

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2012-UP-348
(S.C. Ct. App. filed June 6, 2012)

RECEIVED

SEP 26 2012

S.C. Supreme Court

State of South Carolina,

Respondent,

v.

Jack Harrison, Jr.,

Petitioner.

APPENDIX

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

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

The State, Respondent,

v.

Jack Harrison, Jr., Appellant.

Appellate Case No. 2010-168007

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

Unpublished Opinion No. 2012-UP-348
Heard May 8, 2012 – Filed June 6, 2012

AFFIRMED

Jack B. Swerling of Columbia, Katherine Carruth Goode
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and Solicitor Donald V. Myers, of Lexington, for
Respondent.

PER CURIAM: Jack Harrison, Jr., was indicted for misrepresenting identity to a law enforcement officer, possession of marijuana, and possession with intent to distribute (PWID) methamphetamine. He pled guilty to the charge of misrepresenting his identity, and was convicted of the marijuana and methamphetamine charges. Harrison appeals asserting the trial court erred in (1) admitting evidence obtained as a result of a traffic stop because the basis of the stop was a ruse and the officers did not have reasonable suspicion or probable cause; (2) admitting the marijuana and methamphetamine evidence because the officers exceeded the appropriate parameters for a warrantless search; and (3) admitting the methamphetamine evidence because the State failed to establish a complete chain of custody. We affirm.

1. We find no error in the trial court's admission of evidence obtained as a result of the traffic stop. First, we note trial counsel did not argue to the trial court that the stop, being based upon the broken windshield, was an improper basis or was some type of ruse. We further note Harrison did not object to the trial court's ruling that the traffic stop provided an independent basis for the stop, such that a reasonable suspicion analysis for an investigatory stop was not necessary. Thus, it is questionable whether this argument is properly preserved. *See State v. Stahlnecker*, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (holding an objection must be made on a specific ground, and for an issue to be properly preserved it has to be raised to and ruled on by the trial court). Regardless, we find no error, as there is sufficient evidence that the traffic stop was proper based upon the officer's observation of a cracked windshield. *See State v. Banda*, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006) ("The decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."); *see also State v. Corley*, 392 S.C. 125, 126-27 n.2, 708 S.E.2d 217, 217-18 n.2 (2011) (*Corley II*) (noting, where officer observed certain actions by defendant raising officer's suspicion and causing officer to follow defendant in car, and officer initiated traffic stop after observing defendant failing to use a turn signal, the traffic violation served as an independent basis for the vehicle stop); *State v. Corley*, 383 S.C. 232, 240, 679 S.E.2d 187, 191-92 (Ct. App. 2009) (*Corley I*), *aff'd as modified*, 392 S.C. 125, 708 S.E.2d 217 (2011) (holding a minor traffic violation arrest would not be rendered invalid by the fact it was a "mere pretext for a narcotics search").

2. We find no error in the trial court's admission of the marijuana and methamphetamine evidence based on Harrison's argument the officers exceeded the appropriate parameters for a warrantless inventory search. First, we again find it questionable whether Harrison's appellate argument regarding the opening of

closed containers resulting from inventory searches and the requirement of a department policy on the matter, is preserved for review, as it is not clear that trial counsel raised this argument to the trial court. Even assuming, as Harrison contends, the specific grounds are apparent from the record, it is clear that the trial court did not rule on the issue of opening closed containers during inventory searches and the requirement of policies on the matter. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (holding, in order for an issue to be preserved for appellate review, it must have been *raised to and ruled upon* by the trial court; issues not so raised and ruled upon in the trial court will not be considered on appeal). Additionally, when trial counsel moved to suppress the drug evidence based upon the officers' failure to obtain a search warrant, and the trial court ruled that the can simply fell apart, thus indicating there was no search of the can, trial counsel did not argue against the court's ruling, but apparently accepted this basis for denying the motion to suppress. Trial counsel never argued to the trial court that the evidence did not support the court's determination that the can simply fell apart, nor did he argue that the can only fell apart because the officer improperly shook the can. Thus, these arguments made by Harrison on appeal are not preserved for review. *See State v. Patterson*, 324 S.C. 5, 16, 482 S.E.2d 760, 765 (1997) (noting an issue is not preserved for review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection). At any rate, we find the evidence in the record supports the trial court's ruling that the can simply fell apart, thereby revealing the drugs in question. *See State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010) (noting the admission or exclusion of evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion; an abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or are controlled by an error of law).

3. We find no error in the trial court's admission of the methamphetamine evidence based on Harrison's argument the State failed to establish a complete chain of custody of the substance from the time it was seized until it was analyzed. In regard to the argument concerning the four-month period the evidence was at SLED, the law provides a party offering fungible items such as drugs or blood samples into evidence must establish a complete chain of custody as far as practicable. *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). The police need not account for every hand-to-hand transfer of a fungible item; rather, it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until the time it is introduced at trial. *Id.* at 94, 708 S.E.2d at 754. As to Harrison's assertion the trial court abused its discretion in admitting the evidence based upon admittedly

inaccurate information presented by the State concerning the custody of the evidence on May 9 and 10, 2006, while in custody of officers with the Saluda County Sheriff's Office, we likewise find no error. Harrison contends there is inconsistency in the evidence as to who placed the item in the drop box and when, and the trial court therefore abused its discretion in admitting the evidence. This argument does not involve a missing link in the chain. Rather, it involves a discrepancy in regard to the evidence. "Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." *Id.* Whether the chain of custody has been established as far as practicable depends on the unique factual circumstances of each case. *Id.* "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be." *Id.* at 95, 708 S.E.2d at 755. Further, where the identity of persons handling a specimen is established, our courts have found evidence regarding its care goes only to the weight of the fungible item as credible evidence, and "[w]here there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility." *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001); *see also State v. Johnson*, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995) (holding, although a discrepancy existed as to the dates the evidence custodian received the drug evidence from the detective, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time, and a reconciliation of the discrepancy was not necessary to establish the chain of custody, but merely reflected upon the credibility of the evidence rather than its admissibility). Here, the identity of persons handling the evidence was established and there was no evidence presented to indicate the fungible item was not within the control of identifiable people during the entire time. The discrepancy in regard to the evidence did not render the drug evidence inadmissible, but reflected only on the credibility of the evidence. Accordingly, we find the trial court did not abuse its discretion in finding the chain of custody sufficient under the unique facts of this case.

For the foregoing reasons, Harrison's convictions are

AFFIRMED.

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

STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from Saluda County
Court of General Sessions
William P. Keesley, Circuit Court Judge

Case Nos.
2010-GS-41-070
2010-GS-41-367
2010-GS-41-368

State of South Carolina,

Respondent,

v.

Jack Harrison, Jr.,

Appellant

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, appellant, Jack Harrison, Jr., respectfully requests rehearing of his case, decided in unpublished opinion number 2012-UP-348, filed June 6, 2012. In this appeal, appellant challenged the admission of certain evidence seized from a vehicle appellant was driving, based on the illegality of the stop of the vehicle, the illegality of the search of a closed container found in the vehicle, and a deficient chain of custody. The Court of Appeals found no reversible error and affirmed. Appellant respectfully asks the Court to rehear this appeal, because of certain legal principles and evidence that the Court of Appeals overlooked or misapprehended, as set forth below.

I. Illegality of stop.

Appellant challenged the legality of the stop of the vehicle, because the police did not have a reasonable suspicion for an investigatory stop and because they did not have probable cause, or even a reasonable suspicion, for a traffic stop. The Court of Appeals questioned whether the second basis of this argument – the invalidity of the traffic stop based on an alleged broken windshield and as a ruse – was preserved for review.

The Court first noted that trial counsel did not argue the stop based on the alleged broken windshield was improper. Appellant submits the Court misapprehended the presentation of the issue in the court below. In the pre-trial hearing, defense counsel questioned the witnesses concerning the reason for the stop, and they acknowledged the vehicle would have been stopped without there having been a cracked windshield. Defense counsel's questions also addressed the nature of the allegedly cracked windshield. In argument of the motion, counsel argued the issue of reasonable suspicion for an investigatory stop but also cited *State v. Padgett*, 354 S.C. 268, 580 S.E.2d 159 (Ct. App. 2003), a case addressing the validity of a stop for a traffic offense. This citation of authority clearly put before the court the second prong of appellant's suppression argument. In ruling on the motion, the lower court indicated it did not have to reach the question whether there was reasonable suspicion for an investigatory stop, finding the cracked windshield supported a traffic stop.

All that is required for an issue to be preserved is that it be raised to and ruled on by the trial court. *Hubbard v. Rowe*, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939). Where the specific ground is not stated but is apparent from the context and it is clear the judge understands the ground, the issue is preserved. *State v. Sweet*, 342 S.C. 342, 347, 536

S.E.2d 91, 93 (Ct. App. 2000); *State v. Holliday*, 333 S.C. 332, 338-39, 509 S.E.2d 280, 283 (Ct. App. 1998). Here, the issue was raised by citation of authority that addressed the validity of a stop for a traffic violation, and the court clearly ruled on the issue.

The Court of Appeals also noted the defense did not object when the trial court ruled the traffic stop for a cracked windshield provided an independent basis apart from the investigatory stop. However, the rules of criminal procedure specifically precluded counsel's doing so: "Counsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced." Rule 18(a), SCRCrimP. The issue was raised and ruled upon. Nothing further was needed to preserve it.

On the merits, the Court of Appeals held the traffic stop was proper based on the officer's observation of a cracked windshield. The Court should grant rehearing of the issue, because the physical evidence and the testimony did not demonstrate a crack of such nature as would have constituted a traffic or equipment violation, under S.C. Code Ann. § 56-5-5000, pertaining to the condition of a windshield, or under S.C. Code Ann. §§ 56-5-4410 or 56-5-5310, pertaining to driving a vehicle in an unsafe condition or with equipment that is not in proper working order. Upon a finding that there was insufficient basis for a traffic stop, the Court should also reach the issue of the illegality of an investigatory stop under the circumstances of this case and suppress all the evidence obtained as a result of the stop.

II. Illegality of search of can found in vehicle.

Appellant also challenged the validity of the warrantless search of a Desenex can based on the law pertaining to the opening of closed containers in an inventory search. The Court of Appeals questioned whether this issue was preserved for review.

Appellant submits the Court again misapprehended the presentation of the issue in the court below. The Court should rehear the issue and find it preserved

The defense challenged the admission of the drugs found in the can on the basis that the officers did not obtain a warrant to open the can. This reference to the general warrant requirement was sufficient to preserve the issue for appeal. *Cf. State v. Weaverling*, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999) (an issue is preserved by reference to a general rule without greater specificity). Specific grounds are not required where the judge's comments demonstrate his awareness of the grounds. *See State v. Blalock*, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003). Moreover, the specific grounds were apparent from the record. *See* Rule 103(a)(1), SCRE; *Sweet*, 342 S.C. at 347, 536 S.E.2d at 93; *Holliday*, 333 S.C. at 338-39, 509 S.E.2d at 283.

At the conclusion of the testimony during the pre-trial hearing, the defense argued the illegality of the traffic stop (Issue 1). The court addressed the law applicable to the traffic stop but then moved on to the events that occurred after the stop, before the defense had made its motion to suppress the evidence resulting from the warrantless search of the can. The court discussed the law applicable to inventory searches and closed containers, including case law that deals with not being able to open closed containers unless there is an established policy concerning what can be opened and what cannot be opened during an inventory search. Later, the defense moved to suppress the evidence from the can, specifically referred to what the court had already discussed, and asked the court to suppress the evidence based on the officers' failure to obtain a search warrant before opening the can. The court heard further argument from the state concerning the opening of the can, then denied the motion. The court stated, "I will say

I'm a little bit troubled by it, but that was the testimony that basically they shook it, it was obviously something wrong with it and the thing just basically fell apart and there the drugs were." In the context shown by the record, the grounds for suppression of evidence obtained from the can were clear. The Court of Appeals should rehear the issue and find it preserved for review.

With respect to the merits of the argument, the Court of Appeals noted that, when the court ruled the can simply fell apart, trial counsel did not argue against the court's ruling but apparently accepted this basis for denial of the motion to suppress, did not challenge the evidentiary basis for this ruling, and did not argue the can only fell apart because the officer improperly shook it. The Court should rehear this finding, because counsel was precluded by the rules of criminal procedure from further arguing the issue once the trial court had ruled. *See* Rule 18(a), SCRCrimP.

On the merits, the Court of Appeals held the evidence in the record supports the trial court's ruling that the can simply fell apart. The Court should rehear the issue because of the clear testimony of one officer that he "shook" the can and of another officer that "we went to messing with it and we opened up the bottom of it." Their affirmative acts, which resulted in the can falling apart, constituted a search. For the reasons fully argued in appellant's brief and reply brief and the law cited therein with respect to opening of closed containers during an inventory search, a warrant was required.

III. Chain of custody.

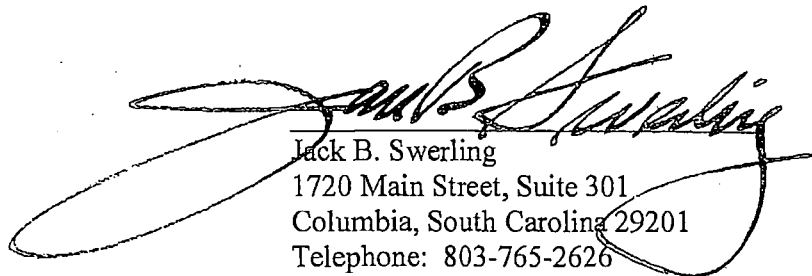
Appellant challenged the admission of evidence related to a substance alleged to be methamphetamine, based on the state's failure to establish a complete chain of

custody. In addition to a gap in the chain similar to the one addressed in *State v. Hatcher*, 384 S.C. 372, 681 S.E.2d 925 (Ct. App. 2009) (reversed by the Supreme Court, 392 S.C. 86, 708 S.E.2d 750 (2011), after the filing of the initial brief in this case), appellant raised a separate defect in the chain of custody – discrepancies with respect to the identity of the handlers of the alleged drugs between the time the drugs were obtained from the vehicle and the time they were placed in the evidence drop box, as well as when that occurred.

The Court of Appeals found the “inconsistency” in the evidence does not involve a missing link in the chain and found the identity of the persons handling the evidence was established. The Court misapprehended the evidence in making this finding. The identity of the persons handling the evidence was not established – the evidence as to who handled the alleged drugs was in fact contradictory. This contradiction resulted in a missing link, not merely a weak link. The Court cited *State v. Carter*, 344 S.C. 419, 544 S.E.2d 835 (2001), and *State v. Johnson*, 318 S.C. 194, 456 S.E.2d 442 (Ct. App. 1995). Those cases are factually different and did not involve the circumstance presented here – contradictory sworn evidence from two officers, each of whom claimed it was he who took the evidence into his physical custody and later placed it in the evidence drop box. The Court should rehear this issue and find the state did not prove a sufficient chain of custody of the evidence to warrant its admission into evidence.

For all these reasons, and based on the authorities previously cited in appellant’s brief and reply brief, the Court should rehear this appeal, reverse the trial court’s failure to suppress the evidence illegally obtained and improperly admitted into evidence, and grant appellant a new trial.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Jack B. Swerling', is written over the printed name and address of the signatory.

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Attorneys for Appellant

June 20, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from Saluda County
Court of General Sessions
William P. Keesley, Circuit Court Judge

Case Nos.
2010-GS-41-070
2010-GS-41-367
2010-GS-41-368

State of South Carolina,

Respondent,

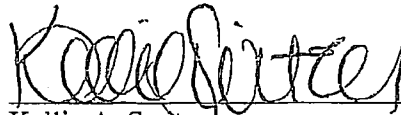
v.

Jack Harrison, Jr.,

Appellant

PROOF OF SERVICE

I certify that I have served appellant's petition for rehearing upon respondent, by mailing a copy, postage prepaid, to counsel of record, Assistant Attorney General William M. Blich, Jr., Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211, on June 20, 2012.



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The South Carolina Court of Appeals

The State, Respondent,

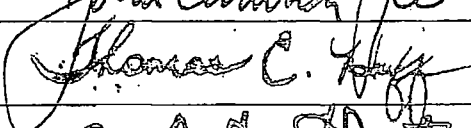
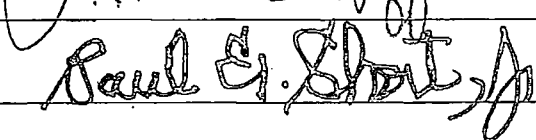
v.

Jack Harrison, Jr., Appellant.

Appellate Case No. 2010-168007

ORDER

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

	C.J.
	J.
	J.

Columbia, South Carolina

cc:

Jack B. Swerling
William M. Blitch, Jr.
Donald V. Myers
Katherine Carruth Goode
John W. McIntosh
Salley W. Elliott
Alan McCrory Wilson

FILED

27 Aug 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Saluda County
Court of General Sessions
William P. Keesley, Circuit Court Judge

Case Nos.
2010-GS-41-070
2010-GS-41-367
2010-GS-41-368

State of South Carolina,

Respondent,

v.

Jack Harrison, Jr.,

Appellant

RECORD ON APPEAL

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WITNESSES

BYRD

SCSO

ARREST WARRANT NUMBER

57382CW

ACTION OF GRAND JURY

TRUE BILL

JAN 11 2010

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-41- 70

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JANUARY TERM 2010

THE STATE

vs.

JACK HARRISON, JR.

CDR# 0659

Indictment for

POSSESSION OF MARIJUANA

DONALD V. MYERS, SOLICITOR

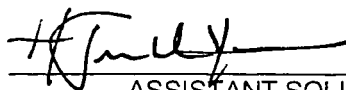
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
POSSESSION OF MARIJUANA

At a Court of General Sessions, convened on January 11, 2010 the Grand Jurors of Saluda County present upon their oath:

That JACK HARRISON, JR., did in Saluda County on or about May 9, 2006, knowingly and intentionally possess Marijuana, a controlled substance, in violation of § 44-53-370(C) of the South Carolina Code of Laws, (1976), as amended, such possession not having been authorized by law, with penalties provided for in 44-53-370(d)(4) of the South Carolina Code of Laws, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

BYRD

SCSO

DOCKET NO. 2010-GS-41- 367

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JULY TERM 2010

THE STATE

vs.

JACK HARRSION, JR.

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

Royane R. Maffett
Foreperson of Grand Jury
Date: 7/14/10

VERDICT

TRUE BILL

JUL 14 2010

Foreperson of Petit Jury
Date:

CDR#1223

Indictment for

MISREPRESENTING IDENTITY TO A
LAW ENFORCEMENT OFFICER

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
MISREPRESENTING IDENTITY TO
A LAW ENFORCEMENT OFFICER

At a Court of General Sessions, convened on July 14, 2010 the Grand Jurors of Saluda County present upon their oath:

That JACK HARRISON, JR., did in Saluda County on or about May 9, 2006, unlawfully and knowingly misrepresent his identification to a law enforcement officer during a traffic stop and/or for the purpose of avoiding arrest and/or criminal charges in violation Section 16-17-725 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

BYRD

SCSO

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

Royan Maffett
Foreperson of Grand Jury

Date: 7/14/10

VERDICT

TRUE BILL

JUL 14 2010

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-41- 368

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JULY TERM 2010

THE STATE

vs.

JACK HARRSION, JR.

