

15 what were you there for?

16 To talk about a party, hang out with some girls and
17 stuff like that.

18 what's your cousin's name?

19 Black.

20 It's on the video.

21 Black, is that a nick name, last name?

22 It's a last name.

23 well, what's his first name?

24 Antwan.

25 It's on the video. Antwan Black, that's what he tells

1 the trooper.

2 Now, Mr. Thompson came in this morning and tells you
3 that's an alias. He didn't want to give his cousin's name..

4 You heard the testimony of his daughter. You have the
5 ability to judge who's telling the truth in full, in part
6 whatever you deem it to be, whatever credit you give it.
7 But when she came up here, she said we have a cousin in
8 Atlanta. It's on my father's side of the family. His name
9 is Arthur wylie I believe you wrote down.

10 It's not the name that Mr. Falls gave to Trooper Wilson
11 after a pause, after thinking about it, after giving the
12 last name first.

13 Where does your cousin live?

14 I don't know.

15 You ever been to his house?

16 Yeah, once.

17 How many times you been to Atlanta?

18 A couple times in the last year he lived down there.

19 Mr. Falls comes up here and says I've been to his
20 house. I met him at different places. When I get to
21 Atlanta I call him, and he meets me some place.

22 He's got to know where he's going. The other thing is
23 Mr. Falls tells you he's a tow truck driver. He's a repo
24 man. Knowing how to get places is got to be part of his
25 business. Common sense question. He's not a guy, he's told

1 you, that sits behind a desk nine hours a day and never gets
2 out. He drives around. He's repossessing vehicles. A
3 sense of direction, I would argue to you, is what Mr. Falls
4 has.

5 So, how do we not know where we're going in Atlanta?

6 We've been there three different times. We know my
7 cousin. He's a good friend. In fact, he's such a good
8 friend of a good person that my well to do well connected
9 cousin has asked me to come down there for advice about
10 which models to invite to this party that we're having.

11 Ms. Falls also testified that it wasn't uncommon for
12 her dad to take day trips down to Atlanta.

13 Now, what inference can we draw from that?

14 I don't know.

15 But on this day trip, we know that he was coming back
16 north bound through Spartanburg County and he had a quarter
17 of a kilo of powder cocaine on him and in his car.

18 The whole stop in this situation, 19 minutes 17
19 seconds, and that's from the time he pulled him over, his
20 conversation that we're having with him, telling him about
21 the warning ticket, searching his car to the point where he
22 finds the cocaine in the car. Nineteen minutes and 17
23 seconds. In fact, it's just shy of 11 minutes when we tell
24 him we're gonna search his car.

25 And, so, is this a prolonged detention, ten minutes

1 worth of time on the roadside when Trooper Falls (sic), a
2 professional, says wait a second, something's not right
3 here, something's not adding up there. Mr. Falls is
4 deceptive with me. At that point he had what we call a
5 reasonable suspicion. He believed that something else is
6 going on here. It's not normal. It's not adding up to him.

7 He asked Mr. Falls can I search your vehicle.

8 Mr. Falls hems and haws around about it. Never really says
9 yes or no. It's on the video. He says well, I mean, I mean
10 I didn't do anything. Trooper Falls (sic) says I didn't say
11 you did anything. I'm just asking if I can search your
12 vehicle.

13 Well, I, I says Mr. Falls, it's a yes or no question,
14 can I search your vehicle. Mr. Falls says if I say no, can
15 I leave. Trooper Wilson says wait a second. We got
16 something going on on here, Mr. Falls. I got a K-9 coming.
17 We're going to, at this point, if that K-9 does not alert on
18 your car, you'll be free to go. But see that K-9 will help
19 Trooper Wilson confirm his suspicions. If that K-9 doesn't
20 alert, we're not gonna be sitting here today. But if that
21 K-9 alerts on that car, that K-9 tells Trooper Wilson your
22 suspicious are right. Something else is going on here, and
23 then we see on the video, Trooper English searching that
24 car.

25 If this was a plant by the Highway Patrol, first of

1 all, it's a big plants. It's 250 grams, a quarter of a kilo
2 of powder cocaine to blame on Mr. Falls, a tow truck driver,
3 repo man from Charlotte, North Carolina.

4 why didn't we just find it in the passenger's side door
5 when we first opened it up?

6 why did Trooper English search through the passenger
7 side door, go to the back door of the passenger side?