CDR#3039

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE**

DONALD V. MYERS, SOLICITOR

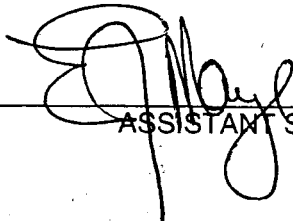
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
POSSESSION WITH INTENT TO DISTRIBUTE
METHAMPHETAMINE

At a Court of General Sessions, convened on July 14, 2010 the Grand Jurors of Saluda County present upon their oath:

That JACK HARRISON, JR., did in Saluda County on or about May 9, 2006, knowingly and intentionally possess with intent to distribute a quantity of Methamphetamine, a controlled substance, in violation of §44-53-375(C), of the South Carolina Code of Laws, 1976, as amended, such possession not having been authorized by law, with penalties provided for in §44-53-375(B)(3) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Saluda
STATE

VS.

Mr. Jack Harrison Jr.

INDICTMENT/CASE#: 2010-GS-41-70

AW#: 57382CW

Date of Offense: 5/9/2006

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0188 0182AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: POSSESSION OF MARIJUANA (3rd OR SUBSEQUENT OFFENSE)In violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0182☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections. Def. HAS SERVED PRETRIAL DETENTION FROM 5/9/06 - 11/12/09 (WAS)
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-286 (DUI Breath Test) \$25 \$ _____
\$47.12 (Public Def/Prob) \$500 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
\$14-1-213 (Drug Court Surcharge) \$100 \$ 150.00
\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
\$90.7 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 6.90
TOTAL \$ 236.90Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender FundOther: Pay court costs @
\$50/mo beginning 120 days
after release from prison☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk Doris B. Holmes
Court Reporter: Stacy Sheppard

SCCA/217 (11/2009)

Presiding Judge Will P. Harding
Judge Code: 2050
Sentence Date July 21, 2010

STATE OF SOUTH CAROLINA

COUNTY OF Saluda

STATE

VS.

Mr. Jack Harrison Jr.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADS

TO:

In violation of §

of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ \$17-25-45

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE the Defendant is committed to the

☐ State Department of Corrections☒ County Detention Center,for a determinate term of 30 days days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of

_____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for

_____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

\$14-1-213 (Drug Court Surcharge) \$150 \$ _____

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

\$44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date

STATE OF SOUTH CAROLINA

COUNTY OF Saluda

STATE

VS.

Mr. Jack Harrison Jr.

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: PWITD METHAMPHETAMINE (3RD OR SUB. OFFENSE)

In violation of § of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT TIME FROM 5/9/2006 - 11/12/2009, PLUS 2 DAYS. WAW☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00\$14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

\$44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ 6.90TOTAL \$ 236.90Clerk of Court/Deputy Clerk: Chris WilliamsCourt Reporter: Stacy Sheppard

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2010-GS-41-368

A/W#:

DIRECT

Date of Offense:

5/6/2006

S.C. Code §:

44-53-0375(B)(3)

CDR Code #:

3039

SENTENCE SHEET

Other: Pay Court Costs @ \$75/mo.beginning 120 days after releasefrom prison☐ Conditional Discharge, §44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge William P. HardingJudge Code: 2050Sentence Date July 21, 2010

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF SALUDA

3
4
5 STATE)
6)
7) V.) TRANSCRIPT OF RECORD
8) 10-GS-41-070
9) JACK HARRISON, JR.,) 10-GS-41-367
10) 10-GS-41-368
11)
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25)

JULY 20 - 21, 2010
SALUDA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

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

ERVIN J. MAYE, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

ROBERT T. WILLIAMS, SR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

STACY L. SHEPPARD, RPR
CIRCUIT COURT REPORTER

1 DONOVAN SHEALY,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MAYE:

5 Q Investigator Shealy, just state your name for
6 the record.

7 A Donovan Shealy.

8 Q Investigator Shealy, let me direct your
9 attention for the purposes of this hearing to
10 Tuesday, May 9th, 2006. Did you have an occasion to
11 respond to a call about -- or multiple calls that
12 y'all received from the area off of Highway 391 in
13 between the traffic circle and -- the traffic circle
14 here in Saluda County and Batesburg-Leesville? Did
15 you have an occasion to respond to complaints of
16 someone trying to do a paving scam at or near the
17 Delmar School area? And describe the circumstances
18 upon you going out there and what happened.

19 A Yes, I did. I was working road patrol at that
20 time and we were dispatched saying we'd had several
21 complaints about a person came to -- coming to
22 residents out there and wanting to receive money and
23 claimed that he would be doing some paving in the
24 area. So I was the first officer on the scene.

25 Q Where was he claiming that he was doing the

1 paving?

2 A Up and down the 391 area is where the variety
3 of calls came from.

4 Q Were they doing any paving on 391 there where
5 you --

6 A No, that's my --

7 Q -- patrol at?

8 A Right. That's my hometown area and I was up
9 and down through that area anyway. So after the
10 call came in, my response time wasn't but a few
11 minutes.

12 Q What was the individual trying to obtain when
13 he was telling them that he was doing the paving?
14 What was he trying to get from the individuals?

15 A The calls came in that he was wanting money up
16 front. And he had another crew down the road, that
17 he would come and get them to come by at the end of
18 the day when they got done to do the paving if they
19 would give him money.

20 Q The claims were paving on 391?

21 A Right.

22 Q At the time that you went there, had y'all been
23 up and down or had you been up and down 391 that
24 day, was there any paving going on there?

25 A Right. I --

1 Q Did you know that at that time?

2 A Right. I patrol that area regularly since it's
3 -- no paving, didn't see any paving of any kind.

4 Q Okay. What happened when you got there? What
5 did you find when you got there on the scene?

6 A I met with an elderly lady, Ms. Novalee Nye and
7 the Brights. They live right across the road from
8 Ms. Nye. And Ms. Nye had give me a business card
9 and said the individual, and I think she might have
10 said it was a white vehicle, had been at her house
11 earlier and said that he wanted money. He kept
12 saying \$700. I think she said, he went down to
13 \$600. It finally got down to \$500. And she give me
14 a business card with his number on it and said if
15 she changed her mind, just give her (sic) a call
16 back and he'd be in the area and he'd come on back
17 and do the paving.

18 Q So at the time that you gathered that
19 information from her, you knew that they were not
20 doing paving. This individual was trying to obtain
21 money in advance up front from these individuals?

22 A Right. That's the way the calls came in.

23 Q Okay. What did you do on the basis of the
24 complaints? Did y'all receive more than one
25 complaint in that area?

1 A I think that maybe one even came in from
2 Batesburg and got transferred over to us, but, yeah,
3 it was several complaints from that area.

4 Q Okay. What did you do to investigate once you
5 received that information about the individual
6 trying to obtain money purporting to be paving on
7 391?

8 A I talked with Ms. Nye and she give me a pretty
9 good description of the vehicle, a pretty good
10 description of the individual and said he had on a
11 yellow vest, he was real clean. And she gave me
12 that business card, that was the one thing. And I
13 got to thinking, I'm like, well, I got a phone
14 number, let me just call and say I'm her grandson
15 and see if this individual would come back.

16 Q Okay. Let me show you this item right here.

17 (State's Exhibit Number 1, business card,
18 was marked for identification.)

19 Q Let me show you what's been marked State's 1
20 for I.D. Is that the business card that you got
21 from Ms. Nye that she got from the individual?

22 A That's correct. That's it.

23 Q What did you do -- what was the number that's
24 on there? What did you do with that number on the
25 business card?

1 A I called this 404 number, area code
2 [REDACTED] I guess, it's 42 or 92. I believe it's
3 a four. I called it off my phone.
4 Q Off your cell phone?
5 A County phone.
6 Q What happened then? What happened next?
7 A Talked with a man and he said -- I told him I
8 was Ms. Nye's grandson, that he'd just been to her
9 residence and I told him I had the money. I handled
10 her money and I handled her affairs and come on back
11 down and show me what he had and we'd discuss it.
12 Q So what happened next? How long was it --
13 A I think he said he was up at the traffic circle
14 at the convenience store at the traffic circle or
15 something and he'd be right on back down.
16 Q Okay. What happened next?
17 A A short time later we were talking with the
18 Brights, Mr. Hiriam and Ms. Joyce, and Ms. Nye and
19 the vehicle, a vehicle slowed down, a white Ford
20 explorer slowed down. It had some yellow or
21 orangish writing stickers on the side of it. And
22 the Brights said, Right there goes the vehicle. Mr.
23 Hiriam said, That's the vehicle right there.
24 Q So you had a positive I.D. of that being the
25 same vehicle, the individual that had come trying to

1 obtain money earlier?

2 A Right, from the -- from Mr. Bright.

3 (State's Exhibit Numbers 2 - 7, photographs,
4 were marked for identification.)

5 Q Let me show you all of these that have been
6 marked collectively as State's 2 through 7. Are
7 those the photographs of the vehicle that was I.D.'d
8 by the individuals there at the scene, the Brights
9 and Ms. Nye, as being the vehicle that had just been
10 there?

11 A That's correct.

12 Q What happened next?

13 A I think it was myself, I...

14 Q What happened when the vehicle got there back
15 to the residence? Did the vehicle pull up in the
16 yard or what happened?

17 A No. It slowed down and acted as if it was
18 going to turn. And our vehicles are visible from
19 the road, so as it got there and saw our vehicles,
20 it kind of sped up and went on down the road.

21 Q Towards where?

22 A Towards Batesburg.

23 Q What did you do once the vehicle did not stop
24 and turn in and you had an I.D. on --

25 A I told the Brights and Ms. Nye I would be right

1 back. I was going to go after the vehicle and see
2 if we couldn't pull it over to (sic) our
3 identification purposes, but I also remembered that
4 I had Deputy Byrd in the area patrolling, also.

5 Q So what did you do and who did you notify?

6 A I took off and left. And I notified Deputy
7 Byrd to be on the lookout for this vehicle and it's
8 fitting the description that the Brights had just
9 give me.

10 Q So what happened?

11 A Deputy Byrd ended up meeting the vehicle and
12 told me that he was going to pull it over, he had
13 probable cause because it had a shattered windshield
14 on the front. And I was like, go ahead, I'm right
15 behind it, I'll be there shortly. So he pulled the
16 vehicle --

17 Q What happened next?

18 A He pulled the vehicle over and asked for I.D.s,
19 and turned out that the man -- fellow had several
20 I.D.s, different driver's license and I think a
21 social security card and come back with two
22 different names on it. And we determined that the
23 man, Jack Harrison, was wanted.

24 Q Okay. All right. Were -- how long afterwards
25 -- who initiated -- who actually did the stop?

1 A Deputy Byrd done the stop.

2 Q Did he have Mr. Riley, the defendant in this
3 case -- Mr. Harrison, excuse me, did he have Mr.
4 Harrison actually stopped when you pulled up there?

5 A Yes. He had already performed the traffic
6 stop.

7 Q Okay. Were you there when he placed him under
8 arrest and inventoried the vehicle?

9 A Yes, I was on the scene.

10 (State's Exhibit Numbers 8 and 9,
11 identification cards, were marked for
12 identification.)

13 Q Let me show you State's 8. Is that one of the
14 I.D.s, is that the one he initially gave y'all?

15 A I think that's the one he initially gave.

16 Q What's the name?

17 A Jimmy Jude Riley, it's a Georgia identification
18 card.

19 Q And then show you State's 9. What's the name
20 that's on that one?

21 A This one is a Georgia identification card,
22 also. It says, Jack Harrison, Jr.

23 Q Can you see the pictures? Are the pictures the
24 same individual?

25 A Seems to be, yes, sir.

1 Q Okay. Let me ask you this. Did you also
2 retrieve from the vehicle --

3 (State's Exhibit Number 10, contract, was
4 marked for identification.)

5 Q -- marked as State's 10 for I.D. here, did you
6 retrieve some sort of contract from the vehicle as
7 well with Ms. Nye's name on it?

8 A Yes, sir, that came out of the vehicle, also.

9 Q Whose name is on there handwritten in the name
10 of the contract?

11 A It's got, Customer Novalee Nye.

12 Q And does it have the address there, the area
13 where you responded, the initial complaint and all?

14 A That's her house, [REDACTED]
15 [REDACTED]

16 Q What other items did y'all seize there pursuant
17 to -- did y'all tow the vehicle?

18 A Yes, sir, the vehicle was towed.

19 Q Did y'all perform a search pursuant to an
20 inventory of the vehicle prior to towing it away?

21 A Right.

22 Q Is that department policy?

23 A Right.

24 Q Prior to towing a vehicle, do y'all always
25 inventory the contents?

1 **A** Right.

2 **Q** Was he under arrest at the time that y'all
3 inventoried the vehicle and were having it towed
4 away?

5 **A** Right.

6 (State's Exhibit Numbers 11 - 15 were marked
7 for identification.)

8 **Q** Let me show you State's 15 and 14 and ask you
9 if those fairly and accurately reflect the interior
10 of the vehicle Mr. Harrison was operating that y'all
11 had stopped there, that y'all were inventorying
12 pursuant to him being arrested and the vehicle being
13 towed?

14 **A** Right. These were taken inside of the
15 Explorer.

16 **Q** All right. Is there a bottle of some
17 description? And describe to the Court what that
18 bottle was there and what's significant about it.

19 **A** It's a Desenex bottle. It's a yellow bottle.
20 And I don't think we thought a whole lot about it.
21 I believe it was Deputy Byrd, we happened to shake
22 it and we shook it and it didn't sound like liquid
23 or anything in it. So we went to messing with it
24 and we opened up the bottom of it and found a white
25 crystal like substance in it that turned out to be

1 crystal meth.

2 Q So it was a false bottom in it?

3 A Right, it had a false contain --

4 Q Was it a real spray container like would
5 contain Desenex --

6 A It looks like it on the top, but it has that
7 fake compartment like in the bottom.

8 Q So it was made to have a hidden compartment?

9 A Right.

10 Q Let me show you what's been marked State's 11.
11 Is that the contents from the Desenex bottle?

12 A That's correct.

13 Q Okay. What all else is in there that you can
14 see in that? Was that ceased contemporaneous there?

15 A Right. It seems to be a smoking pipe, glass
16 smoking pipe and tube. It's one empty baggy with
17 white residue and then it's another baggy with the
18 crystal substance, meth looking substance.

19 Q Let me show you State's 13. Did you also
20 retrieve that from the inventory of the vehicle as
21 well, 13?

22 A Right.

23 Q What is that substance or what does it appear
24 to be?

25 A Appears to be marijuana and a rolling paper and

1 might be a piece of like a hand-rolled cigar in it.

2 Q And State's 12?

3 A Rolling papers and -- cigarette rolling papers.

4 Q Were all of those items seized there pursuant
5 to the inventory of the vehicle?

6 A Yes.

7 Q Were you present as all of those items were
8 found pursuant to that inventory? Were you with
9 Deputy Byrd while they were doing all of that?

10 A I was on the scene. I don't think I was
11 actually the one that pulled them out, but, yeah, I
12 was on the scene.

13 Q But you were present while all of that was
14 taken?

15 A I was present, yes, sir.

16 MR. MAYE: Answer any questions the defense has
17 for you --

18 Q Let me ask you this. This is a silly question
19 for the purposes of this, but what county is all of
20 this taking place in?

21 A Saluda County.

22 MR. MAYE: Okay. Go ahead.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q Officer Shealy, to clarify in my own mind as I

1 understand what you said is that there were some
2 phone calls made to the Saluda dispatch about some
3 gentleman who was offering some sort of paving
4 service. And I -- and Mr. Ervin's questioning to
5 you, he characterized them as complaints. Did you
6 get the names of anyone who actually filed a
7 complaint about the paving services?

8 A It might be on our call report where our
9 dispatchers took down.

10 Q To your knowledge, were there any complaints
11 actually filed?

12 A Yes, sir. It was several calls made to our
13 dispatch. And I think I testified maybe even one
14 got transferred over from the Batesburg Police
15 Department over to us.

16 Q Do you know the names of any of the persons who
17 filed the complaint?

18 A One of them came from Ms. Bowers, she's an
19 elderly lady, I think, off of Beulah Road, I
20 believe.

21 Q And when did she say that my client took money
22 and didn't do services?

23 A I don't know if we actually went to her house
24 or not, but the same day from my understanding.

25 Q So you're saying that he did go to her house,

1 take money from her?

2 A No, he didn't take money. He went to her
3 house.

4 Q All right. Well, let me look at this contract
5 which you say that was found in the car.

6 A Right.

7 Q This contract doesn't indicate that there was
8 any type of money which was taken from any of the
9 customers, does it?

10 A It doesn't say any money was taken. It's got
11 some prices and some stuff marked out where some
12 negotiation had apparently took place.

13 Q And as a matter of fact, it's just an offer to
14 do work, isn't it?

15 A Um...

16 Q There's no contract? Two parties didn't sign
17 that, that's just a piece of paper --

18 A No, it's not signed by two parties, no, sir.

19 Q All right. So it's an offer to do work?

20 A Right.

21 Q All right. Now, throughout your entire -- did
22 you find any excess money in the vehicle or any
23 contracts which were signed which indicated that my
24 client took any money from anyone?

25 A We found \$1659 in the vehicle or either on

1 Mr. Harrison's person.

2 Q All right. And did you return that money to
3 the persons who were claiming that they were out the
4 money?

5 A No. We held on to it because of the drug
6 charges.

7 Q So which individuals did my client take money
8 from who was actually out the money?

9 A I can't say as he actually took any money.

10 Q All right. Now, so essentially what you have
11 described is you've described an individual who has
12 offered services, who's gone by to offer services,
13 and you can't testify that he took money from
14 anyone, pulled any type of fraud or flimflam on
15 anyone, can you?

16 A He didn't actually receive money, no.

17 Q All right. So he hadn't violated any law then?

18 A Being suspicious and up and down the road in
19 the area and scaring Ms. Nye. She was about to the
20 point of tears when I made contact with her.

21 Q And he was suspicious because he came by her
22 house and offered to pave her road; is that correct?

23 A She picked up on it and I called and he
24 returned back. And we pulled him over and he's got
25 false I.D.s and dope in the car and everything else,

1 pretty much fits the description of a suspicious
2 person to me.

3 Q Well, all of that was after you did the
4 searching, wasn't it?

5 A Right.

6 Q So he didn't become suspicious until after
7 you'd done all of the searching?

8 A Other than the fact there wasn't no paving
9 going on in the area.

10 Q Well, he was the beginning part of the paving,
11 wasn't he?

12 A I don't know what job title --

13 Q Paving has to begin with one job, doesn't it?

14 A I don't know what job title he had in his
15 little crew that he was running. I don't know if
16 he's the beginner --

17 Q Excuse me, I'm sorry. Before you do any -- to
18 say there's paving in the area, you have to do the
19 first paving job, don't you?

20 A Well, I mean, like you said right here, we've
21 got a contract, he might not have started it yet.

22 Q So he was the beginning part of the paving?

23 A I would say he's the contact person, yes.

24 Q As I understand it, you didn't stop the
25 vehicle, did you?

1 A No, sir.

2 Q It was some other individual who stopped the
3 vehicle. It'd be Officer Byrd here?

4 A That's correct.

5 Q So when you pulled up, the vehicle was already
6 stopped, had already been stopped by some other
7 officer; is that correct?

8 A That's correct.

9 Q So you didn't actually make the stop?

10 A No.

11 Q And you didn't make the search?

12 A I helped search the vehicle. I don't think --
13 I wasn't the seizing officer on the drugs and money.

14 Q I'm sorry. I thought your testimony on direct
15 examination was that you were on the scene, but some
16 other officer found the items that we've referred to
17 that have been marked into evidence?

18 A That's what I'm saying, I was on the scene,
19 yeah.

20 Q Well, how many people were on the scene? The
21 wrecker driver was on the scene, wasn't he?

22 A That's correct.

23 Q But he didn't actually find the drugs, did he?

24 A No.

25 Q So the mere fact that you're on the scene

1 doesn't mean that you found the drugs?

2 A That's correct.

3 Q Okay. Now, in these photographs which were
4 taken of the vehicle, it appears that the
5 photographs were taken from different cameras; is
6 that correct?

7 A That's probably so, yeah. That's a Polaroid, I
8 know that. And these were probably taken and
9 printed out.

10 Q Do you know who took the pictures of the
11 vehicles?

12 A I don't really recall. I know I had a Polaroid
13 camera at the time so it would be very possible I
14 may have taken them.

15 Q Can you not look at these pictures and tell me
16 who took these pictures of the vehicle?

17 A I don't know who took them right off.

18 Q Don't y'all mark that information in an
19 investigative file when you take pictures of
20 something?

21 A We put in the file that pictures have been
22 taken, but we don't necessarily put who took the
23 pictures.

24 Q I want you to look at each and every one of
25 those photographs of that vehicle where the picture

1 was taken and point out the broken windshield or the
2 shattered windshield which you've referred to?

3 A It's on the left-hand side, the passenger side
4 of the vehicle.

5 Q And will you point it out and show it to the
6 Judge?

7 A I can point it out and show it to the area. I
8 mean, me knowing, I can tell where it's at, but it
9 was right in that area (indicating). He might can
10 pick up on it. It's got a glare on it. It's
11 shattered here and it spread across on the bottom.

12 Q You would agree that the picture doesn't show
13 any kind of shattered windshield, does it?

14 A It's not a very accurate picture of a shattered
15 windshield, no, sir.

16 Q Let's just be honest, you weren't -- y'all
17 weren't stopping him because you thought he might
18 have had a scratch on his windshield. Y'all were
19 stopping him because you thought he might be
20 involved in some sort of paving scam?

21 A I was stopping him to identify him, right.

22 Q Because you thought he was involved in a paving
23 scam?

24 A To obtain more information on this individual.

25 Q And as it turns out, he wasn't involved in a

1 paving scam. You have no evidence that he has
2 violated any law in regards to a paving scam?

3 A I have all of the evidence, I mean, puts him at
4 the location and then I -- of the residence of the
5 complainant. I've got an 80 something year old lady
6 almost in tears, I'm most certainly going to try to
7 protect her.

8 Q Did he harm her in any way? Did he hit her?

9 A No, he didn't hit her.

10 Q Did he force his way into her residence?

11 A He didn't do that, but he kept negotiating her
12 on price and everything else.

13 Q Are you saying that because of her age,
14 contractors should not deal with elderly people is
15 that what you're saying?

16 A I ain't saying that. He shouldn't keep coming
17 back. She told him no, I mean -- and then keep
18 coming back and harassing people riding up and down
19 the road.

20 Q How many times did he come back and talk to
21 her?

22 A He came back when I called. And he'd been down
23 the road to another elderly lady, the Bowers lady,
24 who's, in fact, too disabled to be here today.
25 She's 90 something years old.

1 **Q** You can't say that he ever came back to either
2 one of these residences from the first time that he
3 went there, can you?

4 **A** Not other than when I called him and he came
5 back down the road.

6 **MR. WILLIAMS:** That's all the questions that I
7 have, Your Honor.

8 **THE COURT:** Redirect.

9 **MR. MAYE:** Nothing else -- well, I have one
10 thing.

11 REDIRECT EXAMINATION

12 BY MR. MAYE:

13 **Q** Investigator Shealy, at the time that you
14 initiated that, you believed he had given false
15 information to her regarding conducting and carrying
16 out paving in the area, did you not?

17 **A** That's correct.

18 **Q** At the time?

19 **A** Yes, sir.

20 **Q** And you had that in conjunction with all of the
21 information that you gathered from Ms. Nye at the
22 time?

23 **A** Right.

24 **Q** And the vehicle did have a broken windshield
25 that day, you observed that?

1 **A** Right.

2 **Q** Still does, doesn't it?

3 **A** Still does.

4 **Q** You've got in evidence here into the impound,
5 in your impound --

6 **A** In our impound yard.

7 **MR. MAYE:** Okay. Nothing else.

8 **THE COURT:** Recross.

9 **MR. WILLIAMS:** No questions on recross, Your
10 Honor.

11 **THE COURT:** Thank you. You may step down.

12 Next witness.

13 **MR. MAYE:** Investigator Stephen Byrd.

14 STEPHEN BYRD,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MAYE:

18 **Q** Investigator Byrd, let me direct your attention
19 back -- you're employed where -- state your name for
20 the record.

21 **A** Stephen Byrd. I'm employed at the Saluda
22 County Sheriff's Office.

23 **Q** Where were you working May 9th, 2006 or what
24 was your involvement in this case?

25 **A** Highway 391. We got a call through dispatch

1 that somebody was at the victim's residence or the
2 complainant's residence trying to go through with a
3 paving scam they thought.

4 Q Okay. But the information that you would have
5 is they believed that they were trying to scam them
6 in relation to paving?

7 A Yes, sir.

8 Q Okay. So when did you first become involved in
9 this and when did you encounter the defendant in
10 this case, Mr. Harrison? What were the
11 circumstances upon you getting there?

12 A Captain Shealy gave a description of the
13 vehicle. I met the vehicle with a cracked
14 windshield.

15 Q Okay. Now, where were you? Which direction
16 were you traveling, where were you coming on 391?

17 A I was on 391 headed from Batesburg toward the
18 traffic circle, that's the direction. I met it past
19 Holly Ferry Road and 391, turned around on him,
20 advised Captain Shealy what I was doing and what I
21 was stopping him for and then conducted a traffic
22 stop.

23 Q When you met the vehicle, what got your
24 attention when you met the vehicle?

25 A Great big 'ol huge starburst windshield on the

1 passenger side.

2 Q So you observed that the vehicle had a busted
3 windshield on it?

4 A Yes, sir.

5 Q Did that give you a basis to conduct a stop
6 independent of any other information that you had?

7 A Yes, sir, absolutely.

8 Q Did you, in fact, when you met this vehicle
9 fitting this description that you saw had a busted
10 windshield, did you, in fact, initiate a traffic
11 stop?

12 A Yes, sir.

13 Q Okay. What happened when you initiated the
14 traffic stop, who did you encounter?

15 A Mr. Harrison, I encountered him. He gave me a
16 driver's license suspended, got another driver's
17 license -- well, I.D. --

18 Q Which one did he give you to start with? Let
19 me show you two licenses here or two -- they're not
20 licenses, but Georgia I.D. cards, 8 and 9, which one
21 did he give you first and who did he identify
22 himself as initially when you stopped him?

23 A I would have to look at the run sheet to be
24 verified -- to be sure which one I ran first. I'm
25 not because they had to run it...

1 Q Did he at first give you a false identification
2 other than Harrison?

3 A Yes, sir.

4 Q What is that name that he gave you?

5 A Jimmy Jude Riley.

6 Q So he first identified himself in a false
7 fashion?

8 A Yes.

9 Q Gave you a false I.D. card. Which one is that
10 that's got the name Riley on it?

11 A Yes, sir.

12 Q Which number is that that has the name Riley
13 that he initially gave you?

14 A It's going to be Georgia I.D. [REDACTED]

15 Q Turn it over, the State's I.D. number on the
16 back.

17 A I apologize.

18 MR. WILLIAMS: Your Honor, I would object to
19 the testimony from the prosecutor. I realize this
20 is just a motion hearing, but he's just kind of
21 directed every witnesses' testimony so far. This
22 officer couldn't even testify which one he looked at
23 first.

24 THE COURT: You can't lead --

25 BY MR. MAYE:

1 Q Which one did he give you first, is it the
2 correct one or otherwise?

3 A I need my cad sheet.

4 THE COURT: We're at ease.

5 (Pause.)

6 Q Officer Byrd, if this will refresh your
7 recollection, is this what you're looking for, the
8 run sheet?

9 A Yes, sir. Thank you. The first one I ran was
10 Jimmy Jude Riley.

11 Q Is that the one he gave you first?

12 A Yes, sir.

13 Q Did that one come back wanted?

14 A It don't state on here if it come back wanted
15 or not.

16 Q Let me ask you this. Were either one of the
17 things that he gave you valid driver's licenses?

18 A No, sir.

19 Q They both I.D. cards?

20 A Yes, sir.

21 Q Pursuant to your conversation with dispatch,
22 did you receive notification that the individual
23 that you had there was wanted?

24 A Yes, sir.

25 Q Did y'all tow the vehicle as a result of you

1 making an arrest? Did you give him an arrest for
2 not having a valid driver's license?

3 A Yes, sir.

4 Q You placed him under arrest. Did you inventory
5 the vehicle pursuant to it being towed? Did y'all
6 call a wrecker out to the scene?

7 A Yes, sir, we did.

8 Q Okay. What did you find as a result of your
9 inventory search?

10 A Passenger side of the vehicle, the Desenex
11 bottle laying on the passenger seat.

12 THE COURT: What did you say?

13 THE WITNESS: The Desenex bottle laying on the
14 passenger seat.

15 BY MR. MAYE:

16 Q What happened with that as you picked it up and
17 you examined it?

18 A Picked it up, shook it, it didn't sound right.
19 Just one screw in the bottom come off of it, you
20 just more or less touched it and the bottom come off
21 of it and there was meth in the container.

22 Q Okay. What else did you find there? And
23 identify it by number if it's got a State's Number
24 there. How about the contents of the Desenex
25 bottle, what number was that?

1 A Which numbers?

2 Q The State's number for I.D. Did you obtain
3 powder contents from the Desenex bottle?

4 A I'm sorry. Yes, sir.

5 Q What's the State's I.D. number on it?

6 A 11.

7 Q What else did you find there in the vehicle,
8 what other items did you retrieve?

9 A Marijuana.

10 Q What's the State's I.D. number and where did
11 you find the marijuana?

12 A 13. The marijuana was in the Desenex can,
13 also. It was in the Desenex can, also.

14 Q What other items did you find out of the
15 vehicle?

16 A State's Exhibit 10, the road construction used
17 hot mix was also in the vehicle.

18 Q Did you find another identification reflecting
19 another name other than the one that he gave you
20 there?

21 A Yes, sir, State's Exhibit 9.

22 Q Who did he tell you that the Riley, the first
23 identification that he gave you, who did he tell you
24 that was?

25 A Later on he told me it was his brother.

1 Q Told you it was his brother?

2 A I believe that's correct, yes, sir.

3 Q Okay. But he had the second Georgia I.D. card
4 on him and what name is on it?

5 A Jack Harrison, Jr.

6 Q Officer Byrd, are you certain that you could
7 see the broken windshield at the time that you met
8 the vehicle?

9 A Yes, sir.

10 Q Did that give you an independent basis for a
11 stop regardless of the information that you had
12 about the suspicion of the paving scam?

13 A Yes, sir. You can see, I don't know if it
14 matters, but you can see the windshield through the
15 back glass on this picture.

16 Q What number is that item?

17 A State's Exhibit 4.

18 MR. MAYE: Answer any questions the defense has
19 for you.

20 THE COURT: Cross.

21 CROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q Officer Byrd.

24 A Yes, sir.

25 Q We heard your supervisor, Captain Shealy,

1 testify that he had gone down there pursuant to a, I
2 guess, maybe a BOLO, if you will.

3 **A** Okay.

4 **Q** And that he -- did he contact you to come in
5 the other way or down the highway the way you were
6 coming?

7 **A** I believe I was already in the area down that
8 way. He didn't necessarily contact -- we was
9 already down in that area working.

10 **Q** How many officers arrived on the scene?

11 **A** Myself, Captain Shealy, Sergeant Kenny Clark, I
12 believe Major Shorter arrived a short bit later on.

13 **Q** Would there be any reason why Captain Shealy's
14 name would not be reflected in any of the police
15 reports for that particular event?

16 **A** Well, actually it probably is. The thing only
17 holds two on our papers, but on the incident report
18 actually on the computer, they hold numerous, but it
19 only holds the first -- it only holds two.

20 **Q** It's got Byrd, it's got Clark there, doesn't
21 it?

22 **A** Yes, sir, it does.

23 **Q** It doesn't have Shealy's name there at all,
24 does it?

25 **A** It don't on here, but on our computer system,

1 it would have it.

2 Q Did you meet the vehicle coming the other way?

3 A Yes, sir, I did.

4 Q And had you already been instructed by your
5 captain to stop the vehicle?

6 A I wasn't instructed to stop him.

7 Q You had heard all of the news and you were
8 going to stop him?

9 A I -- he had a cracked windshield and that's
10 the --

11 Q It's just us guys here in this courtroom. I
12 mean, were you going to stop him or were you not
13 going to stop him?

14 A I stopped him for the cracked windshield.

15 Q That's why you stopped him?

16 A Yes, sir.

17 Q If he hadn't had a cracked windshield, you
18 wouldn't have stopped him?

19 A During the -- pending an investigation, I
20 probably would have stopped him also, yes, sir.

21 Q Sure, because you had already heard he'd gone
22 up there towards the captain and the captain said
23 stop him, right?

24 A He didn't say stop him on the radio, no, sir.

25 Q Did anyone say stop him?

1 A I called the captain and advised him that I was
2 going to stop him for a cracked windshield.

3 Q And you told him that before you stopped him?

4 A Yes, sir, I did.

5 Q And how far away from him when you called him
6 and told him you were going to stop him for a
7 cracked windshield?

8 A Not terribly far, but I wanted to make sure
9 somebody was close to me.

10 Q So the vehicle was still coming in your
11 direction and you called the captain and told him
12 that you were going to stop him for a cracked
13 windshield?

14 A Yes, sir.

15 Q How long did it take you to make that call?

16 A A second, I let him know on the radio.

17 Q And y'all were coming in opposite directions?

18 A I turned around -- me and who was coming in
19 opposite directions?

20 Q You and Mr. Harrison were coming in opposite
21 directions?

22 A Yes, sir.

23 Q And when you stopped him, that's the first
24 thing you said, I stopped you for a cracked
25 windshield?

1 A I would imagine I advised him that's why I
2 stopped him for a cracked windshield.

3 Q Do you remember what you told him?

4 A I would imagine -- I would think when I stopped
5 him, I told him that I was stopping him for a
6 cracked windshield. I always -- whenever I stop
7 somebody, I advise them why I'm stopping -- who I am
8 and the reason I'm stopping them, so it's no
9 different than why I would have done it any other
10 way.

11 Q Were you in a uniformed -- were you a uniformed
12 police officer?

13 A Yes, sir.

14 Q Were you in a car that had, what, blue lights?

15 A My car had been marked up, yes, sir.

16 Q Did you turn your blue lights on when you
17 stopped him?

18 A Yes, sir.

19 Q And was your car equipped with a camera?

20 A No, sir.

21 Q So none of this is recorded on a camera?

22 A No, sir.

23 Q The crack which was in the windshield, it was
24 on the passenger side; isn't that true?

25 A Yes, sir, it is.

1 Q How big was it?

2 A Big.

3 Q Would it have prevented him from seeing?

4 A The run that come across there, yes, sir.

5 Q But it was on the passenger side?

6 A The huge crack was on the passenger side and
7 then it run across to the driver's side, all the way
8 to the other side.

9 Q Now, who found these items which we've talked
10 about in the courtroom today?

11 A The meth and the marijuana and the paper?

12 Q Yeah.

13 A That would have been me, sir.

14 Q You found them?

15 A Yes, sir.

16 Q Did you find any contracts other than this
17 offer?

18 A No, sir.

19 Q And you told the Solicitor just a while ago
20 that once you stopped him, you charged him for
21 having an improper driver's license; is that
22 correct?

23 A Yes, sir.

24 Q Not having a valid driver's license?

25 A That's correct, yes, sir.

1 Q Can you tell me exactly which ticket you're
2 talking about, what number ticket did you give him
3 for not having a valid driver's license?
4 A I don't have that handy.
5 Q What would help you to tell me?
6 A Do you have it?
7 Q I can give you the incident report.
8 A No, no, no. I have a ticket book in my car
9 that would have that in there.
10 Q How about if I gave you the bond where he
11 bonded out?
12 A That wouldn't have the ticket number on it, no,
13 sir.
14 Q It wouldn't have the ticket number?
15 A No, sir.
16 Q Are you sure?
17 A I'm pretty sure.
18 Q Well, it's got a bunch of other stuff on it?
19 A It might. I'll look at it if you'll let me.
20 Q Look at that and tell me if that might not have
21 some ticket numbers or warrant numbers on it.
22 A It's got warrant numbers and three ticket
23 numbers, 5739CW, 5738CW and 5381CW.
24 Q And those would be the ticket numbers out of
25 your book for the charges that you gave him; isn't

1 that correct?

2 **A** Yes, sir.

3 **Q** Now, tell me which one of those tickets and
4 which one of those charges indicate that he was
5 given a ticket for having an invalid driver's
6 license.

7 **A** Driving under suspension.

8 **Q** Well, that's different, isn't it?

9 **A** Same difference.

10 **Q** It's the same thing. Driving under suspension
11 is the same thing as an invalid driver's license?

12 **A** Sure, it's no good, yes, sir.

13 **Q** It's not characterized that way, is it?

14 **A** No, sir, it's says DUS.

15 **Q** So that's actually driving under suspension,
16 not having an invalid driver's license?

17 **A** Correct.

18 **Q** Because there's no driver's license. There's a
19 charge for no driver's license?

20 **A** There's a charge for no driver's license and a
21 suspended driver's license..

22 **MR. WILLIAMS:** That's all I have, Your Honor.

23 **THE COURT:** Redirect.

24 **MR. MAYE:** Just one.

25 ****

1 REDIRECT EXAMINATION

2 BY MR. MAYE:

3 Q You were advised by dispatch that he was under
4 suspension?

5 A Correct.

6 Q Is that correct?

7 A Yes, sir.

8 Q At the time?

9 A Yes, sir.

10 MR. MAYE: Nothing else.

11 THE COURT: Recross.

12 MR. WILLIAMS: No recross, Your Honor.

13 THE COURT: Thank you, sir. You may step down.
14 Any other witnesses from the State?

15 MR. MAYE: Nothing else, Your Honor, regarding
16 the drug evidence and the stop.

17 THE COURT: Any witnesses from the defense?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: What's your motion?

20 MR. WILLIAMS: Your Honor, the most recent case
21 that I have seen in reference to this, I don't know
22 if Your Honor was the judge on this or not, the
23 State versus Padgett, 354 S.C. 268, 580 S.E.2d 159,
24 it's a 2003 case. I want to say it's either
25 McCormick or Edgefield.

1 In that particular case, Your Honor, they talk
2 about reasonable suspicion. Your Honor, to have
3 reasonable suspicion, there should have to be
4 something reasonable about your suspicion. The only
5 thing that has been testified to today is that my
6 client supposedly tried to offer his services for a
7 paving contract. There was no individual who gave
8 him money for which he was flim flamed and there's
9 no indication that he'd done anything illegal up
10 until the point which he was stopped on the road.

11 So I guess -- to a certain extent, I guess we
12 can have a reasonable suspicion about any individual
13 going down the road, but this man had done
14 absolutely nothing illegal. Matter of fact, there's
15 really nothing suspicious about going to an
16 individual and offering his services, it happens all
17 the time.

18 So, Your Honor, the stopping of the vehicle we
19 would suggest to the Court did not arise to the
20 degree of reasonable suspicion. And you can't
21 determine that backwards. You have to look at it up
22 until the point in which he's stopped.