8 He's told -- he's trained to look for things, things
9 that you and I, again, may not recognize. He's trained to
10 look for hidden compartments, traps, for common hiding
11 places. Trooper Wilson -- you know, Trooper English, as you
12 may recall, had a pretty thorough knowledge of that type of
13 a vehicle. He's trained on these types of things. He knows
14 certain things about vehicles that you or I may not know. I
15 mean maybe you're a car buff. I'm not. But you, just off
16 the top of my head, if I, if I remember correctly, believe
17 the trunk release button was wherever it was on that
18 vehicle. I thought geez. I didn't know that. But he knew
19 it.

20 He's a professional. He knew how to take that back
21 seat out because he said there's a natural void there. He
22 knows, based on his experience, based on his training,
23 that's some place else to look.

24 Again, if it's a plant, why not find it there?

25 why not find it in the front seat on the passenger

1 side?

2 why not find it in the back seat?

3 Especially after we've taken the back seat out. walk
4 around to the front side of the car cause we're gonna have
5 to pop that trunk cause that's some place else we're gonna
6 look. wait a second. Here's a blue nylon bag.

7 what is that?

8 we got powder cocaine.

9 Go ahead and hook Mr. Falls up. Give a head signal.
10 Nothing wrong with that. It's officer safety. We're not
11 gonna stand out there and say hey, we found a bunch of
12 cocaine, go ahead and arrest him.

13 You know why?

14 Cause they're worried Mr. Falls is gonna endanger
15 himself, endanger other motorists, take off, and endanger
16 himself. Little head signal and we're good.

17 They go ahead and take Mr. Falls into custody, and you
18 see Trooper English continues to search that vehicle.

19 Again, if it's a plant, if you're planting 250 plus
20 grams of powder cocaine on Mr. Falls, why, why are we
21 looking up front under the engine compartment?

22 why are we continuing to search the passenger
23 compartment of the vehicle?

24 watch the video. Trooper English climbed into the
25 trunk of the vehicle. He's looking for things that you and

1 I aren't trained to look for, but he knows to look for.

2 If it's a plant, why go through all of that?

3 That's an elaborate scheme.

4 Common sense. Common sense.

5 The judge is gonna tell you about the elements of this
6 offense for trafficking. I told you kind of in my opening
7 statement that trafficking doesn't require that you've
8 driven a car. Trafficking is based on the weight alone, and
9 the judge will instruct you the offense before you is called
10 trafficking in cocaine more than 200 grams, but less than
11 400 grams.

12 You've had direct testimony. Two State's exhibits.
13 The drugs and the chemistry report. 254.12 grams powder
14 cocaine.

15 Your question is, as the judge tells you the elements
16 of this offense, he'll tell you that one of the elements of
17 this offense is that the defendant either be actually or
18 constructively possess that drug. Again, doesn't require
19 that it be driven up and down the road. Trafficking is a
20 weight based crime, and the weight in this case is more than
21 200 grams. We have 254 grams.

22 The question you'll have to decide, again, applying
23 common sense, is this a plant by the Highway Patrol cause
24 apparently the trooper's now on trial.

25 Is this a plant by the Highway Patrol?

1 Is this a plant to put a kilo or a quarter of a kilo of
2 powder cocaine in Mr. Falls car or is Mr. Falls running
3 drugs up and down Interstate 85, and because of his error,
4 and his own ramblings, deceptive statements, and whatever
5 else that happened, that caused Trooper Wilson to say wait a
6 second. That was possession of powder cocaine.

7 I submit to you Mr. Falls was nervous that night.
8 Mr. Falls knew he had a quarter of a kilo of cocaine in his
9 car. Mr. Falls was trying to think on his feet, but it
10 wasn't adding up.

11 And if he'd been to visit his cousin, I ask you today,
12 why does Arthur Wylie or Antwan Black not even darkened the
13 doorway of this courtroom?

14 Ladies and gentlemen, as you go back to deliberate, I
15 ask you consider all the evidence. If you need to, watch
16 the video again. But I think the video's clear. Trooper
17 Wilson's testimony is concise and specific as to what his
18 observations were, as to what his feelings were regarding
19 Mr. Falls, and I believe that if you look at that using your
20 common sense, not even that specialized skill that Trooper
21 Wilson has, which is common sense, that you'll find that
22 Mr. Falls is guilty of the offense of trafficking in
23 cocaine, and I respectfully request that you return a
24 verdict of guilty.