23 Now, if you want to look at it from the time in
24 which he handed two bad I.D.s and they searched the
25 vehicle and found these drugs, then obviously that

1 would be suspicious, but the reasonable suspicion
2 has to be determined before the vehicle is stopped.
3 And we would suggest to the Court that there was
4 insufficient evidence or facts to substantiate that.

5 (Pause.)

6 **THE COURT:** I'm going to look at the particular
7 case you cited. I'm sure once I see it, I'll
8 remember it. But my understanding of the law is
9 that an officer may stop a vehicle and detain the
10 occupants of the vehicle briefly without probable
11 cause if there is a reasonable suspicion. And
12 reasonable suspicion is certainly less demanding
13 than probable cause and requires a lesser showing
14 than even a preponderance of the evidence, but there
15 has to be a minimal level of objective justification
16 for making the stop.

17 The language used in the U.S. Supreme Court
18 cases deals with being able to articulate something
19 more than just an unparticularized suspicion or a
20 hunch. It has to be based on specific and
21 articulable facts which taken together with rational
22 inferences from those facts reasonably warrant the
23 intrusion. It has to be particularized, it has to
24 be objective and lead one to suspect another of
25 criminal activity. And the court is supposed to

1 look at the whole picture, the totality of the
2 circumstances.

3 In this particular case, the testimony is that
4 Officer Byrd -- Deputy Byrd observed the vehicle
5 with a cracked windshield, that gave him probable
6 cause to stop the vehicle. He could conduct the
7 stop. I don't think I even have to get to the
8 reasonable suspicion evaluation.

9 Now, granted, the focus on the vehicle came
10 about because of these other activities that were
11 allegedly going on and what people perceived to be
12 some sort of scam that was attempted to be conducted
13 in that area, but if an officer sees a vehicle with
14 a cracked windshield and his testimony was that he
15 stopped the vehicle because of the cracked
16 windshield, then he's within his rights to stop the
17 vehicle, there's no problem.

18 If you got to a reasonable suspicion analysis,
19 which again I don't think the Court has to do, there
20 is authority about fleeing from police upon seeing
21 police and there was some testimony about that, but
22 again I don't think I have to get to a reasonable
23 suspicion analysis.

24 So once the vehicle is stopped, then there's a
25 right to ask for the driver's license and

1 identification. Those were given.

2 My understanding of the testimony, though I
3 wish the time line was a little bit clearer, but my
4 understanding of the testimony is that there was a
5 false identification card given and then another
6 identification card given. There was -- these were
7 called in. It was determined that the defendant was
8 -- had a license that was suspended. He was
9 arrested.

10 The terminology could have been more exact as
11 well, but it appeared he was arrested for driving
12 under suspension and then that there was an
13 inventory search of the vehicle, which was testified
14 to be standard practice.

15 You get into some issues with inventory
16 searches when you have containers that are closed
17 and they're opened. This false Desenex bottle, fake
18 container, now the testimony of Deputy Byrd was that
19 basically the bottom just fell out of it and that
20 the drugs were found inside of that and that issue
21 hasn't specifically been raised about opening the
22 container, but there's authority for allowing
23 officers to open containers during the inventory
24 searches.

25 There's also some case law that deals with not

1 being able to do that unless there's an established
2 policy that deals with what can be opened and what
3 cannot be opened during an inventory search.

4 The motion is -- let me look at this case I
5 did.

6 (Pause.)

7 **THE COURT:** State versus Padgett was a case
8 where there was not a license plate on the vehicle
9 and I ruled that the mere fact that driving a
10 vehicle without license plate was a chargeable
11 offense that constituted reasonable suspicion to
12 initiate the traffic stop. Judge Anderson wrote the
13 opinion and I don't really know why we need to get
14 into a reasonable suspicion there, but -- because if
15 there's no tag on a car, you can stop it.

16 Anyway, the motions are denied.

17 **MR. WILLIAMS:** Your Honor, having gone through
18 that, I've got a couple more motions.

19 **THE COURT:** Go ahead.

20 **MR. WILLIAMS:** Your Honor, I would move in
21 limine that there be no testimony in reference to
22 any paving that was not done or done by my client.

23 On the basis of that, Your Honor, as a
24 collateral matter, as Your Honor has succinctly
25 ruled, the reason he was stopped was as a result of

1 the broken windshield. So any testimony about any
2 paving is, obviously, it's -- the evidence is more
3 -- it's not as probable as prejudicial and it's a
4 collateral matter. It doesn't have anything to do
5 with the case for which he is being tried and, that
6 is, he's being tried for possession of drugs.

7 And as Your Honor has ruled, the reason he was
8 stopped was because of the broken windshield, so
9 there should be no reason why we should have to
10 bring up anything about the fact that he may or may
11 not been engaged in the art of paving asphalt.

12 **THE COURT:** Does the State want to be heard?

13 **MR. MAYE:** Your Honor briefly, he's alleging
14 there was no -- they argue on one hand there's no
15 criminal activity, but then they're not wanting to
16 hear it.

17 At the time that the officers initiated the
18 stop, they had information that these individuals
19 believed that they had been given false information
20 and asked for money was the information that the
21 officers collected at the scene. I think it's part
22 of the res gestae in this case, Your Honor.

23 The -- they're alleging -- he's not charged
24 with doing anything illegal and they're asserting
25 that he's not doing anything illegal, but the

1 officers in this case clearly collected information
2 that these individuals that they talked to believed
3 they had been given false information in an attempt
4 to obtain money from them, Your Honor. Could not
5 see any reason that that should be limited, don't
6 know -- we do not think that the prejudicial effect
7 would outweigh the probative value respectfully.

8 **THE COURT:** Well, if there were not the cracked
9 windshield, I would have to let it in as part of res
10 gestae, I think, because it would have to be
11 utilized to explain why the vehicle was stopped in
12 the first place, but there is no need to explain all
13 of that other stuff.

14 And to me, it's a classic case of Rule 403. If
15 you inject all of this other stuff about trying to
16 flim flam a bunch of older folks, that's extremely
17 prejudicial and it doesn't have anything to do with
18 whether he had drugs. He wasn't alleged to be
19 trying to sell these folks drugs. And I guess
20 tangentially you might argue that it has something
21 to do with a false identification, but it's very
22 tangential, so the motion is granted.

23 It's a collateral matter. It's not necessary
24 to prove the case. And it really injects elements
25 into the trial that would be extremely prejudicial

1 and unduly so under Rule 403.

2 What else?

3 **MR. WILLIAMS:** Your Honor, two other issues.
4 The sequestration motion, I don't think the
5 Solicitor objects to.

6 **MR. MAYE:** No, as long as it extends both
7 directions. I'm going to keep my investigating
8 officer, Officer Byrd, and --

9 **MR. WILLIAMS:** It shouldn't matter now.

10 **MR. MAYE:** And Investigator Shealy testified
11 first in this case, but I'm going to keep Officer
12 Byrd here, but that's --

13 **THE COURT:** All right. It's reciprocal both
14 sides. Your chief investigating officer can stay --

15 **MR. WILLIAMS:** And, Your Honor, the only other
16 thing -- I'm sorry.

17 **THE COURT:** Chief investigating officer can
18 stay in the courtroom throughout the trial.

19 Anything else?

20 **MR. WILLIAMS:** The only other thing, Your
21 Honor, I think you actually mentioned it when you
22 were referring to the search issue and that is that
23 the can in which the methamphetamine was found in,
24 we would move to suppress that on the basis that
25 there was ample time to have secured a search

1 warrant for the opening of the can to find the
2 methamphetamine inside the can, that it was a
3 separate item and there was nothing on the face of
4 it which should have allowed them to open up the
5 can.

6 **THE COURT:** Do you want to be heard on that,
7 Solicitor?

8 **MR. MAYE:** Your Honor, the officer testified in
9 this case that the bottom fell out of the can as
10 they picked it up and did the inventory search, that
11 they could tell that something was wrong with it
12 when they picked it up. It's a can purporting to
13 contain liquid in this case, Your Honor. And the
14 officer testified when they picked the can up, that
15 the bottom fell out of it in this case.

16 It was a can that was not real at all. It was
17 made to secret. You can purchase these things that
18 are not real aerosol cans. This can was to hide
19 things in. It was not a can that was utilized for
20 the intended purpose in this case. The officer
21 testified as he picked it up, the bottom fell out of
22 it. So there wasn't any opening on the part of law
23 enforcement in this case, Your Honor. It was
24 something as they did the inventory search that
25 opened itself.

1 **THE COURT:** All right. The motion is denied.
2 I will say I'm a little bit troubled by it, but that
3 was the testimony that basically they shook it, it
4 was obviously something wrong with it and the thing
5 just basically fell apart and there the drugs were.

6 All right. We're going to take just a few
7 minutes. Tell the jury I'll be with them in less
8 than five minutes.

9 (Brief Recess.)

10 (Court's Exhibit Number 1, jury note, was
11 marked for identification.)

12 **THE COURT:** All right. I got a note from a
13 juror, Mary R. Bouknight, that I shared with the
14 attorneys that's been marked as Court's Exhibit
15 Number 1. It deals with the fact that she did not
16 disclose to the Court that her daughter is a
17 corporal at the Edgefield Detention Center. I
18 didn't really ask any questions about whether your
19 children work at a detention center or are employed
20 with law enforcement, but she felt like she needed
21 to disclose it.

22 Do you all want me to do any further inquiry on
23 this?

24 **MR. MAYE:** None from the State, Your Honor.

25 **MR. WILLIAMS:** Yes, sir.

1 about the facts, doesn't it? But this is not some
2 great story for T.V., it's a traffic stop. They
3 allegedly find something in the vehicle and then
4 based on that, they charge my client as opposed to
5 whoever else had been driving the truck or whoever
6 else had dealt with that particular company.

7 I thank you for your attention and hopefully it
8 -- it will take us into tomorrow, though. Thank
9 you.

10 THE COURT: All right. Thank you,
11 Mr. Williams.

12 Solicitor, call your first witness.

13 MR. MAYE: State calls officer Stephen Byrd.

14 THE COURT: Come around please, sir.

15 STEPHEN BYRD,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MAYE:

19 Q Investigator Byrd, just tell the ladies and
20 gentlemen of the jury who you are, about what your
21 background is with the sheriff's department, how
22 long you've been employed, in what capacity you work
23 for the sheriff.

24 A My name's Stephen Byrd. I work for the Saluda
25 County Sheriff's Office. I've been employed at the

1 Saluda County Sheriff's Office for nine years. I
2 was a road deputy for years and then I got into
3 investigations and I'm a road deputy again and
4 investigations also, just do numerous things at the
5 sheriff's office.

6 Q But you've worked on the road as a regular road
7 deputy?

8 A Yes, sir.

9 Q And you've worked as an investigator for the
10 sheriff's department; is that correct?

11 A Yes, sir.

12 Q And you work now as a supervisor with the
13 sheriff's department over road deputies; is that
14 correct?

15 A Yes.

16 Q Okay. Let me direct your attention to May the
17 9th of 2006. Tell the ladies and gentlemen of the
18 jury about stopping the individual that turned out
19 to be the defendant in this case, Jack Harrison, Jr.

20 A Yes, sir. I was on patrol. I was on Highway
21 391 leaving from Batesburg headed towards the
22 traffic circle. I met Mr. Harrison just past Holly
23 Ferry Road and 391. He had a busted windshield. I
24 conducted a traffic stop on him. He gave me an I.D.
25 card that was false.

1 **Q** Okay. Now, let me -- tell the ladies and
2 gentlemen what initially attracted your attention
3 and describe to them what you saw initially, what
4 initially attracted your attention to him, the
5 vehicle. And what kind of vehicle was it?

6 **A** It was a white Explorer with stickers all over
7 it. It was like a contracted vehicle of sorts.

8 **Q** Let me show you what's been marked State's 5
9 for I.D. See that?

10 **A** Yes, sir.

11 **Q** What is that?

12 **A** It's a white Ford Explorer with a yellow light
13 on top and stickers on the sides.

14 **Q** Is that the vehicle that the individual that
15 turned out to be Mr. Harrison, the defendant in this
16 case, is that what he was driving that night?

17 **A** Yes, sir.

18 **MR. MAYE:** I move to admit that into evidence.

19 **MR. WILLIAMS:** Your Honor, we would object
20 unless he has the person who actually took the photo
21 here, who can identify that he took the photograph.

22 **MR. MAYE:** Your Honor, I'll ask him this
23 question.

24 **BY MR. MAYE:**

25 **Q** Does that fairly and accurately reflect the

1 vehicle that he was driving and was that photo taken
2 the night of the stop?

3 A Yes, sir.

4 MR. WILLIAMS: Now we have no objection, Your
5 Honor.

6 THE COURT: Mark 5 into evidence.

7 (State's Exhibit Number 5, photograph,
8 admitted into evidence.)

9 BY MR. MAYE:

10 Q What is this vehicle?

11 A It's a white Ford Explorer.

12 Q Is that what Mr. Harrison was driving that
13 night?

14 A Yes, sir.

15 Q What initially attracted your attention to it?

16 A Windshield on the passenger side was just
17 busted, I mean, it's huge.

18 Q Okay. All right. Is it your practice to
19 initiate and do traffic stops when you see those
20 sorts of violations?

21 A Yes, sir.

22 Q Did you do one in this case that night?

23 A Yes, sir.

24 Q Where did you stop him at?

25 A Just past Holly Ferry Road on Highway 391

1 headed towards Batesburg.

2 Q Were you in Saluda County?

3 A Yes, sir.

4 Q Did all of the events in this case take place
5 in what county?

6 A Saluda County.

7 Q Here in Saluda County?

8 A Yes, sir.

9 Q Okay. After you stopped this individual, what
10 happens and who does he identify himself as?

11 A Gave me his first I.D. as Jimmy Jude Riley.

12 Q Okay. I'm going to show you what's been marked
13 State's 8 for identification, tell me what that is.

14 A That's a Georgia I.D. card, it has the name
15 Jimmy Jude Riley on it and it's Exhibit 8.

16 Q That's who he tells you he is when you stopped
17 him?

18 A Yes, sir.

19 Q Who did you find out he actually was that
20 night? Let me show you State's Exhibit Number 9.

21 A Jack Harrison, Jr.

22 Q Okay. Are those -- what are those documents
23 that you have there, those items?

24 A Georgia I.D. cards.

25 Q Georgia I.D. cards. Are they driver's

1 licenses?

2 A No, sir.

3 Q Did he actually have a valid driver's license
4 on him?

5 A No, sir.

6 Q Is it necessary to have a valid driver's
7 license to drive here?

8 A Yes, sir.

9 Q Okay. He didn't have one, did he?

10 A That's correct, he did not.

11 Q So he initially gives you which I.D. card?

12 A Jimmy Jude Riley was first.

13 Q Is that true or is that false? Is that what
14 he --

15 MR. WILLIAMS: Your Honor, I would object to
16 the reference of the card unless he places the items
17 into evidence because he's publishing those items by
18 communicating about them in that way.

19 THE COURT: Do you want to be heard?

20 MR. MAYE: I move to admit them into evidence,
21 Your Honor.

22 MR. WILLIAMS: Without objection, Your Honor.

23 THE COURT: What are the numbers on it?

24 THE WITNESS: Jimmy Jude Riley is Exhibit 8 and
25 Jack Harrison, Jr. is Exhibit 9.

1 **THE COURT:** Mark those in evidence, please.

2 (State's Exhibit Numbers 8 and 9,
3 identification cards, admitted into evidence.)

4 BY MR. MAYE:

5 **Q** After he gives you the false identification, do
6 you communicate with dispatch and is anybody else on
7 the scene at this time?

8 **A** Yes, sir.

9 **Q** Who else comes up on the scene there?

10 **A** Captain Donovan Shealy.

11 **Q** Okay.

12 **A** And Kenny Clark.

13 **Q** Do you have communications with your dispatcher
14 involving this identification card, the false one,
15 that he gives you when he attempts to misidentify
16 himself?

17 **A** Yes, sir.

18 **Q** Okay. All right. Do you have reason to place
19 him under arrest at that point in time?

20 **A** Yes, sir.

21 **Q** Okay. Tell the ladies and gentlemen once you
22 get him under arrest in this case, what's y'all's
23 procedure? What do y'all do when you arrest
24 somebody and you take them away and they're driving
25 a vehicle, what do you do with their vehicle

1 according to the sheriff's department policy?

2 A We inventory the vehicle, everything in the
3 vehicle and what compartments or what area the
4 vehicle is in, that way nothing takes missing out
5 the vehicle and they've got a true and accurate
6 record.

7 Q Why do y'all do this? What's that for? Why do
8 y'all inventory it?

9 A People's belongings are in vehicles and wanting
10 them to get back everything that's theirs.

11 Q All right. Once y'all have the vehicle towed,
12 do y'all relinquish custody to somebody else? Do
13 you tow them yourself or how do y'all do that at the
14 sheriff's office?

15 A Just next one on rotation and that next one on
16 rotation would have been a local one here.

17 Q So you turn it over to a private citizen to be
18 towed?

19 A Yes, sir.

20 Q Okay. Prior to doing that, what's your policy?
21 What do y'all do before you release it to someone
22 else?

23 A Have to inventory the vehicle.

24 Q Okay. Tell the ladies and gentlemen of the
25 jury what happens when you start inventorying this

1 Ford Explorer, the individual that later turns out
2 to be Mr. Harrison, the defendant in this case, what
3 do you find? What do you see?

4 A The passenger side of the vehicle, there's a
5 little black bag that had some shaving products in
6 it, I believe some razor blades. Beside it was
7 laying -- laying beside it was a Desenex can.

8 Q Let me ask you this. Let me show you State's
9 14 and 15 for identification, ask you if you
10 recognize those. What are those items or those two
11 items that you have?

12 A Yes, sir. It's -- what's in the pictures?

13 Q What do the photographs reflect?

14 A A Desenex can with a -- and then looks like a
15 bag of crystal meth or methamphetamines and then a
16 bag of marijuana.

17 MR. WILLIAMS: Your Honor, again, we would
18 object to the publishing of the items unless he's
19 going to introduce them in evidence.

20 BY MR. MAYE:

21 Q Do they fairly and accurately reflect what you
22 saw there in the interior of the vehicle?

23 A Yes, sir --

24 Q And if so, I'd move to admit them into
25 evidence.

1 **MR. WILLIAMS:** No objection.

2 **THE COURT:** What numbers are they?

3 **THE WITNESS:** The first one is going to be
4 Exhibit 14 and the second one is going to be State's
5 Exhibit 15.

6 **THE COURT:** Mark 14 and 15 into evidence
7 please, ma'am.

8 (State's Exhibit Numbers 14 and 15,
9 photographs, admitted into evidence.)

10 BY MR. MAYE:

11 **Q** Tell the jury what those photos show.

12 **A** It shows one clear plastic baggy containing
13 methamphetamines, a second bag containing marijuana
14 and a Desenex can that the bottom is not on.

15 (State's Exhibit Number 16, Desenex can,
16 marked for identification.)

17 **Q** Let me show you what's been marked State's 16
18 and ask you if you can identify that and where you
19 got it from?

20 **A** Yes, sir. It's a yellow Desenex can that come
21 from the passenger seat of Mr. Harrison's Explorer.
22 It was in the passenger seat.

23 **MR. MAYE:** Move to admit this into evidence.

24 **MR. WILLIAMS:** Without objection, Your Honor.

25 **THE COURT:** Mark it in evidence please, ma'am.

1 (State's Exhibit Number 16, Desenex can,
2 admitted into evidence.)

3 BY MR. MAYE:

4 Q Where do you find the Desenex can?

5 A Laying on the front seat beside the bag, little
6 black bag.

7 Q What's unusual about your discovery of that
8 Desenex can? What do you find as you pick up the
9 can?

10 A I picked the can up. I shook it and the bottom
11 come out of it. I just picked it up.

12 Q Describe to the ladies and gentlemen of the
13 jury have you ever seen a spray can like that?

14 A No, sir, I hadn't.

15 Q Okay. How about a regular spray can, are you
16 familiar with those?

17 A I've seen them, yes, sir.

18 Q Have you ever seen one that had a screw off
19 bottom in the bottom of it like that?

20 A No, sir, that I hadn't.

21 Q Would that be very functional with an aerosol
22 can?

23 A It wouldn't be very functional at all.

24 Q What could you do with that, though, rather
25 than spray your feet with it and keep from getting

1 foot rot?

2 A You could hide, conceal anything that you
3 didn't want nobody to see.

4 Q And that's what you discovered that night.
5 What was inside of that Desenex can?

6 A A bag containing marijuana and then another
7 plastic bag, clear plastic bag containing
8 methamphetamines.

9 Q Let me show you an item marked State's Exhibit
10 11. Can you identify that?

11 A Yes, sir, that's crystal meth and smoking pipe
12 and some residue.

13 Q Where did you find that item that's marked --
14 what's the number on it?

15 A 11. That would have been in the aerosol can.

16 Q In that same Desenex can?

17 A Yes.

18 Q Did you take that into your custody that night?

19 A Yes, sir.

20 MR. MAYE: Your Honor, I move to admit this in
21 evidence at this time for I.D. only at this point in
22 time. I'll withdraw that and ask to identify it.

23 Q But that item you found inside that Desenex
24 can?

25 A Yes, sir.

1 Q Okay. What happened when you picked the can
2 up? What happened when that took place when you
3 picked it up?

4 A I picked it up and the bottom fell out of it.

5 Q Was the bottom screwed all the way into it or
6 did it just fall off when you picked it up?

7 A It fell off when I picked it up.

8 Q And as a result of that falling off, you found
9 the item that's been marked for I.D. that you've
10 already identified?

11 A Yes, sir.

12 Q Let me show you what's been marked as State's
13 13 in this case. Can you identify that?

14 A Yes, sir. It's the marijuana in the picture
15 that come out of there also.

16 Q Okay. Same -- you found that in the same
17 place?

18 A Yes, sir.

19 Q Okay. Did you take that into your custody at
20 that time?

21 A Yes, sir.

22 Q Okay. Did you change it or alter it in any way
23 while you had either one of the items?

24 A No, sir.

25 Q Okay. What else did you find as a result of

1 your inventory?

2 **A** Had a 400 megahertz scanner positioned under
3 the console at the floorboard between the passenger
4 and driver's seat that was -- that and an 800
5 scanner for the Highway Patrol. The 400, I walked
6 back --

7 **Q** Let me stop you here. What brought your
8 attention to the radios that are in the vehicle?
9 What happened?

10 **A** I walked back to my vehicle and Captain Shealy
11 was saying something while I was walking back to my
12 vehicle, somebody talked on the radio and it come
13 across and Captain Shealy asked me did I lay my
14 radio down, I said no. And we walked back to the
15 vehicle and then we noticed that the scanners was
16 actually on our channel.

17 **Q** Where were you hearing your own radio
18 transmissions coming from?

19 **A** Inside Mr. Harrison's vehicle.

20 **Q** From the radio inside Mr. Harrison's vehicle?

21 **A** Yes, sir.

22 **Q** You could hear your own sheriff's department's
23 transmission?

24 **A** Yes, sir.

25 **Q** What frequency do y'all transmit on?

1 **A** The 400s is 45 3.3 00 megahertz.

2 **Q** So in order to have that on the radio, you have
3 to have the Saluda Sheriff's Department's frequency,
4 don't you?

5 **A** Yes, sir.

6 **Q** So it's obvious in this case that Mr. Harrison
7 had y'all's frequencies and was monitoring it. His
8 radio was tuned to that --

9 **MR. WILLIAMS:** Objection to leading.

10 **THE COURT:** You're leading. Don't phrase your
11 questions in a leading fashion, please.

12 BY MR. MAYE:

13 **Q** What does the transmission over that same
14 frequency, what does that show you in this case?

15 **A** That he was listening to us talk on the --
16 that he was listening to the Saluda County Sheriff's
17 Office talk on the radio and figuring out where we
18 are in the county, our locations.

19 **Q** What other listening device that scans police
20 frequencies did you find in the vehicle?

21 **A** An 800 scanner that scans for SLED and Highway
22 Patrol, DNR.

23 **Q** Do they use the same kind of radios that y'all
24 use or do they transmit over a different frequency?

25 **A** It's a different frequency. It's 800

1 megahertz.

2 Q So what do those two devices, electronic
3 devices, that are on in his vehicle, what do those
4 enable him to do?

5 A It would aid him to know where the police are
6 or what they're doing.

7 Q Okay. Were they on and active when you
8 initiated the stop?

9 A Yes, sir.

10 Q What county was he in?

11 A Saluda County.

12 Q What else did you find in the vehicle?

13 A His second I.D. card, of course. There was
14 other luggage bags in the very back compartment,
15 rear cargo area, the third cargo area of the vehicle
16 and that was it.

17 Q What else did he have on him? Did he have --
18 what other personal items did he have on him? What
19 else did you seize?

20 A We seized a driver's license, a business card
21 and just another piece of paper.

22 Q Okay. Did he have any money on him?

23 A Yes, sir.

24 Q How much money did he have?

25 A \$1659.

1 **Q** Well, now, Officer Byrd, in this case, he faces
2 the charges -- what charges did you initiate for
3 which we're here for now about the identification
4 cards? What charges is he facing now as a result of
5 what your investigation discovered that night?

6 **A** Driving under suspension, driving under
7 suspension --

8 **Q** The charges that we're currently pursuing right
9 now that were initiated by you?

10 **A** Right. The --

11 **Q** What is it? In relation to his identification
12 cards, what is you charged him with?

13 **MR. WILLIAMS:** Objection to leading.

14 **THE COURT:** That's not leading.

15 **THE WITNESS:** False information to a police
16 officer, false information is what --

17 BY MR. MAYE:

18 **Q** Based on your investigation, did he give you an
19 appropriate identification in this case?

20 **A** No, he did not.

21 **Q** Okay. Let me ask you this. Is the defendant,
22 Jack Harrison, Jr., is he present here in the
23 courtroom, if you could identify him?

24 **A** Yes, sir.

25 **Q** Point him out and say how he's dressed.

1 **A** Mr. Harrison is sitting beside Mr. Theo
2 Williams. He's wearing a white shirt, polo shirt,
3 with some gray on it, black hair.

4 **Q** Is that the individual that you stopped that
5 night that falsely identified himself?

6 **A** Yes, sir.

7 **Q** How did he falsely identify himself? Who did
8 he tell you he was?

9 **A** Jimmy Jude Riley.

10 **Q** In regard to what's been marked for
11 identification as State's 13, what charge did you
12 bring that he currently faces?

13 **A** Possession with intent to distribute --
14 possession of marijuana and distribute -- or PWID
15 meth.

16 **Q** Possession with intent to distribute
17 methamphetamine?

18 **A** Yes.

19 **Q** The charge with which he's indicted -- facing
20 in this case?

21 **A** Yes, sir.

22 **Q** So you charged him with possession of
23 marijuana?

24 **A** Yes, sir.

25 **Q** Giving false identification to law enforcement?

1 A Yes, sir.

2 Q And possession with intent to distribute meth?

3 A Yes, sir.

4 Q Correct?

5 A Yes, sir.

6 Q Okay. Officer, what evidence did you find in
7 this case of possessing with intent to distribute
8 the methamphetamine in this case?

9 A The -- you've got the multiple drugs packaged
10 together, but the methamphetamines is one gram --
11 more than one gram.

12 Q He had over -- if it's over a gram --

13 A Right.

14 Q -- what are you permitted to infer from that in
15 proffering charges?

16 A That it's possession with intent to distribute.

17 Q If it's over one gram?

18 A If it's over one gram of meth.

19 Q So did you perform a field analysis of those
20 drugs contemporaneous with that night's
21 investigation?

22 A Yes, sir.

23 Q Okay. What would your -- what did your initial
24 field estimation of the weight, what did it come
25 back as?

1 **A** Twelve grams, 12.0 grams.

2 **Q** About 12 grams?

3 **A** Yes, sir.

4 **Q** And that's your field weight?

5 **A** Yes, sir.

6 **Q** What did the weight actually come back, the
7 certified official weight from the State Law
8 Enforcement Division once you submitted it to them
9 for testing?

10 **MR. WILLIAMS:** Objection, calling for hearsay.

11 **THE COURT:** It's hearsay. Do you want to be
12 heard?

13 **MR. MAYE:** No. I'll withdraw it. I'll cover
14 it through another witness.

15 **THE COURT:** All right.

16 BY MR. MAYE:

17 **Q** What else was evidence to you in your charging
18 him with possession with intent to distribute that
19 you found that night? What else was significant to
20 you?

21 **A** The radios, the 400 radio, the 800 radio, the
22 400 radio listening to our frequently, the money,
23 \$1659 and the hidden compartment in the Desenex can.

24 **Q** How long have you been a sheriff's deputy?

25 **A** Nine years.

1 Q Have you ever encountered anybody in all that
2 time that was monitoring yours and SLED's
3 frequencies?

4 A No, sir, never.

5 Q In all of your drug work and in all of the
6 cases that you've done, have you ever had a
7 circumstance where somebody had the sophistication
8 to monitor your frequencies?

9 A No, sir.

10 Q Have you ever seen a can like that or seize
11 anything like that where someone was using it as a
12 hidden compartment?

13 A Prior to this, no, sir.

14 Q Is that a standard can? Is that something
15 that's made specifically to hide items?

16 A Yes, sir, it sure is.

17 Q For housekeeping only, let me ask you this.
18 What did you do with State's Exhibit Number 13 for
19 I.D., the green leafy substance there that's in this
20 bag? Did you take custody of it that night?

21 A Yes, sir.

22 MR. WILLIAMS: Objection to leading again.

23 THE COURT: The second question was leading,
24 the first question was not.

25 BY MR. MAYE:

1 Q What did you do with item number 13 that you
2 seized there that night?

3 A I took the marijuana, took it into my custody,
4 took it to the Saluda County Sheriff's Office and
5 dropped it in a evidence drop box where it's located
6 in a secured place.

7 Q When did you do that?

8 A May the 9th, 2006.

9 Q Okay. Did you change or alter it in any way
10 while you had it?

11 A No, sir.

12 Q Let me show you State's Exhibit 11, the powder,
13 whatever substance that is that's in the bag there.
14 What did you do with that? Did you take it into
15 custody that night?

16 A I took it into custody. I took it to the
17 Saluda County Sheriff's Office, put it into evidence
18 in the evidence drop box in a secure location and
19 that's where it was --

20 Q Did you change or alter it in any way while you
21 had it?

22 A No, sir.

23 Q Did you take steps to secure those items in a
24 bag, specifically the item that you believe that is
25 methamphetamine?

1 **A** Yes, sir.

2 **Q** What did you -- how did you secure that or seal
3 it up?

4 **A** Secured it in a best kit, number B-17544. It's
5 a bag. Once you open it and fill out your
6 information and put it in there and you close it, if
7 you reopen it, it's pretty much destroyed.

8 **Q** What prohibits someone or how do you know
9 someone has reopened it?

10 **A** If you open -- if somebody opens it, it's
11 pretty much destroyed. I mean, the seal's broke and
12 it's obvious. I mean, it just tears the whole thing
13 up.

14 **Q** Pursuant to your training, did you seal it in a
15 best kit?

16 **A** Yes, sir.

17 **Q** So you put both of those where that same night?

18 **A** In the evidence box at the Saluda County
19 Sheriff's Office drop box.

20 **Q** Based on your investigation and all of the
21 things that you found there pursuant to that
22 inventory search, what charges is he facing up here
23 now?

24 **A** Possession with intent to distribute
25 methamphetamines, possession of marijuana and false

1 information.

2 MR. MAYE: Answer any questions the defense has
3 for you.

4 THE COURT: Cross.

5 MR. WILLIAMS: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q Let me take you back and we'll do it a little
10 bit slower. And I'll ask you questions and you just
11 answer them.

12 A Yes, sir.

13 Q The -- you were a sergeant or a corporal back
14 then?

15 A Corporal.

16 Q Are you a sergeant or a corporal now?

17 A Corporal now.

18 Q It's been a long time --

19 A It has.

20 Q -- since I was in the Army. So you were
21 working road patrol on that particular night?

22 A Yes, sir.

23 Q And you were going down 391 and when you were
24 going down 391, you observed a broken windshield on
25 the passenger side of a white Ford Explorer; is that

1. on the corner of the road. I don't know if he would
2 have been watching for traffic, I mean it was in a
3 bad spot.

4 Q He wasn't doing any searching?

5 A No, sir.

6 Q And Lieutenant Donovan Shealy wasn't doing any
7 searching?

8 A No, sir.

9 Q So any items that were found on this particular
10 day would have been found by you?

11 A Anything inventoried -- the vehicle would have
12 been me, yes, sir.

13 Q And I think your testimony was that in
14 inventorying it, the first thing you found was what?

15 A Inventorying the vehicle, we start in the glove
16 compartment, then go to the passenger seat where the
17 black bag was with the toothpaste or whatnot and
18 then the Desenex.

19 Q So you actually went in the glove box first?

20 A That's the way the paper is filled out.

21 Q So that's the way you do it?

22 A Yes, sir. I would have done it, yes, sir.

23 Q And did you find anything in the glove box?

24 A Just papers.

25 Q I'm sorry?

1 A Just papers.

2 Q Just papers. So the only drugs that were found
3 in this vehicle were not found in the glove box,
4 which would have been secure or hidden, right?

5 A Correct.

6 Q They were found in a, did you call it a -- was
7 it like a -- was it a black plastic --

8 A Drugs wasn't found in that. It was black
9 plastic tote bag.

10 Q A tote bag? Was it like a woman's tote bag?

11 A No, sir.

12 Q What does the tote bag look like?

13 A Do you want to see it?

14 Q Do you have it?

15 A Yes, sir.

16 Q Where is it?

17 A Right there.

18 Q Do you have the bag?

19 A I'm sure it's in -- yes, sir. I'm sure it's at
20 the office. I don't have it with me here.

21 Q Okay. But y'all have the bag?

22 A Yes, sir.

23 Q All right. Was the bag opened like that?

24 A Yes, sir.

25 Q So your bag was open, right?

1 A Yes, sir.

2 Q Now, this bag that you're referring to would
3 you call that a men's ditty bag?

4 A Yes, sir.

5 Q And you normally would put shaving cream,
6 razors, comb?

7 A Yes, sir.

8 Q Toothbrush?

9 A Probably.

10 Q And is that what you found in the man's ditty
11 bag?

12 A Yes, sir.

13 Q Did you find any identifying information in
14 there?

15 A No, sir.

16 Q Did you find any type of I.D. card in there?

17 A No, sir.

18 Q Did you perform any tests, any fingerprint
19 analysis or any type of analysis to determine
20 whether or not it was actually my client's ditty bag
21 or not?

22 A No, sir.

23 Q Is that a word, ditty bag?

24 A It can be. I know what you're talking about.

25 I'm sure they know what you're talking about. It's

1 fine. We're going to be okay with your word. No,
2 sir.

3 Q All right. And the marijuana that you found
4 was not in the ditty bag?

5 A No, sir. Everything was in the aerosol can or
6 Desenex can rather.

7 Q So the marijuana -- well, it's not marijuana
8 yet, the green, leafy material.

9 A Green, leafy, plant-like material.

10 Q And the methamphetamine, alleged
11 methamphetamine, since it hadn't been proven yet.

12 A Okay.

13 Q Was in this Desenex can?

14 A Yes, sir.

15 Q And is your testimony that even though it has a
16 screw deal, that you didn't unscrew it?

17 A That's correct.

18 Q Matter of fact --

19 A You got it on there tight so I can't get it?

20 Q -- unscrew that?

21 A That's right, I didn't unscrew it.

22 Q So you have to actually look inside this unless
23 it is completely loose, right?

24 A Correct.

25 Q There's no way it just flops out?

1 A It flopped off that day.

2 Q Well -- and when you were checking this, did
3 you put this in a plastic bag and send it to SLED to
4 have a fingerprint analysis done off of this Desenex
5 can?

6 A No, sir.

7 Q Was that in the ditty bag?

8 A No, sir.

9 Q So even the ditty bag didn't have drugs in it?

10 A No, sir, it did not.

11 Q The only drugs were found in a Desenex can and
12 where was that located?

13 A About accurate where it is in the picture on
14 the passenger seat beside the bag.

15 Q And if you didn't know there were drugs in
16 here --

17 A You wouldn't know.

18 Q You wouldn't know?

19 A Right.

20 Q If you and I sat in that car, we wouldn't know
21 there were drugs in there, would we? No one would
22 know unless he'd put them there?

23 A That's right.

24 Q Now, did you do any fingerprint analysis off of
25 any items that you consider to be illegal to prove

1 jury what your name is and where you were formerly
2 employed?

3 A Okay. My name is Coronda Williams. I was
4 formerly employed with the South Carolina Law
5 Enforcement Division better known as SLED.

6 Q Let me ask you this. Where were you working
7 for SLED or what was your capacity at SLED when you
8 were working there?

9 A I worked at SLED -- when I was working at SLED,
10 I worked as an evidence forensic technician.

11 Q Let me show you an item that's been marked
12 State's Exhibit 11, the best kit there. Was that
13 item brought to you by Chris Cockrell of the
14 sheriff's office?

15 A Correct.

16 Q Okay. When did you receive that from Officer
17 Chris Cockrell of the Saluda County Sheriff's Office
18 and what did you do to indicate that you received
19 it?

20 A Okay. I received this evidence from Chris
21 Cockrell on May the 17th, 2006. It usually comes in
22 a brown kit. It's called a best kit. And once we
23 get the evidence, we put it in -- we input the
24 information into the system to create what is called
25 this lab number here and that's how the evidence is

1 identified throughout the lab.

2 Q Let me ask you this. Did you follow those
3 procedures when Chris Cockrell brought you that item
4 there, that best kit?

5 A Correct.

6 Q Okay. Did you enter it into the system and
7 give it a SLED lab number?

8 A Correct.

9 Q Okay. Did you change or alter it in any way
10 when you got it from Cockrell while it was in your
11 custody and control?

12 A No, sir.

13 Q Okay. Did you put it in secure evidence
14 storage and logged that into secure evidence storage
15 prior to it being tested?

16 A Correct.

17 Q You did that?

18 A Yes.

19 Q It was subsequently tested by Kukila Stanley
20 from SLED?

21 A Correct.

22 Q Did you change or alter it in any way while it
23 was in your custody and control?

24 A No, sir.

25 MR. MAYE: Answer any questions Mr. Williams

1 has.

2 CROSS-EXAMINATION

3 BY MR. WILLIAMS:

4 Q Ms. Williams, I'm Theo Williams. Can I see
5 what you were looking at that you were testifying
6 about?

7 A Sure.

8 Q As I understand it, you essentially work at
9 SLED as a person who receives evidence and takes
10 that evidence to a different location?

11 A Different location within our department.

12 Q Right. You're not trained in any way to
13 perform any type of chemical analysis on the
14 substance which you receive into SLED?

15 A No, sir.

16 Q And it's essentially your testimony that you
17 received the items which are in front of you from a
18 different officer in SLED -- I'm sorry -- not a
19 different officer from you because you haven't been
20 here. What's the name of the officer that you
21 received it from?