25 Thank you.

1 THE COURT: Ladies and gentlemen of the jury, we have
2 reached the stage of the trial where you have now heard the
3 closing arguments by counsel, and I told you that when we
4 reached this stage of the trial that it would be my
5 responsibility to charge you concerning the law to be
6 applied in this case. At the beginning of this trial I went
7 over with you the indictment. That is the formal charge
8 that brings the case before this Court, and at this time I'm
9 going to read that indictment to you again because this does
10 set forth the charge and it sets forth the matters the State
11 is required to prove in the case.

12 This is in Case Number 07-GS-42-2111. The indictment
13 is for the offense of trafficking in cocaine. The
14 indictment states that Jeffrey Bernard Falls did, in
15 Spartanburg County, on or about February the 20th of 2007,
16 knowingly sell, manufacture, cultivate, deliver, purchase,
17 or bring into this state, or did provide financial
18 assistance, or did otherwise aid, abet, attempt, or conspire
19 to sell, manufacture, cultivate, deliver, purchase, or bring
20 into this state, or did knowingly, actually or
21 constructively, possess, or did knowingly attempt to become
22 in actual or constructive possession of more than 200 grams
23 of cocaine, a Schedule II controlled substance, in violation
24 of Code Section 44-53-370 of the Code of Laws of South
25 Carolina, 1976 as amended, against the peace and dignity of

1 the State and contrary to the statute in such case made and
2 provided.

3 Now, ladies and gentlemen, that is the indictment that
4 brings the case before this Court. Again, an indictment
5 does not constitute evidence and can not be used directly by
6 you in determining the guilt or the innocence of a
7 defendant. But it does state the charge and it does state
8 the matters that the State is required to prove in this
9 case.

10 Now, the defendant has pled not guilty to the
11 indictment, and, as I told you at the beginning of the case,
12 that plea, under the law and the Constitution of this state,
13 places the burden on the State to prove the defendant
14 guilty. A person charged with committing a crime in South
15 Carolina is never required to prove himself innocent. I
16 charge you it's an important rule of law that a defendant,
17 in a criminal case, no matter what the seriousness of the
18 crime that's been charged might be is always presumed to be
19 innocent of that offense until and unless guilt has been
20 proven by evidence satisfying you, the jury, of that guilt
21 beyond a reasonable doubt.

22 The presumption of innocence does not end when you
23 begin your deliberations. It accompanies the defendant
24 throughout the trial and into your deliberations until such
25 time as you might reach a verdict of guilt based on evidence

1 that satisfies you of that guilt beyond a reasonable doubt.

2 Many people describe the presumption of innocence that
3 a defendant has in this courtroom somewhat like the robe
4 that I wear into the courtroom. That presumption of
5 innocence remains about the defendant's shoulders throughout
6 the trial, it accompanies the defendant into your
7 deliberations, and it remains about his shoulders in your
8 deliberations until such time as it might be stripped from
9 him by evidence that satisfies you of his guilt beyond a
10 reasonable doubt.

11 Now, the presumption of innocence is not just a legal
12 theory and it's not just a legal phrase. It's a substantial
13 right that every defendant is entitled to in this Court
14 unless you, the jury, are satisfied from the evidence of the
15 defendant's guilt beyond a reasonable doubt.

16 Now, you've probably heard me already say or indicate
17 that proof must be beyond a reasonable doubt about three or
18 four times in my charge, and you're probably aware that
19 that's an important concept in our criminal justice system,
20 that is proof beyond a reasonable doubt, and you may be
21 asking yourself well, just what do they mean by a reasonable
22 doubt, what is that.

23 Now, a reasonable doubt is that kind of doubt that
24 would cause a reasonable person to hesitate to act. The
25 State has the burden of proving the defendant's guilt, guilt

1 beyond a reasonable doubt.

2 Now, I will tell you, some of you may of been involved
3 in civil cases. Let me explain to you the difference
4 between civil cases and criminal cases insofar as the level
5 of proof is concerned. In civil cases, that's where
6 somebody's seeking monetary damages. That could be because
7 of a personal injury or a breach of a contract or a failure
8 to pay a debt, things of that nature, where people are
9 seeking money from someone else for some reason. Those are
10 civil cases, and in those cases, the standard of proof in
11 those cases is proof by the greater weight or the
12 preponderance of the evidence.