22 A Chris Cockrell.

23 Q And you received it when?

24 A On May the 17th, 2006.

25 Q Do you know when -- do you have any independent

1 knowledge about when the Saluda Sheriff's Department
2 received this evidence?

3 A No, sir.

4 Q So the only thing you can testify is that an
5 officer who identified himself with the Saluda
6 Sheriff's Department as Chris Cockrell gave you that
7 item on May the 17th of 2006?

8 A Correct.

9 Q And then you took that item and you put it in a
10 location within SLED and that's all you know?

11 A Correct.

12 Q And you had no other dealings with this item?

13 A No, sir.

14 Q And the only reason why you know that is
15 because of the numbers which were reflected on the
16 bag?

17 A Correct.

18 Q You have no independent knowledge of it, do
19 you? Can you remember four years ago whether or not
20 this is the particular item that you received or is
21 it the numbers which key to you that it was the item
22 that you received?

23 A Correct.

24 Q Your initials?

25 A Correct.

1 JACK HARRISON, JR.,
2 having been duly sworn, testified as follows:

3 THE COURT: This indictment charges that in
4 Saluda County on or about May 9, 2006, you willfully
5 and knowingly misrepresented your identification to
6 a law enforcement officer during a traffic stop
7 and/or for the purpose of avoiding arrest and/or
8 criminal charges in violation of section 16-17-725
9 of the South Carolina Code of Laws.

10 Upon your arraignment on this charge, it
11 appears you wish to plead guilty; is that correct?

12 DEFENDANT: Yes, sir.

13 THE COURT: Mr. Williams, have you fully
14 explained to your client the nature and elements of
15 the offense, the possible punishment and his
16 constitutional rights, including trial by jury?

17 MR. WILLIAMS: I did, Your Honor.

18 THE COURT: Are you satisfied there's a factual
19 basis for his plea?

20 MR. WILLIAMS: There is, Your Honor.

21 THE COURT: Do you agree with his decision?

22 MR. WILLIAMS: I do.

23 THE COURT: Mr. Harrison, today are you under
24 the influence of any medicine, alcohol, drug or
25 anything affecting your thinking?

1 **DEFENDANT:** No, sir.

2 **THE COURT:** Do you have physical or mental
3 problems that affect your thinking?

4 **DEFENDANT:** No, sir.

5 **THE COURT:** You're clearheaded? You know what
6 you're doing?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** When you plead guilty, you give up
9 important rights, including your right to remain
10 silent and your right to a jury trial; do you
11 understand?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** If you want a jury trial, you're
14 presumed innocent. The State has to prove you
15 guilty beyond a reasonable doubt to convict you.
16 You get to see, hear and have your lawyer
17 cross-examine every witness against you. Do you
18 understand all of that?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** Do you want a jury trial?

21 **DEFENDANT:** No, sir.

22 **THE COURT:** This carries up to 30 days or \$200;
23 do you understand that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** All right. We've been in the trial

1 of the case. The State has put up witnesses which
2 have indicated that you gave a false I.D. to law
3 enforcement officers during the traffic stop and
4 that at the time you apparently had outstanding
5 charges against you.

6 Do y'all have anything else from the State on
7 that?

8 **MR. MAYE:** Your Honor, he was wanted at the
9 time. And we maintain that it was for the purposes
10 -- and the part of the statute is, done for the
11 purpose of avoiding arrest for him to have tendered
12 and given his true identity would have immediately
13 resulted in arrest because he was wanted under the
14 name Jack Harrison in multiple states.

15 **THE COURT:** All right. So, Mr. Harrison, do
16 you admit you're guilty of this charge?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Has anybody forced you, threatened
19 you, coerced you in any way to get you to plead
20 against your will?

21 **DEFENDANT:** No, sir.

22 **THE COURT:** Any plea bargains the State made
23 with you, they would have to tell me about on the
24 record in open court or you would lose; do you
25 understand?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** You're pleading without any
3 negotiations or recommendation on this charge; you
4 understand?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** So has anybody promised you
7 anything or offered you any hope of reward to get
8 you to plead guilty?

9 **DEFENDANT:** No, sir.

10 **THE COURT:** Are you fully satisfied with your
11 attorney?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Is there anything else you want
14 your attorney to do on the case that he has not done
15 on this charge?

16 **DEFENDANT:** No, sir.

17 **THE COURT:** Do you have any complaint of any
18 kind against your attorney, law enforcement
19 officials or anybody who's dealt with this charge?

20 **DEFENDANT:** No, sir.

21 **THE COURT:** Now, Mr. Harrison, you understand I
22 haven't made any kind of ruling yet on that
23 evidentiary issue that's come up this morning. I
24 haven't decided whether this guy from Georgia is
25 going to be able to testify about any statement you

1 allegedly made to him or if he is allowed to
2 testify, the extent to which he's allowed to testify
3 because I don't know enough about those things to
4 make any rulings yet. Do you understand?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** So it may be that all of that comes
7 in anyway.

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** You sure you want to plead guilty?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Mr. Harrison's made a free,
12 knowing, voluntary and intelligent decision to waive
13 his rights and plead guilty to this charge on
14 indictment 367. He's done so upon the advice of
15 counsel with whom he's fully satisfied. There's a
16 factual basis for his plea. It is accepted.
17 Sentencing is deferred.

18 **MR. WILLIAMS:** Thank you, Your Honor.

19 **THE COURT:** Thank you.

20 **MR. MAYE:** Thank you, Your Honor.

21 **THE COURT:** All right. You said you had
22 another witness that we can do first?

23 **MR. MAYE:** I have a very -- yes, sir. I have a
24 chain witness that I was going to let go. I brought
25 him back from Guard and I'll take him next.

1 **THE COURT:** Bring the jury in.

2 **MR. MAYE:** Your Honor, prior to bringing the
3 jury in, I would ask now that he's pleaded guilty,
4 would you publish that to the jury so that we --
5 they're aware that he has now changed his plea from
6 not guilty to guilty because that changes some of
7 what would come in as to these witnesses. And I
8 would like for the jury to have an understanding as
9 to why we're no longer going forward on some of that
10 fact scenario, some we would and some we would not.
11 I would just ask that you publish that.

12 **THE COURT:** Do you want to be heard?

13 **MR. WILLIAMS:** I assume, Your Honor, that by
14 his statement, that the Court is only going to tell
15 the jury that that's no longer before them, that
16 he's entered a plea in regards to those charges.

17 **THE COURT:** Basically, yes.

18 **MR. WILLIAMS:** No, sir.

19 **THE COURT:** All right. Bring the jury in,
20 please.

21 **MR. MAYE:** Your Honor, does that in any way
22 limit us in -- I mean, the fact that he has now
23 pleaded guilty would come before the jury, that
24 would be fodder to come before the jury, would that
25 not be correct?

1 **THE COURT:** He's admitted he presented a false
2 identity -- he misrepresented his identity to a law
3 enforcement officer at the scene. And as I said
4 before the last break, that's come in and that's
5 going to come in.

6 **MR. MAYE:** Okay. Thank you, Your Honor.

7 **THE COURT:** Now, the extent to which it may
8 come in, that's subject to debate.

9 Bring the jury in.

10 (The jury enters the courtroom at 11:18
11 a.m.)

12 **THE COURT:** Ladies and gentlemen of the jury, I
13 hope you'll accept my deepest apologies for the
14 delay this morning. I promise you we've been
15 working. And I promise you that had I anticipated
16 what came up this morning, I would have made
17 adjustments either in when I brought you in or how I
18 dealt with things, we would have stayed here well
19 into the night. So I'm sorry.

20 I do need to tell you that during this period
21 when you were out, Mr. Harrison changed his plea on
22 one of these indictments from not guilty to guilty
23 and that is on the indictment for misrepresenting
24 identity to a law enforcement officer. He has now
25 entered a plea of guilty to that charge.

1 All right. Call your next witness, Solicitor.

2 MR. MAYE: The State calls Chris Cockrell to
3 the stand.

4 CHRIS COCKRELL,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MAYE:

8 Q Officer Cockrell, just tell the ladies and
9 gentlemen of the jury where you're employed.

10 A I'm with the Saluda County Sheriff's Office,
11 been there for ten years now.

12 Q Let me ask you this. I'm going to show you
13 what's been marked State's Exhibit 11 for I.D., a
14 SLED drug analysis security envelope with control
15 number B-175444. I ask you if on May the 17th of
16 2006, you took that item to the South Carolina Law
17 Enforcement Division?

18 A I did on the 17th. I got it from Captain
19 Shealy and transported it the same day to SLED to a
20 Ms. Williams, Coronda Williams.

21 Q Did you change or alter it in any way while you
22 had it in your control?

23 A I did not.

24 Q Was it sealed up in the best kit when you took
25 it and dropped it off to Coronda Williams at SLED?

1 **A** Affirmative, yes.

2 **MR. MAYE:** Answer any questions the defense has
3 in regard to the chain of custody.

4 CROSS-EXAMINATION

5 BY MR. WILLIAMS:

6 **Q** Officer Cockrell, did you have any other
7 affiliation with the case involving my client,
8 Mr. Harrison?

9 **A** Just taking the evidence.

10 **Q** I'm sorry?

11 **A** Just taking the evidence to SLED.

12 **Q** All right. So you weren't present when he was
13 arrested?

14 **A** No, sir.

15 **Q** And you weren't present when any search of the
16 vehicle was done?

17 **A** I didn't search the vehicle, no.

18 **Q** And you weren't present when any search of the
19 vehicle was done?

20 **A** No, sir.

21 **Q** So the only thing that you know about my client
22 in regards to this particular case and your
23 involvement is the fact that you took an item from
24 Shealy to Williams at SLED?

25 **A** Correct.

1 **Q** And the reason you know that is based on the
2 number which is placed on the item; is that correct?

3 **A** Right, sir.

4 **MR. WILLIAMS:** No other questions, Your Honor.

5 **THE COURT:** Anything further from this witness?

6 **MR. MAYE:** No. Thank you.

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

8 Are we in a position to call the next witness?

9 **MR. MAYE:** State calls officer Donovan Shealy.

10 DONOVAN SHEALY,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 **BY MR. MAYE:**

14 **Q** Investigator Shealy, if you would, introduce
15 yourself to the ladies and gentlemen of the jury,
16 tell them about your background at the sheriff's
17 office, what positions you've held and what work
18 you've done for the sheriff's office.

19 **A** My name is Donovan Shealy. I'm a lifelong
20 resident of Saluda County. I come to work at the
21 sheriff's office in December of 2001 as a narcotic
22 investigator, worked that for approximately seven
23 years, went to the road as a lieutenant to start
24 with, road patrol, and now on the road currently as
25 a captain for the road patrol.

1 Q Were you at one time the chief narcotics
2 officer here in Saluda County?

3 A Basically the only narcotics officer, yeah. We
4 had a task force.

5 Q You were attached to a multicounty task force?

6 A That is correct.

7 Q How many years did you do that, did you work
8 drugs?

9 A Had to have been almost seven years.

10 Q Where were you employed in law enforcement
11 prior to coming to Saluda?

12 A Lexington County Sheriff's Department, started
13 with them in 1995 as a jailer, went to the road in
14 '97 and then worked road patrol and warrant division
15 at the Lexington County Sheriff's Department.

16 Q Let me ask you this. Let me direct your
17 attention to May the 9th of 2006. Did you come up
18 upon the stop that Officer Byrd made on the
19 defendant in this case, Jake Harrison?

20 A Yes. I was the backup officer on the traffic
21 stop that Deputy Byrd had made.

22 Q Tell the ladies and gentlemen of the jury, what
23 you observed or what items you observed there being
24 taken after the initial arrest on the part of
25 Officer Byrd.

1 **A** I helped Officer Byrd do the inventory. It was
2 -- I remember some green leafy material, some
3 crystal -- white crystal-like material, pipe that's
4 used for smoking narcotics. I think some -- Officer
5 Byrd had recovered some money also. And it was this
6 can, a Desenex can that was taken into evidence,
7 also.

8 **Q** Show you State's 16 and photographs 14 and 15
9 that are in evidence. Are those the items that you
10 observed there in the vehicle that Mr. Harrison was
11 operating?

12 **A** Right. This picture was taken on the inside of
13 Mr. Harrison's vehicle, both of them.

14 **Q** What condition was the windshield in the
15 vehicle that Officer Byrd stopped?

16 **A** It was shattered like a rock or baseball or
17 something had hit it on the passenger side and it
18 had, like, spider webbed across to the driver's
19 side.

20 **Q** I'm going to show you what's been marked
21 State's 4 for I.D. Can you identify that
22 photograph?

23 **A** That's the vehicle that Mr. Harrison was
24 driving.

25 **Q** Is that a fair and accurate photograph of the

1 condition of the vehicle or the vehicle as it was
2 during the time that the stop was effectuated by
3 Officer Byrd?

4 **A** This picture was taken roadside at that
5 location.

6 **MR. MAYE:** Move to admit it into evidence.

7 **MR. WILLIAMS:** If I could see which one he's
8 referring to.

9 **MR. MAYE:** Sure.

10 (Pause.)

11 **MR. WILLIAMS:** No objection, Your Honor.

12 **THE COURT:** Mark that in evidence please,
13 ma'am.

14 (State's Exhibit Number 4, photograph,
15 admitted into evidence.)

16 BY MR. MAYE:

17 **Q** Investigator Shealy, ask that you look at
18 State's 4. Can you look through the back window,
19 can you see -- what can you identify about the front
20 windshield from the photograph in the rear?

21 **A** You can see, looking at this picture, you can
22 see on the right-hand side as you look through the
23 back glass, the initial impact, whatever object hit
24 it, and then the spider web-like things going across
25 the front windshield.

1 Q You can see that?

2 A Yes, sir.

3 Q Just publish that to the jury if you would.

4 A (Witness complies.) (Inaudible.)

5 THE COURT: I can't hear what you're saying.

6 THE WITNESS: I said it would be on the
7 right-hand side of the picture.

8 (Witness resumes the witness stand.)

9 BY MR. MAYE:

10 Q Investigator Shealy, where is that vehicle now?

11 A That vehicle remains in our impound yard at the
12 Saluda County Sheriff's Office.

13 Q Have you seen it in the last few days?

14 A Drove by it yesterday.

15 Q Does it still reflect the windshield in the
16 same condition broken as there --

17 A Still does. I mean, I even took a picture of
18 it. I got a little clearer picture of it.

19 Q Okay. What else was taken or what else came to
20 your attention there as y'all were conducting this
21 stop and you were assisting Officer Byrd? What, if
22 anything, did you hear from the vehicle?

23 A Myself and Officer Byrd were together at the
24 back of the vehicle, I think, with Mr. Harrison and
25 Officer Byrd was running his driver's -- running

1 some stuff on the vehicle. And we were standing
2 side by side so we could hear our radios, but we
3 also heard another radio, and it was just me and him
4 at that time, coming from the inside of the vehicle.
5 So we done a little more looking around in the
6 vehicle and we noticed --

7 Q What do you mean you could hear another radio?
8 What was significant about the transmission you were
9 hearing?

10 A We were hearing ourselves talk, I mean, hearing
11 ourselves come over another radio. And we knew we
12 were standing side by side and it was, where is this
13 coming from.

14 Q You were hearing your transmissions?

15 A Right.

16 Q Okay. What did you discover there in the
17 vehicle?

18 A Two radio -- scanner radios, one of them being
19 a 400 megahertz, which we operate off of. I don't
20 know, the frequency is 43 something, I believe, but
21 it's a six digit frequency that has to be put in and
22 we were hearing our live transmissions.

23 Q What in relation to your frequency as to other
24 departments around you, do y'all use the same
25 frequency?

1 **A** No. You have to use different ones or it would
2 bleed over and you never would get a chance to get
3 on the radio because Lexington, Aiken, they may use
4 800s, but the Town of Saluda, Town of McCormick,
5 some of the smaller agencies all are on 400, so we
6 have to have our own separate frequency. If not,
7 everybody would know what was going on.

8 (Pause.)

9 **MR. WILLIAMS:** No objection, Your Honor, if
10 he's offering it into evidence.

11 **MR. MAYE:** I'm going to ask him if he can
12 identify it.

13 **BY MR. MAYE:**

14 **Q** Are these the radios, the transmission radio
15 here and the scanning radio on the other side, are
16 those the ones that you seized out of the vehicle
17 that Mr. Harrison was operating?

18 **A** That's correct. The one on my right as I look
19 toward the jury would be the 400, that would be the
20 one that was picking up our frequency and our
21 transmissions. And the one on the left is a 800
22 megahertz. It's a little more sophisticated. It
23 works with agencies like SLED and Highway Patrol.
24 It's more expensive, the radios in general are more
25 expensive so it's programmed to pick up agencies

1 like Highway Patrol, FBI, SLED. They run off of
2 800.

3 **Q** In order to receive y'all's frequencies, would
4 an individual have to know what the frequency was
5 ahead of time and put it in the radio, the one the
6 left?

7 **A** Right. The one on my right has got program,
8 program one, priority one, two, three and all that,
9 so it would've had to have been programmed on a
10 certain channel on this radio. And it wasn't
11 scanning. I mean, it continued to run live through
12 the whole traffic stop, so it was actually
13 programmed into this radio.

14 **Q** Will that radio transmit and receive on y'all's
15 frequency?

16 **A** Right.

17 **Q** Is that a transmitter and receiver?

18 **A** Yeah. You have a mic so you can...

19 **Q** That's essentially a police radio, isn't it?

20 **A** Pretty -- yeah. It's not just a average Joe, I
21 don't think, could walk in and would have that in
22 his vehicle.

23 **Q** Have you ever, during all of the time you were
24 working narcotics or anything else, have you ever
25 seen anyone that had a setup like that where they

1 could receive your frequencies?

2 **A** Not going down a road. You'll occasionally do
3 a search warrant on a house and go in and see the
4 little scanners, you know, the handheld scanners
5 with the antennas, but going down the road with our
6 frequency programmed in raised some attention.

7 **Q** What advantage does that give someone that,
8 say, is hauling narcotics? What advantage would
9 that give them?

10 **A** They would know where we're at and what we're
11 doing and what end of the county and everything else
12 if we're using our locations. That's the reason we
13 have to go to codes to keep people, that's why we
14 try to talk in ten codes, as far as locations if
15 they're familiar with the area and the roads.

16 **Q** What do you term an individual utilizing those
17 kind of devices? What term do y'all use in
18 narcotics for that when an individual on the other
19 side is utilizing --

20 **A** They're a transporter, I mean, illegal
21 activities, smuggler, whatever. I mean, it's
22 several different terms you can use, dealer.

23 **Q** Is that a counter surveillance measure?

24 **A** Most certainly. Can I say something else?

25 **Q** What other information did that radio lead you

1 to believe or what other significance did that bear
2 to you with the seizure that you made of the
3 narcotics in finding those radios?.

4 A He was trying to -- someone was trying to evade
5 law enforcement.

6 MR. WILLIAMS: Objection to that, Your Honor.
7 His first statement was he as opposed to someone.

8 MR. MAYE: I can rephrase that.

9 BY MR. MAYE:

10 Q What would an individual utilize that for in
11 order to -- how would that help them if an
12 individual was hauling or transporting drugs?

13 A To evade law enforcement, find out where law
14 enforcement is at at all times.

15 Q I'm going to show you what's been marked as
16 State's 13 for I.D., ask you if you can identify
17 that, ask you when you received it?

18 A This is a green leafy substance. At the time I
19 received it, it was evidence. I mean, you can see
20 it in the picture. I don't know which picture was
21 introduced as evidence, 15 or 14, but anyway, you
22 can see it in this picture. It was -- Officer Byrd
23 had got it out of this Desenex can.

24 Q Had you ever encountered any kind of hidden
25 compartment like that?

1 **A** No.. Through my seven years in narcotics and 15
2 years in law enforcement, I didn't -- never
3 encountered anything like that.

4 **Q** What condition was the bottom? What happened
5 when y'all picked that item up?

6 **A** The bottom fell off. I wasn't there actually
7 when Officer Byrd encountered it, but I think he
8 might have said something about look at this or what
9 about this, and I went around there.

10 **Q** Where was that in relation to where
11 Mr. Harrison was in the vehicle? Where was that
12 bottle in relation to where the driver was?

13 **A** It was right there on the front seat, front
14 passenger seat.

15 **Q** Was that within arm's reach of the driver?

16 **A** Most certainly. A Ford Explorer, you could
17 easily.

18 **Q** When did you receive the -- the substance you
19 believe to be marijuana, when did you receive it?

20 **A** It was put in the drop box by Officer Byrd.
21 And then on July the 6th of 2006, I got it out and
22 tested it. I also forgot to mention that during my
23 introduction. I am certified through State Law
24 Enforcement Division as a marijuana analyst.

25 **Q** Let me ask you this. Were you the evidence

1 custodian in charge of keeping those items secure
2 once you got it from the drop box where it had been
3 put by Officer Byrd?

4 **A** That's correct.

5 **Q** Did you change or alter it in any way during
6 the time that it was in secure storage?

7 **A** No.

8 **Q** Let me ask you this. Have you been certified
9 through SLED to test marijuana and do you have any
10 certification --

11 **A** I do. I've been certified and recertified, so
12 it's going on approximately five -- probably upwards
13 of seven years now as being an analyst. And I have
14 my card.

15 **Q** You do have your certification from SLED card?

16 **A** Correct.

17 **Q** How many times have you been qualified as an
18 expert witness in the past to test marijuana?

19 **A** Numerous times in magistrate court and probably
20 five or six up here in general sessions court.

21 **Q** What specialized training did you get from the
22 South Carolina Law Enforcement Division to enable
23 you to test substances to determine whether or not
24 it's marijuana?

25 **A** Initial class, attended a day and a half class

1 of testing a hundred samples and you had to test
2 them all correctly and take a written test and make,
3 I believe, it was 85 percent on it and then also go
4 back and be recertified. And during the
5 recertification, I think it's 25 samples and test
6 them all and a written test.

7 Q Did you successfully complete all of those --

8 A Both times, yes.

9 Q How long have you been testing marijuana for
10 the sheriff's department here?

11 A About seven years.

12 MR. MAYE: Your Honor, at this time, I'm going
13 to ask or submit him as an expert witness in this
14 regard subject to, of course, him being
15 cross-examined by Mr. Williams. I don't know what
16 his position is on that, but I would offer him as an
17 expert in the area of analysis of marijuana, being a
18 chemical analyst of marijuana.

19 MR. WILLIAMS: We don't have any objection in
20 regards to the marijuana, Your Honor, in regards to
21 his expertise in testing.

22 THE COURT: He is so recognized.

23 BY MR. MAYE:

24 Q The substance that you seized there or that was
25 seized by the sheriff's department from Mr. Harrison

1 in this case, did you conduct and carry out a test
2 in accordance with the procedures that SLED laid out
3 for you? Did you test it to see whether or not it
4 was marijuana?

5 A Right. I done (sic) the two prong test.

6 Q What is that? Tell the jury how you determine
7 it scientifically.

8 A It's a chemical and microscopic test. It has
9 to pass both tests. In the microscopic test,
10 marijuana has three distinctive hairs that you look
11 for and it has to have all three to be positive.
12 And then the chemicals, you mix the chemicals
13 together and then it has a unique combination that
14 only marijuana comes back with turning purple. And
15 it has to pass both tests. If it fails one of the
16 tests, you can't consider it marijuana. And this
17 substance passed both tests.

18 Q Let me ask you this. In your expert opinion,
19 what is that subject that was seized there from
20 Mr. Harrison?

21 A It's marijuana.

22 Q It is marijuana. Did you do a written report?

23 A I did. I have my original report.

24 Q You have your report here with you?

25 A Yes, sir.

1 **MR. MAYE:** Your Honor, at this point in time, I
2 would move to admit the report of the marijuana
3 analysis and I would move to admit the substance
4 that has been identified as being marijuana.

5 **THE COURT:** Any objection?

6 **MR. WILLIAMS:** If I can see what he's referring
7 to.

8 (Pause.)

9 **MR. WILLIAMS:** We don't have any objection to
10 that, Your Honor.

11 **THE COURT:** That has not been marked. And the
12 other, what number is on it?

13 **THE WITNESS:** On the marijuana?

14 **MR. MAYE:** State's 13 for I.D. so far, Your
15 Honor.

16 **THE COURT:** Mark 13 in evidence and mark that
17 document in evidence.

18 (State's Exhibit Number 13, marijuana, and
19 State's Exhibit Number 17, lab report, admitted into
20 evidence.)

21 BY MR. MAYE:

22 **Q** Let me show you what's been marked State's 11
23 for I.D. with a control number B-175444, ask you is
24 that the powder substance that was seized from the
25 vehicle there from Mr. Harrison in this case?

1 **A** It is.

2 **Q** Okay. When did you receive it -- who do you --
3 the records indicate putting it in the drop box and
4 when did you receive it?

5 **A** On May 17th, I got it out of the drop box and
6 give it to Officer Chris Cockrell.

7 **Q** Did you change or alter it in any way during
8 the time that it was in the drop box and that you
9 were the evidence custodian?

10 **A** No. It's sealed up. In this inner package is
11 a best kit that Officer Byrd would have had to seal
12 and put his initials on it.

13 **Q** Was it sealed when you took it from secure
14 storage and gave it to Officer Cockrell to take to
15 SLED?

16 **A** Yes, sir. It would have been -- this blue
17 envelope would have been placed inside a manila
18 envelope that's given to us by SLED, so it was
19 sealed.

20 **Q** Officer Shealy, in relation to the charge
21 possession with intent to distribute
22 methamphetamine, what did you see -- what evidence
23 did you see with Mr. Harrison from the totality of
24 the stop, what else did you see that supported
25 possession with intent to distribute

1 methamphetamine?

2 A The vehicle's in his control, the can where the
3 narcotics was found was in his reach, the money, it
4 all just goes along with illegal drug activity.

5 Q Okay. When have you ever encountered the
6 degree of sophistication of having radios that would
7 monitor your frequency?

8 A Not in a vehicle, I've never encountered that.

9 MR. MAYE: Beg the Court's indulgence.

10 (Pause.)

11 MR. MAYE: Investigator Shealy, answer any
12 questions the defense has for you. Thanks.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Officer Shealy, as I understand your testimony
16 and your involvement in this case, you arrived on
17 the scene when my client was arrested on or about,
18 what was it, May the 9th, 2006?

19 A I think that's correct, yes, sir.

20 Q And your other involvement with this case was,
21 as you've testified, that you received from the
22 evidence box, the item which has been marked -- this
23 item. You got this out of the evidence box and you
24 tested this on or about May 17?

25 A I think that's correct.

1 Q And from your testimony and your --

2 A No, July the 6th, 2006.

3 Q July the 6th?

4 A Right.

5 Q Is that when you took it out or when you tested
6 it?

7 A It was packaged separate. These were packaged
8 separate.

9 Q These were not together?

10 A No.

11 Q Both of them were in your evidence log --

12 A Right.

13 Q -- I mean, in your evidence box at the Saluda
14 County Sheriff's Department?

15 A Right.

16 Q And you took this item out and tested it on
17 July the what?

18 A July the 6th.

19 Q Of 2006?

20 A Right.

21 Q And when you finished testing it on July the
22 6th of 2006, what did you do with it?

23 A It had been placed back into evidence.

24 Q All right, sir. Now, as I understand your
25 testimony in reference to this white powdery

1 substance, you took that out of the evidence box
2 when?

3 A It would've been May 17th, 2006.

4 Q May 17, 2006. And you gave that item to
5 Officer Cockrell?

6 A That's correct.

7 Q And Officer Cockrell took that item to SLED?

8 A Correct.

9 Q To Ms. Williams?

10 A I'm assuming so. He took it to the intake
11 technician at SLED, yes, sir.

12 Q Aside from those facts which you've testified
13 to, has either item, either the marijuana or the
14 white powdery substance, been out of the Saluda
15 County evidence locker?

16 A No, sir, not to be brought up here other than
17 that.

18 Q Okay. And you're the evidence custodian of
19 that?

20 A That's correct.

21 Q Can you look at this document right here?

22 A (Witness complies.)

23 MR. MAYE: I'd like to see whatever it is as
24 well.

25 BY MR. WILLIAMS:

1 Q Let me show it to the Solicitor and I'll hand
2 it back. You recognize what type of document that
3 is, don't you?

4 A That's a chain of custody on a best kit, it
5 seems to be.

6 (Solicitor Maye reviewing document.)

7 Q Now, that's a chain of custody form, isn't it?

8 A (Witness reviewing document.)

9 Q Have you never seen a form like that, Captain?

10 A Yes, I've seen a form like this.

11 Q Would you like to change your testimony about
12 whether or not those items have been out of the
13 Saluda County evidence locker now?

14 A According to this, this is Chris Cockrell, and
15 the date on it is May the 10th, 2006. And it's
16 saying that Chris Cockrell dropped it into the
17 evidence box at the Saluda County Sheriff's Office.

18 Q So the item was out of the evidence box on at
19 least one other occasion? It would have to be,
20 right?

21 A According to this, yes, sir.

22 Q Do you recognize that form as being something
23 which you normally use in your -- in the Saluda
24 County Sheriff's Department?

25 A It's the evidence form out of a best kit from

1 SLED.

2 Q Do you recognize the signature on that form?

3 A It's Chris Cockrell's signature.

4 Q So, at some point in time, somebody else took
5 possession of this white substance that you're
6 talking about and it was out of your control and you
7 had no knowledge about it?

8 A According to that, it was between Stephen Byrd
9 and Chris Cockrell, yes, sir.

10 Q And you had no knowledge about it. Well, how
11 about check and see who notarized that form.

12 A That's my signature on the notarization.

13 Q How did you notarize something that you had no
14 knowledge of?

15 A I notarized the signatures on it.

16 Q Okay. Let's back up to the day in which my
17 client was arrested. You were at the scene.
18 Officer Byrd was at the scene.

19 A Correct.

20 Q And there was another officer at the scene,
21 right?

22 A Some other officers might have pulled up.

23 Q Do you know who was there?

24 A I believe Major Shorter may have pulled up and
25 seems like somebody else might have been riding with

1 because that's part of the inventory, right?

2 A Clothes wasn't actually seized. I mean, they
3 were inside the vehicle when the vehicle was towed?

4 Q What did you do with them?

5 A They're probably still in the vehicle at the
6 Saluda County Sheriff's Department.

7 Q Okay. Now, since you did the inventory, did
8 you witness the Desenex container that we've
9 referred to here today, where did you first -- you
10 said you didn't see him when he found it, but you
11 heard him find it; is that right?

12 A That's correct.

13 Q And what did he say?

14 A He said how about this or look at this or
15 something to that effect.

16 Q All right. And when he said how about this or
17 look at this, where were you?

18 A I was probably at the back of the vehicle.

19 Q All right. And where was he?

20 A He was probably in the passenger area of the
21 vehicle.

22 Q Did you see him there?

23 A I mean, I could tell -- I mean, yeah, he was on
24 the passenger side of the vehicle or up in the
25 passenger area of the vehicle.

1 Q All right. And what did he do? Did he hold up
2 the container?

3 A I think he may have had it in his hand, yes,
4 sir.

5 Q So he holds it up like that (indicating). And
6 when he holds it up, did you see anything when he
7 held it up?

8 A It didn't have a bottom in it.

9 Q Right. Have you messed with this to see how
10 this thing goes together?

11 A No, sir.

12 Q Well, would you like to kind of -- mess with it
13 a little bit.

14 A (Witness complies.)

15 Q Can you tighten it securely?

16 A You can.

17 Q You can. You can tighten it so tight, you
18 can't almost -- you can't even open it?

19 A Probably so.

20 Q You want me to tighten it to see if you can
21 open it?

22 A I don't care, you can.

23 Q Okay. So when he held it up and he had an open
24 bottom, you didn't see marijuana or the white,
25 crystal, powdery substance fall out of the can, did

1 you?

2 **A** No, sir.

3 **Q** So where were those items when you first found
4 them, when you first saw them?

5 **A** Those items were on the front seat passenger
6 area.

7 **Q** All right. And were they positioned like they
8 are in this photograph?

9 **A** Yes, sir. As well as I can remember, they were
10 in that general area.

11 **Q** So when you saw them, they were positioned just
12 like that?

13 **A** In a roundabout area. I mean, I can't say they
14 wasn't moved a little bit for the photograph, but
15 they were on the front seat area.

16 **Q** Right. Moved around for the photograph,
17 because in that photograph, it shows a can of
18 Desenex seated nicely on the front seat of the car,
19 doesn't it?

20 **A** I don't know if you can say nicely, but it's on
21 the front seat, yes, sir.

22 **Q** Is it straight and level with the front of the
23 seat where the seat would be?

24 **A** It's on the seat. I don't know about the
25 leveling purposes or what we're getting at with

1 **MR. MAYE:** Nothing else. Thank you, Your
2 Honor.

3 **THE COURT:** Thank you, sir. You may step down.
4 Your next witness.

5 **MR. MAYE:** The State would call Kukila Stanley,
6 the South Carolina Law Enforcement Division.

7 KUKILA NICOLE STANLEY,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MAYE:

11 **Q** Identify yourself to the ladies and gentlemen
12 of the jury, just introduce yourself and tell them
13 where you're employed.

14 **A** My name is Kukila Nicole Stanley. And I am
15 employed with South Carolina Law Enforcement
16 Division also known as SLED.

17 **Q** In what capacity are you employed at SLED?

18 **A** I'm employed with SLED as a chemical analyst.

19 **Q** How long have you been employed there and what
20 specialized training do you have in that regard?

21 **A** I've been employed there for five years. I
22 have a bachelor's degree in chemistry from the
23 University of South Carolina. And I've also
24 received extensive training with SLED to analyze
25 controlled substances.

1 Q Okay. Have you previously been qualified as an
2 expert witness in the area of chemical analysis of
3 evidence that's suspected to be narcotics?

4 A Yes.

5 Q Approximately how many times have you been
6 qualified as an expert witness?

7 A Eighteen times.

8 Q Eighteen times.

9 MR. MAYE: Okay. At this point in time, Your
10 Honor, I'm going to offer her as an expert witness
11 in the area of chemical analysis of suspected
12 narcotics items.

13 MR. WILLIAMS: No objection, Your Honor.

14 THE COURT: She is so recognized.

15 BY MR. MAYE:

16 Q Let me show you what's been marked State's 11
17 for I.D., control number B-175444, ask you if you
18 recognize that and ask you if that was the item that
19 was submitted to SLED for testing?

20 A Yes.

21 Q Did you perform an analysis pursuant to your
22 duties at SLED on that subject that's there or that
23 sample that is there before you now?

24 A Yes.

25 Q Okay. When did you perform testing and what --

1 where did you get the item from or where did you
2 retrieve it -- prior to testing it, where did you
3 retrieve it from?

4 **A** The evidence log-in department at SLED.

5 **Q** Okay. When you got the item, what condition
6 was the tamper seal on the best pack or the
7 tamper-resistant seal? Was it still sealed?

8 **MR. WILLIAMS:** Your Honor, I have a matter of
9 law to take up with the Court outside the presence
10 of the jury.

11 **THE COURT:** All right. Ladies and gentlemen,
12 please step in the jury room. Don't discuss the
13 case.

14 (The jury retires to the jury room.)

15 **MR. WILLIAMS:** Out of an abundance of caution,
16 Your Honor, I stopped at this time because it would
17 appear that there might be two problems with the
18 chain of custody of the item. Number one, her
19 testimony right here is that she got it from the
20 evidence log and I assume that she got it from some
21 lab technician, maybe not. And the other has to do
22 with the other testimony that we had about where --
23 for some reason, this item was taken out of the
24 evidence log or evidence box by one of Saluda's
25 officers.

1 **MR. MAYE:** No, sir. I don't think that there's
2 any question of the chain, Your Honor. What we have
3 in the record now in the chain is complete. I want
4 to ask her if it was secure. It went to SLED,
5 Coronda Williams got it. And I think this -- and
6 I'm going to ask her --

7 Did you retrieve the item from I.D. yourself?

8 **THE WITNESS:** No, I don't. I retrieve it from
9 a forensic technician that works in evidence log-in.

10 **MR. MAYE:** Okay. Your Honor, certainly with
11 Rule 6, I think we've complied in this case. I've
12 never been in the habit of bringing evidence
13 technicians in with the internal chain of custody at
14 SLED.

15 I mean, we've been through this issue numerous
16 times before. She retrieved it from a log-in. I
17 don't think that we have to prove internal chain of
18 custody at SLED. I've not been in the habit of
19 doing that. I have no idea what evidence technician
20 might have moved it around inside of SLED. I was
21 going to merely ask her, we have it going to SLED in
22 the sealed best pack, we have her retrieving it out
23 and I'll ask her now --

24 Was the item still sealed in the best pack when
25 you got it?

1 **THE WITNESS:** Yes, it was.

2 **MR. MAYE:** Okay. Was it tampered -- or would
3 you have proceeded with the test procedure if it had
4 been opened or tampered with?

5 **THE WITNESS:** No.

6 **MR. MAYE:** Your Honor, I have -- Officer Byrd
7 has testified that he sealed it up in the
8 tamper-resistant seal. Every witness has testified,
9 thus far, has testified that the seal was unbroken
10 and it went to SLED. That's what we would have to
11 rely on chain of custody so far, Your Honor.

12 **THE COURT:** All right. Mr. Williams.

13 **MR. WILLIAMS:** Your Honor, on cross-examination
14 of the last witness who testified, he had to admit
15 that the item had left the evidence -- who was the
16 evidence custodian, he had to admit that the
17 evidence had somehow left the evidence box and was
18 with another officer with Saluda without his
19 knowledge and that's what he testified to. And then
20 he testified, as I showed him the form and asked him
21 about the signature, he says, That's my signature,
22 but I just notarize names.

23 So there's a period of time in which these
24 drugs were with some other officer not in the chain,
25 it hasn't been testified to in the chain, so they

1 were out floating around doing something with them.

2 And, Your Honor, as -- well, I guess that's
3 sufficient, Your Honor. And we would take exception
4 to the Solicitor's viewpoint that he doesn't have to
5 produce those individuals who work at SLED because
6 we had actually, as part of our discovery motion, we
7 had required the appearance of any and all witnesses
8 involved in the chain of custody when we filed our
9 discovery motion.

10 **MR. MAYE:** Your Honor, they filed under Rule 6
11 in this case and that just requires me to bring the
12 chemist for live testimony. We only have to -- my
13 understanding of the law in chain of custody in
14 South Carolina is it only has to be to where there's
15 reasonable reliability and certainty that the item
16 that was seized actually was the one that made it to
17 SLED. And I have that Officer Byrd sealed it in
18 this case. We have that it went to SLED.

19 I've never brought any of the witnesses -- I
20 know that many defense lawyers attempt to do that to
21 get some sort of internal run or chain of custody
22 from SLED. I understand the new criminal rules are
23 going to attempt to change that, but basically
24 they're certain that if some lab tech moved it
25 inside of SLED, that we've got to bring them, that

1 results often in a situation where there are 15
2 people in the courtroom trying to comply with that.