13 What that means is the scales of justice, and you-all
14 have seen the scales of justice, if they tilt ever so
15 slightly one way or the other, then that's the level of
16 proof that's required in a civil case.

17 Now, this is not a civil case. This is a criminal case
18 and the level of proof is more powerful than that. It is
19 proof beyond a reasonable doubt.

20 Now, proof beyond a reasonable doubt is that kind of
21 proof that would leave you firmly convinced of the
22 defendant's guilt. Now, there's very few things in this
23 world that can be proven, that we go, that we do or we go
24 about in our day-to-day lives that can be proven beyond any
25 doubt, and the State's not required to prove its case beyond

1 any doubt whatsoever.

2 Again, the standard of proof is proof beyond a
3 reasonable doubt. Again, I will tell you that if, after
4 you've considered all of the evidence in this case, if you
5 are firmly convinced of the defendant's guilt beyond a
6 reasonable doubt, you must find the defendant guilty.

7 However, on the other hand, if you think there's a real
8 possibility that the defendant is not guilty in this case,
9 then you must give the defendant the benefit of that doubt
10 and find the defendant not guilty.

11 Now, I'll remind you and I'll go over briefly with you
12 again the different duties that you and I have in this
13 trial. It's been my responsibility to preside over the
14 trial of this case, and I've had to deal with several
15 objections and questions concerning the evidence and the
16 presentation of evidence. And I will tell you again that
17 you should not take from anything that I have done in the
18 discharge of my duties to indicate to you one way or the
19 other that I have any opinion as to how you determine the
20 facts in this case.

21 I told you earlier the law doesn't allow me an opinion
22 on that subject. I have no opinion as to how you determine
23 the facts in this case, and don't take from anything that I
24 do or say now or throughout the end of this trial to
25 indicate to you that I have an opinion on that subject.

1 You are to consider only the competent evidence that is
2 come into this case, and if I ruled anything out or any
3 question as inappropriate or overruled any objection or, or
4 sustained any objection, anything that I ruled out of the
5 evidence, of the record you should not consider at all in
6 reaching your verdict in this case.

7 I told you also it's my additional duty, besides
8 presiding over the trial, the trial of the case, to charge
9 you concerning the law to be applied in this case, and I
10 have told you that, under your oath, you must accept the law
11 as I give it to you and apply it to the facts as you find
12 them to be. Again, if you have any idea or notion as to
13 what the law is or what it ought to be, leave those notions
14 outside of the jury room and accept the law as I give it to
15 you, and, again, apply it to the facts as you determine them
16 to be.

17 Now, you are the sole judges of the facts in this case,
18 and as such, it is your duty to analyze the evidence that
19 you've heard, evaluate the evidence that you've heard, and
20 make a determination of what evidence convinces you of its
21 truth. Again, you're the sole judges of the facts. So,
22 therefore, you're the sole judges of credibility and
23 believability of the testimony and the witnesses that you've
24 heard during this trial, and I've told your use own good
25 common sense in making that determination. You do it every

1 day. Today is no different than any other day.

2 You can consider whether or not a witness has a stake
3 in the outcome of the case, whether or not a witness might
4 possess some bias or prejudice for or against one side or
5 the other, whether or not the witness had the ability to
6 know the facts about which the witness testified, and you've
7 observed the witnesses as they testify, the way they spoke,
8 how they delivered their testimony. Again, use any of those
9 factors you choose to use using your own good common sense.
10 Make a determination as to what evidence convinces you of
11 its believability and is deserving of a finding by you of
12 credibility, and then you determine the effect, the value,
13 and the weight that you want to give to any testimony that
14 you've heard during this trial.

15 Now, I'll tell you that in making your decision you
16 have the right to consider two types of evidence. We
17 haven't discussed these two types of evidence, and let me
18 explain to you what I mean by two types of evidence. The
19 first type of evidence you can consider is what we call
20 direct testimony, direct evidence. That's evidence given by
21 a witness who claims to have actual knowledge of the facts
22 about which that person testifies such as an eye witness.
23 Someone who was present or experienced the facts about which
24 that person testified. They saw something, they heard
25 something, they tasted, smelled, felt. Those are things

1 where people are talking about their own experiences
2 directly. That's what we mean by direct evidence.

3 There's another type of evidence that you have the
4 right to consider in reaching your verdict, and that is what
5 we call circumstantial evidence. Now, circumstantial
6 evidence is proof of a chain of facts or circumstances which
7 immediately establish some other fact. It's collateral
8 facts from which a main fact can be inferred.

9 Now, those are big fancy words and I try to reduce this
10 to a simple example as to what I mean by proving a fact by
11 other facts and circumstances that you know to exist. Let's
12 say last night before you retired to go to bed you looked
13 outside of your window and the stars were shining. It was a
14 pretty night outside, and you went to bed, slept well all
15 night. You woke up the next morning, you looked out the
16 very same window. While -- and the sun was shining. But
17 there's water dripping from all the trees, there's puddles
18 in the driveway, the road in front of the house is soaking
19 wet.

20 Now, you slept well all night. So, you don't directly
21 know that it rained. You didn't hear it rain. You didn't
22 see it rain. But from the facts that you know to be true,
23 you could reasonably infer or deduce that it, in fact,
24 rained during the night, and that's what we mean by proof of
25 collateral facts from which a main fact could be reasonably

1 inferred. That is proof of a fact by circumstantial
2 evidence.

3 Now, the law doesn't make any distinction as to what
4 weight or value you, the jury, can give to either direct or
5 circumstantial evidence. You give it the weight that you
6 think it deserves nor is there a greater degree of certainty
7 required of circumstantial evidence than that of direct.
8 You, the jury, have the right to weigh all of the evidence,
9 both direct and circumstantial, and I'll tell you that if,
10 after weighing all of evidence, you're not convinced of the
11 defendant's guilt beyond a reasonable doubt, you must find
12 the defendant not guilty. However, if you are firmly
13 convinced of the defendant's guilt beyond a reasonable
14 doubt, you must find the defendant guilty.

15 Now, in determining credibility and believability of
16 the witnesses, I've already touched on that. But I will
17 tell you again you have the right to believe all of what a
18 witness has told you, part of what a witness has told you,
19 or none of what a witness has told you. And you have the
20 right to believe one witness against all the others and all
21 the others against one.

22 Now, during the trial, we had a witness testify who was
23 qualified as an expert in some field or science, and at that
24 time I paused and I explained to you that generally
25 witnesses are not allowed to give their opinions when they

1 testify. Lay witnesses are not allowed to do, do that. But
2 an exception to that rule exists for people who are
3 qualified or classified as experts.

4 Now, I will tell you that you accept that testimony
5 from an expert witness just like you do any other witness in
6 the trial. You have the right to give the, the, that
7 evidence the weight that you think it believes, deserves,
8 and a witness' testimony is no more believable just because
9 someone is classified as an expert. If you find that the
10 opinion of an expert is not based on substantial reasoning
11 or good facts or, or that reasons given by the expert are
12 outweighed by other evidence in the case, you have the right
13 to disregard an expert's testimony even though it may not be
14 contradicted by other testimony.

15 In other words, you judge an expert's testimony just
16 like you do any other witness' testimony. You give it the
17 weight that you think that any expert's testimony deserves
18 in a case.

19 Now, in order to establish criminal liability, criminal
20 intent, in some form or fashion, is required, and I'll be
21 going over with you the actual offense in just a minute, and
22 talk to you about what has to be shown in the actual
23 offense. But usually there is some type of intent required.
24 That is a state of mind that must be proven by the State in
25 order to establish criminal responsibility.

1 Now, criminal intent is always a matter that has to be
2 proven by circumstantial evidence, by inference. The reason
3 for that is that there's no way, scientifically, that at a
4 time an event occurs that we can look in somebody's head and
5 scientifically determine what they're intending to do or
6 what they knew or didn't know at any given period, point in
7 time. So, criminal intent is a matter that always has to be
8 proven by the facts and the circumstances that were shown to
9 have existed at the time that the alleged incident occurred.
10 So, it is proved, proven by, by inference and not by direct
11 testimony.

12 Now, what criminal intent is, it's a conscious
13 wrongdoing. It's a state of mind. And it's up to you to
14 determine what the, what the level of intent was of any
15 defendant was based on the circumstances that were shown at
16 the time that the incident occurred.

17 Now, the charge in this case is for the charge of
18 trafficking, and the defendant is charged, charged is
19 trafficking in cocaine. For that charge, under the Code
20 Section that I just referred, I referred to earlier,
21 44-53-370, the State must prove, beyond a reasonable doubt,
22 that the defendant knowingly sold, manufactured, cultivated,
23 delivered, purchased, brought into the State, or that he
24 provided financial assistance or otherwise aided, abetted,
25 or attempted, or conspired to either sell, sell,

1 manufacture, cultivate, deliver, purchase, or to bring into
2 the State, or was knowingly in actual or constructive
3 possession, or attempted to become in actual or constructive
4 possession of cocaine.

5 Now, in order for the offense to rise to the level of
6 trafficking in cocaine, the State must also prove, beyond a
7 reasonable doubt, that the amount of cocaine or any mixture
8 containing cocaine was at least 200 grams, but less than
9 400 grams in this case.

10 Now, one of the factors that was talked about in that,
11 that charge I just gave you on trafficking is the question
12 of possession and it talks about either actual or
13 constructive possession, and let me tell you what the law
14 means by either actual or constructive possession. The
15 State must prove, beyond a reasonable doubt, that the
16 defendant knowingly or intentionally possessed cocaine.

17 Now, knowingly means with knowledge, consciously, not
18 by accident. Intentionally means willfully, intending the
19 result which occurs. Again, not accidentally or
20 involuntarily.

21 Now, intent can be shown, as I told you earlier talking
22 about criminal intent, by other facts and circumstances from
23 which you may reasonably infer intent. Again, by that, by
24 the, the evidence that we talked about earlier.

25 Now, to prove possession, the State must prove, beyond

1 a reasonable doubt, that the defendant both had the power
2 and the intent to control the disposition or use of the
3 cocaine. Therefore, possession can either be actual
4 possession or constructive possession.

5 Now, actual possession means that it was in the
6 physical custody of the defendant. In other words, I'm in
7 actual possession of this pen that I have in my hand because
8 it's in my actual physical possession. I'm holding it.
9 That's what is meant by actual possession.

10 Constructive possession means that the defendant had
11 dominion and control or the right to exercise dominion or
12 control over either the cocaine itself or the property on
13 which the cocaine was found. Mere presence at a scene where
14 drugs are found is not enough to prove possession, however.
15 Actual knowledge of the presence of the cocaine is strong
16 evidence of the defendant's intent to control its
17 disposition or use.

18 The defendant's knowledge and possession can, again,
19 can be inferred when a substance is found on property which
20 is under the defendant's control. However, this inference
21 is simply an evidentiary fact to be taken into consideration
22 by you along with all the other evidence in this case. You
23 give it the weight that you think that it should have.

24 Now, Mrs. Dunn, you're going to be the foreperson of
25 the jury. That means that you will be the person who will

1 be responsible to conduct the discussions of the jury,
2 preside over deliberations might be another way to look at
3 it. You also will be the person who will be communicating
4 with this Court if communication becomes necessary. That
5 means if, during the jury deliberations, they have a
6 question that they'd like to ask of me, it will be your job
7 just to write it down on a piece of paper, knock on the
8 door, hand it to the bailiff, and then submit it to me for
9 my consideration.

10 Now, I tell the jury that not every question that you
11 ask can I answer. I've already told you we have different
12 responsibilities. I can't enter in your decisions or
13 discussions concerning the facts in this case. I can answer
14 questions concerning my charge on the law. I can answer
15 questions concerning some questions about the evidence.

16 But I'm not asking you, Madam Forelay, to, in any way,
17 edit any question the jury may ask. You simply write it
18 down. I'll decide the appropriate answer. Also, there will
19 be a verdict form that I will give you. It will be
20 relatively simple. But once the jury has reached a
21 unanimous verdict, you'll record that verdict on the form,
22 sign the form, and submit it again by informing the bailiff
23 that a verdict has been reached.

24 Now, as I've told you, your verdict must be unanimous.
25 Each and every one of you must agree upon the verdict before

1 it becomes a verdict of the jury. That means all 12 of you
2 must agree on the verdict before it is recorded and
3 submitted to the Court.

4 I've gone over a lot of things with you. I have to get
5 with the attorneys and get the evidence together because the
6 evidence goes back to the jury room with you, and I want to
7 be sure what is properly gone into the record is submitted
8 to you. So, I've got some housekeeping matters to take up
9 before you actually begin your deliberations. I'm going to
10 ask you one more time to retire to the jury room.

11 Madam Forelay, don't allow any discussions to begin
12 until you come back to the courtroom and I give you your
13 final instructions.

14 You may retire to the jury room.

15 Thank you very much.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any objections to the charge from the
19 State?

20 SOLICITOR MCCARTY: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. THOMPSON: None, Your Honor.

23 THE COURT: All right. I'll ask you to step forward.
24 Gather the evidence and be sure that only properly admitted
25 evidence is submitted to the jury.

1 (Pause.)

2 THE COURT: And, Mr. Thompson, if you want to step up
3 I'll let you take a look at the verdict form. I'll ask him
4 to do that when he finishes. See if you have any objection
5 to the form I'll submit to the jury.

6 Mr. Bailiff, why don't you take that back there and
7 plug it up and be sure it's operating.

8 Is the tape in it?

9 SOLICITOR McCARTY: Yes, sir.

10 THE COURT: Just go ahead and plug it up. If they have
11 any questions, let them ask us about it.

12 You want to look at the verdict form?

13 SOLICITOR McCARTY: Certainly, sir.

14 THE COURT: All right. Let's bring the jury in.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. The record will reflect that
18 the jury has returned to the courtroom.

19 Mr. Bailiff, if you'll wait right up here please. Just
20 a second.

21 BAILIFF: Yes, sir.

22 THE COURT: I'm gonna pass over the verdict form that's
23 done, that's going to be in use for this case. Let me go
24 over that with you.

25 At the top you'll see that the, the name of the

1 Court -- I'll give you a second to get your glasses.

2 FORELADY: Thank you.

3 THE COURT: Uh-huh. (Affirmative).

4 You'll see at the top of the page it has the State,
5 county, and the Court that we're in, and then the caption of
6 the case against Mr. Falls. There is one question presented
7 and it states that we, the jury, unanimously find, as to the
8 indictment in this case, trafficking in cocaine, the
9 defendant, and the choices are not guilty or guilty. You'll
10 just put a check next in the line next to the appropriate
11 verdict once it's been reached, and once a unanimous verdict
12 has been reached, you'll then sign the form, knock on the
13 door, and, and tell the bailiff a verdict has been reached.

14 Do you understand the form, ma'am?

15 FORELADY: I do.

16 THE COURT: All right. I'm also going to pass to you
17 the indictment in the case. The indictment is the charge.
18 You can have that to take a look at that as well during the
19 deliberations.

20 Now, we've brought in the video viewing machine. The,
21 the CD is not in it. The little silver thing that says Coby
22 is the player for that. So, you'd insert it in that, turn
23 on the TV, and then push play or pause or whatever you
24 decide to do as far as operating it if you wish to view the,
25 the CD during your deliberations.

1 The other evidence will be coming back. I'll caution
2 you, don't open the, the cocaine or the substance that's in
3 the bag because obviously if that were to spill out or
4 whatever that would create a real problem for us. So, try
5 to view it through the bag. Don't try to open that. So, if
6 you need to view it, you're welcome to take a look at it
7 inside the bag.

8 All right. At this time I'm going to ask the jury to
9 retire.

10 Ma'am, you're the alternate. You remain seated. You
11 may retire and begin your deliberations at this time.

12 Thank you very much.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury and the alternate juror was dismissed
15 at this time.)

16 THE COURT: Any objections to my final instructions
17 from the State?

18 SOLICITOR MCCARTY: None, Your Honor. Thank you.

19 THE COURT: Any from the defense?

20 MR. THOMPSON: No, Your Honor.

21 THE COURT: All right. We'll be in recess in this case
22 until such time as a verdict is reached.

23 (WHEREUPON, the jury began deliberations at 10:17 and
24 returned with a question at 10:42.)

25 THE COURT: All right. We have questions from the jury

1 in the case. I need Mr. Thompson.

2 Mr. Thompson, we're gonna need your client back in the
3 courtroom.

4 THE COURT: All right.

5 (WHEREUPON, the defendant comes into the courtroom at
6 this time.)

7 THE COURT: All right. Is the State ready to go over
8 the questions of the jury?

9 SOLICITOR McCARTY: They are -- we are, Your Honor.

10 THE COURT: Defense ready?

11 MR. THOMPSON: Yes, Your Honor.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Sir, the forelady has to sit in that seat
16 right there. Thank you.

17 JUROR: Sorry.

18 THE COURT: That's all right.

19 All right. The record will reflect the jury has
20 returned to the courtroom.

21 I've received three questions from the jury. The first
22 is request details concerning the driver's side pocket
23 compartment including color of door. Need possible -- need
24 photo, if possible.

25 The second question, is there a center console.

1 Third question, are we correct that there is no
2 photographic evidence.

3 The first two questions I've explained to you. I can't
4 enter into your discussions concerning the facts in this
5 case. The evidence that's in the record is the evidence
6 that's in the record. If that information is not currently
7 in the record we can not supply it at this time. So,
8 there -- I can't answer those questions and those answers
9 can't be questioned, those questions can't be answered
10 unless those answers can be taken from the evidence that's
11 been presented.

12 It says are we correct there is no photographic
13 evidence. I can tell you I'm not aware of any photos that
14 went into the record, but the evidence, again, has been
15 submitted to you. You have the right to review it. But at
16 this stage of the proceedings we do not supplement the
17 record and do not add to the record. Whatever is in the
18 record is there, and you must decide the case based upon the
19 record that's in the case.

20 I'll ask you to retire to the jury room and continue
21 your deliberations.

22 Thank you very much.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Any objection from the State to my

1 responses?

2 SOLICITOR MCCARTY: No, Your Honor.

3 THE COURT: Any from the defense?

4 MR. THOMPSON: None, Your Honor.

5 THE COURT: All right. The questions will be made a
6 Court's Exhibit and part of the record.

7 (WHEREUPON, the note from the jury was marked as
8 Court's Exhibit No. 2 for identification purposes only at
9 this time.)

10 THE COURT: We'll remain in recess in this case until a
11 verdict is reach.

12 Thank you very much.

13 MR. THOMPSON: Thank you.

14 (WHEREUPON, the jury began deliberations again at 10:43
15 and returned with a verdict at 12:05.)

16 THE COURT: All right. I have been informed basically
17 that a verdict has been reached in this case.

18 Is the State ready to receive that verdict?

19 SOLICITOR MCCARTY: We are, Your Honor.

20 THE COURT: Defense ready?

21 MR. THOMPSON: Yes, Your Honor.

22 THE COURT: Bring the jury in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. The jury has returned to the

1 courtroom.

2 Madam Forelady, I'm informed a verdict has been
3 reached, is that correct?

4 FORELADY: It has, Your Honor.

5 THE COURT: If you'll pass the form to the bailiff for
6 me.

7 (Forelady complies.)

8 THE COURT: Thank you.

9 Madam Clerk, you may publish the verdict.

10 CLERK: In the State of South Carolina, the County of
11 Spartanburg, in General Sessions Court, Jeffrey Bernard
12 Falls, as to Indictment Number 2007-GS042-2111 for
13 trafficking cocaine, the verdict guilty. Signed by the
14 foreperson August the 11th, 2011.

15 Ladies and gentlemen of the jury, is this your verdict
16 and still your verdict, if so, please raise your right-hand.

17 (WHEREUPON, all jurors raise their hands.)

18 THE COURT: Thank you.

19 Anything further from the State before I release the
20 jury?

21 SOLICITOR MCCARTY: No, Your Honor. Thank you.

22 THE COURT: Anything further from the defense before we
23 release the jury?

24 MR. THOMPSON: None, Your Honor.

25 THE COURT: All right.

1 (WHEREUPON, the jury was dismissed at this time.)

2 THE COURT: All right, sir. You may approach the bar
3 right in front of where the microphone is.

4 All right. Mr. McCarty, I didn't bring my computer up.
5 I think the range of sentencing on this is?

6 SOLICITOR MCCARTY: According to the Legislature, Your
7 Honor, for the offense for 200 to 400 grams, it is a
8 straight 25 years. No part of which may be suspended or
9 probation granted. It does not offer a range, Your Honor.
10 It is a mandatory minimum term of imprisonment of 25 years.

11 THE COURT: And a fine I believe.

12 SOLICITOR MCCARTY: And a fine of \$100,000.

13 THE COURT: All right. Mr. Falls, you have been found
14 guilty by a jury of your peers.

15 Is there anything you'd like to say before I pass
16 sentence in this case?

17 DEFENDANT: No, Your Honor.

18 THE COURT: Anything, Mr. Thompson?

19 MR. THOMPSON: Your Honor, I'd just like to tell the
20 Court I appreciate your patience this week, and, and just
21 appreciation for Mr. McCarty and the troopers and yourself.

22 THE COURT: All right. Does your client claim any
23 credit for any time that he might of already served?

24 MR. THOMPSON: I think it was seven or eight days he,
25 he spent in the county jail.