3 I think that we have met the chain of custody
4 requirements in this case, Your Honor. She's
5 testified -- Officer Byrd testified he sealed it.
6 We've testified that it was in the secure drug
7 storage. No one that's involved in this has
8 testified they tampered or altered the seal in any
9 way.

10 And we submit to Your Honor that we have met
11 the burden on showing the reliability or insuring
12 what actually chain of custody is supposed to show,
13 that an item is untampered with and that it is the
14 item that was seized from Mr. Harrison. I don't
15 think there's any realistic challenge to that, Your
16 Honor, and I would ask that she be allowed to
17 testify. And, of course, I'm going to move to admit
18 it into evidence based on these witnesses.

19 (Pause.)

20 **THE COURT:** All right. What is your argument
21 about on May the 10th, Cockrell got State's Exhibit
22 11?

23 **MR. WILLIAMS:** Cockrell took the item out of
24 the evidence box. Donovan Shealy, who's the person
25 in charge of the evidence for Saluda, had no

1 knowledge of that. In his testimony -- and then
2 there's nothing from which the item goes back into
3 the evidence box. So, for a period of time, it's
4 just in suspension.

5 **THE COURT:** Where is that form?

6 **MR. MAYE:** Your Honor, we weren't relying on
7 the Rule 6 forms in this case. We relied on live
8 testimony. And the testimony in the record at this
9 point in time is Officer Cockrell to the drop box,
10 from the drop box to Donovan Shealy got it from the
11 drop box and sent it to Cockrell to SLED.

12 And we're not relying on the Rule 6 forms in
13 this case. We relied on live testimony in this
14 case. And that's just a matter of impeachment,
15 that's not -- not what we rely on. The only time we
16 would utilize the Rule 6 form is if we were
17 attempting to put it in without the chemist.

18 **MR. WILLIAMS:** Well, either Cockrell got it one
19 way or the other, Your Honor, if indeed he ever got
20 it.

21 **MR. MAYE:** And, again, Your Honor, we're not
22 relying on those Rule 6 forms. We brought the live
23 witnesses on the chain of custody and we've got --
24 for the record, what's in the record now, we've got
25 a complete chain of custody going to SLED. The only

1 issue would be Mr. Williams' argument that we would
2 have to produce internal chain of custody people.

3 **THE COURT:** I thought he raised this issue
4 about Cockrell.

5 **MR. WILLIAMS:** I did, Your Honor, I did. He's
6 saying that the forms are wrong and that -- and I
7 don't know what he's saying. I guess he's saying
8 that --

9 **MR. MAYE:** I'm not saying anything in regard to
10 that other than we're not relying on those forms.

11 **MR. WILLIAMS:** The person in charge of the
12 evidence log admitted that the evidence had been out
13 of his control for a period of time and he knew
14 nothing of it.

15 **MR. MAYE:** Your Honor, that is not what he
16 admitted. He said that it had been in secure
17 evidence and he attempted to impeach him with that
18 form. He did not say that it had been out of his
19 custody, control. He said he was not aware that it
20 had been out of his custody or control or had been
21 out of secure evidence, that was his testimony.

22 And like I said, that's an attack -- we have a
23 complete chain and he's attempting to attack that
24 with the Rule 6 forms, which we're not relying on in
25 this case, Your Honor. We relied on live testimony

1 and there's testimony in the record to support the
2 chain of custody.

3 On a Rule 6 form, the only time that it is
4 critical is when the officer seals it and when the
5 chemist gets it out and it's still sealed.

6 I don't think that we would have to prove every
7 link in the chain. There's been cases in South
8 Carolina where the evidence -- where there's a
9 person that's completely missing. I know that
10 there's been cases where items went in where there
11 was a nurse that was not available at all and that
12 never went in.

13 The whole issue with chain of custody is
14 whether or not that the item is -- is fungible
15 evidence, that it hasn't been tampered with or
16 altered in any way. And I don't think there's been
17 any meaningful attack that anybody changed, tampered
18 or altered or that there's any realistic argument
19 that the item that was seized is not the same item
20 that was tested and I think that's basically what
21 we've got to comply with. I don't think it has to
22 be perfect in this case.

23 He's asserting or trying to attack the chain of
24 custody, but like I said, we didn't rely on the Rule
25 6 forms, we relied on live testimony. And we assert

1 that the item that was seized from Mr. Harrison is
2 the same item and it was in an unchanged and
3 unaltered condition when it was tested by this
4 witness that's before the Court.

5 **MR. WILLIAMS:** Your Honor, for the Court's
6 edification, I didn't write those forms out. Those
7 were produced by the State.

8 **MR. MAYE:** And, Your Honor, we did not
9 introduce the Rule 6 forms in an attempt to try to
10 avoid or obviate bringing the chemist here. They
11 demanded that we bring the chemist and produce the
12 chain witnesses and we've done so.

13 **THE COURT:** You're getting ahead of me on that.
14 What is in the testimony? I mean, I'm trying
15 to scroll through the real time.

16 I know May the 10th is a state holiday, which
17 may explain why when it was taken out and put back
18 in, but be that as it may, I've got one form here
19 that states, and it's notarized, that Deputy
20 Cockrell got control item B-175444 personally from
21 Stephen Byrd at the Saluda County Sheriff's Office
22 on May the 10th, 2006. And then I've got another
23 form that's not notarized, that -- the first one is
24 notarized by Donovan Shealy.

25 The second one, which is not notarized, states

1 that Chris Cockrell received the item personally
2 from Donovan Shealy on May the 17th, 2006, at the
3 Saluda County Sheriff's Office, was originally
4 seized by Stephen Byrd. And on May the 17th, 2006,
5 that it was delivered to SLED.

6 **MR. WILLIAMS:** The unnotarized one, Your Honor,
7 is consistent with what their theory is, I guess.

8 **THE COURT:** Well, wait a minute. The first one
9 says he put it in the evidence box.

10 **MR. WILLIAMS:** Yes, sir.

11 **THE COURT:** So how is that inconsistent? On
12 May the 10th, he says he put it in the evidence box.

13 **MR. WILLIAMS:** The testimony so far from the
14 live witnesses are Byrd finds it, Byrd gets it, Byrd
15 puts it in the evidence locker. It remains in the
16 evidence locker until Donovan Shealy pulls out the
17 marijuana. He tests the marijuana. Then later on
18 -- or on a separate date, Donovan Shealy pulls the
19 white item out and gives it to Cockrell and Cockrell
20 takes it to SLED. It's taken to SLED and it's
21 received by a lab technician and then the next
22 witness we have is the chemist.

23 We're missing the testimony from the lab tech
24 which took it from the evidence locker at SLED, gave
25 it to the chemist to test.

1 And the other problem is that clearly -- and
2 the form that you're looking at is where there's a
3 contradiction as to how it got in the evidence
4 locker, if you will.

5 **THE COURT:** Well, I've dealt with this Rule 6
6 issue numerous times. If the State establishes that
7 it's in a tamper-resistant package and it was
8 delivered to SLED and it was in a evidence box and
9 that only certain people have access to that and how
10 the procedure normally is is the tech picks it up,
11 brings it to the lab, the lab -- the chemist checks
12 the package, makes sure it hasn't indicated any sign
13 of tampering, then I have not required every
14 evidence technician or lab technician who may have
15 touched it to come to court.

16 I think there's sufficient indicia of
17 reliability with the tamper resistant aspects of the
18 best evidence kit and, you know, unless I rule
19 differently in this case, I've allowed this same
20 thing to go forward in other cases.

21 **MR. WILLIAMS:** This has got a little different
22 spin to it, Your Honor, that's on the front end.

23 **THE COURT:** Well, that's why I'm asking the
24 questions. If you're talking about what happened at
25 the Saluda County Sheriff's Office, that's why I've

1 been asking questions about that.

2 **MR. WILLIAMS:** Yes, sir, I have.

3 **MR. MAYE:** Your Honor, I can clear it up.

4 Officer Byrd has refreshed his recollection and
5 looked. He gave it to Chris Cockrell on the 9th and
6 I think he went on the 10th the next day and put it
7 into evidence. He thought that he had taken it
8 straight and put it into evidence, but he did not.
9 Cockrell is in that chain, in that link. And I have
10 Cockrell here and I can fix that.

11 These officers would have to refresh their
12 recollection with the Rule 6 forms, but Investigator
13 Cockrell got it from Byrd on the, I believe, on the
14 9th and put it in the evidence locker on the 10th.
15 And I have him here. But like I said, it was not
16 changed, it was not altered, that's the only
17 discrepancy in the chain that he's talking about on
18 the Rule 6 forms. And Officer Byrd was mistaken in
19 thinking that he had taken it himself.

20 I mean, they have to -- from four years ago,
21 Your Honor, in all candor, they have to refresh
22 their recollection with the forms in this case.
23 And, again, I would ask that the Court allow me to
24 recall Officer Cockrell, if necessary, but we still
25 assert in this case, Your Honor, that we've met the

1 requirements that would be necessary under Rule 6
2 that there's no realistic belief that this item was
3 tampered with, Your Honor.

4 We can go back through that, but that is my
5 understanding that Officer Byrd may have testified
6 in error that he took it directly to the drop box.
7 The forms reflect that Officer Cockrell got it from
8 him and took it and put it in the drop box between
9 the 9th and the 10th, that he took it down and put
10 it at the sheriff's office.

11 But, again, Your Honor, I don't think that we
12 have to produce every link of the chain. All of
13 these witnesses have testified that they never
14 changed or altered this in any way and none of them
15 ever broke the seal.

16 Two alternatives we can do that, I can either
17 let these officers refresh their recollection on
18 that one day on the chain or we can go forward.

19 **MR. WILLIAMS:** Your Honor, I would object to
20 him being allowed to now buttress his case because
21 they've already testified, they've been
22 cross-examined. And now he wants to fix everything
23 because his two officers have -- they said it one
24 time one way, so now he's going to have two
25 witnesses change their testimony after he talks to

1 them, after they've been sequestered.

2 **MR. MAYE:** Your Honor, we have a direct -- as
3 the evidence came forward under oath in this case,
4 we have that it went from Officer Byrd to the drop
5 box. It went from the drop box in this case to
6 Shealy who got it out and gave it to Cockrell and it
7 went to SLED. That's the live testimony in this
8 case.

9 As whether or not that's an error or not,
10 Mr. Williams attempted to cross-examine them. We
11 did not rely on the Rule 6 forms, that's what we
12 have at this point and I leave it in the Court's
13 discretion.

14 **THE COURT:** Yeah, but isn't the chain of
15 custody an issue for the Court?

16 **MR. WILLIAMS:** It is, Your Honor.

17 **THE COURT:** I mean, you keep talking about it
18 just goes to credibility or impeachment, that's an
19 issue for me to consider. I mean, I understand it
20 can also be an issue related to reasonable doubt for
21 the jury, but whether I actually introduce it into
22 evidence or allow it to be introduced into evidence
23 is an issue for the Court.

24 Where were we before the last objection? Where
25 was it raised?

1 **MR. MAYE:** I think I just asked her if the seal
2 had been broken on the items she received and he
3 objected. That was my memory.

4 **COURT REPORTER:** At 12:10:42.

5 **THE COURT:** Okay. I'm not really sure I
6 understand the issue that's before me right now. I
7 just went back and read it. You asked that the jury
8 be sent out, Mr. Williams, and you said there may be
9 two problems with the chain of custody, but it
10 wasn't -- he was not offering it in evidence.

11 **MR. WILLIAMS:** Your Honor, my concern was by
12 the time he offered it in evidence, the results
13 would already be out and that was the next spot
14 where he was going, Your Honor. You know, we have
15 to take it up some time.

16 **THE COURT:** Well, I don't take up -- I don't
17 make a decision on the chain of custody until all of
18 the evidence is in related to the chain of custody.
19 So I don't really think there's anything for me to
20 rule on right now, but to the extent that there is,
21 they're still offering evidence.

22 Ma'am, you can step down if you like. We're
23 going to take a little short break. You cannot
24 discuss your testimony with anybody, though.

25 All right. Let's just take a few minutes. And

1 then we'll get start back. It's almost one o'clock,
2 so we're going to have to break for lunch soon.

3 (Court's Exhibit Number 2, Rule 6 form,
4 marked for identification.)

5 (Brief Recess.)

6 **THE COURT:** Is the State ready for the jury?

7 **MR. MAYE:** The State's ready, Your Honor.

8 **THE COURT:** Defense?

9 **MR. WILLIAMS:** The defense is ready.

10 **THE COURT:** Bring the jury in.

11 (The jury returns to the courtroom.)

12 **THE COURT:** You may continue.

13 BY MR. MAYE:

14 **Q** Ms. Stanley, if you would, what do you do --
15 once you retrieve the items, what -- who do your
16 records indicate was the initial intake person on
17 this, who took it in at the I.D.?

18 **A** I'm sorry, I don't understand the question.

19 **Q** When the outside agency brought it in, when the
20 law enforcement officer, who do your records
21 indicate was the intake person at SLED that took it
22 in?

23 **A** Coronda Williams.

24 **Q** Okay. Let me ask you this. Once you retrieve
25 the items for testing, what procedures do you do in

1 regard to the best pack and opening, what are you
2 looking for then?

3 **A** When I receive the items for testing, I do a
4 visual of this inner packaging here. You see the
5 green area, that's our tamper proof seal. I make
6 sure that that hasn't been tampered with. I further
7 do a visual of the packaging to make sure there
8 aren't any cuts, holes or any punctures in it to
9 where the evidence may have been tampered with.
10 Once I do that, I weigh the substance, do the
11 analysis on it and write up my results.

12 **Q** The item there that you received that's been
13 I.D.'d already as State's 11, was that
14 tamper-resistant seal was it intact when you got it?

15 **A** Yes, it was.

16 **Q** Were there any cuts or were there any
17 indication that that bag had been altered or changed
18 or opened in any way?

19 **A** No.

20 **Q** Once you established that that had been sealed
21 up, what procedures did you go through on that
22 sample, State's 11, in order to test it to see
23 whether or not you believed in your expert opinion
24 it was a controlled substance?

25 **A** I take it out of the packaging that it comes

1 in, I weigh it, write the weight out and then I do a
2 color test which gives me an idea as to what the
3 substance may be. Once I do the color test, I go on
4 to do a confirmatory test which tells me exactly
5 what the substance is.

6 Q Okay. What did you find based on your expert
7 opinion that the substance was?

8 MR. WILLIAMS: Objection, Your Honor.

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: There's been an insufficient
11 laying of a foundation for this testimony at this
12 time.

13 THE COURT: Ladies and gentlemen of the jury,
14 I'm going to send you to lunch. You're going to be
15 on your own for lunch. I need you back at 2:30.
16 Don't discuss the case. Thank you.

17 (The jury was excused for lunch.)

18 THE COURT: Your argument is based on what?

19 MR. WILLIAMS: Your Honor, it's based on the
20 chain essentially, that is that there's missing
21 items in the chain. And for her to give her
22 testimony about this item when they can't -- should
23 not be allowed to introduce it, it would -- unless
24 they can establish that this item has not been
25 changed in any way or unless it's been in a secured

1 location and introduced into evidence, then her
2 testimony about what the substance is would be
3 improper. So if they can't introduce the substance,
4 she certainly can't talk about what the substance
5 is.

6 **THE COURT:** What's the State's position?

7 **MR. MAYE:** Your Honor, the State would maintain
8 that there's sufficient indicia of reliability in
9 this case that the substance that was seized was
10 unchanged and unaltered and the substance that she
11 tested was the item that was seized from the vehicle
12 Mr. Harrison was operating. We would rely on what's
13 been proffered and put forward thus far recognizing
14 that it's the Court's determination as to the
15 admissibility of evidence and the reliability.

16 **THE COURT:** I need to go back through and
17 review all of these real time notes regarding the
18 chain. I want you all back here at two o'clock.

19 Ma'am, don't discuss the case with anybody,
20 don't talk about your testimony with anybody. I
21 hope it doesn't affect your schedule too badly, but
22 I need you back at 2:00.

23 Y'all be back at 2:00. I've got a conference
24 call at 2:00, but you be back 2:00.

25 **MR. MAYE:** Thank you, Your Honor.

1 he's going to have to sit in jail another night.

2 We're at ease.

3 (Brief recess.)

4 **THE COURT:** Do y'all need to put anything else
5 on the record?

6 **MR. MAYE:** Nothing from the State, Your Honor.
7 Thank you.

8 **MR. WILLIAMS:** Nothing from the defense, Your
9 Honor.

10 **THE COURT:** I've reviewed the real time notes
11 and it appears that there is a sufficient chain of
12 custody.

13 If either side wants to make a proffer or if
14 you want to withdraw your request at this time and
15 recall a witness, Solicitor, you may. If, after
16 hearing the proffer, if any of y'all want to put up
17 -- the defense wants to put up or anybody wants to
18 put up evidence about that missing date or that date
19 of May the 10th, I'd be happy to hear it. And if it
20 changes my mind, I'd be happy to entertain a motion,
21 or I'd be happy to entertain a motion anyway.

22 Basically, what it appears is that Byrd
23 testified that he put this white substance into a
24 best bag. In each one of the different sections
25 where this was discussed, the bag was referred to by

1 a serial number. There was discussion about the
2 tampering or anti-tampering aspects of the bag.
3 Coronda testified that it was obtained from Cockrell
4 on May the 17th, 2006, put in a secured evidence
5 facility.

6 Again, there was testimony about the best kit,
7 about the serial number and about the tamper-proof
8 mechanisms. Byrd said that he had put it in the
9 evidence drop box.

10 When there was discussion by Shealy about
11 evaluating the marijuana, he pointed out that the --
12 there were two separate bags, one for the white
13 powder substance -- one for the white substance and
14 the other for the marijuana. There's evidence that
15 it was taken to SLED in that sealed, serial number
16 encoded bag, placed into the facility there. And
17 this witness has just testified about the best kit
18 and how she examined it. There were no tears, no
19 punctures and the tamper-proof seal was still
20 intact.

21 I think that's sufficient under the law. I
22 note the objection of the defense and overrule it.

23 All of the jury's here?

24 **BAILIFF:** Yes, sir.

25 **THE COURT:** Solicitor, are you ready?

1 **MR. MAYE:** The State's ready..

2 **THE COURT:** Are you ready, Mr. Williams?

3 **MR. WILLIAMS:** The defense is ready, Your
4 Honor.

5 **THE COURT:** I need you back on the stand,
6 please, ma'am.

7 (Witness resumes the witness stand.)

8 (The jury returns to the courtroom.)

9 **THE COURT:** The objection is overruled.
10 Mark that into evidence, please, ma'am.

11 (State's Exhibit Number 11, methamphetamine
12 and pipe, admitted into evidence.)

13 BY MR. MAYE:

14 **Q** Ms. Stanley, if you will, could you tell the
15 jury again what your findings were as to the items
16 that you analyzed, what, if any, controlled
17 substance you found and what amounts and where, what
18 items you tested there?

19 **A** I tested two items. The first item I found
20 methamphetamine found 9.61 grams, 148.30 grains and
21 it's a scheduled two drug. And the second item,
22 methamphetamine found 0.08 grams, 1.23 grains and
23 it's a scheduled two drug.

24 **Q** So basically the combined weight of that, if my
25 math's right, is 9.69 grams?

1 **A** Correct.

2 **Q** Of methamphetamine. In your expert opinion,
3 the substance that was submitted to you is in total
4 9.69 grams of methamphetamine?

5 **A** That's correct.

6 **Q** Did you generate a written report to that
7 effect?

8 **A** Yes.

9 **Q** Did you bring it with you here today?

10 **A** Yes.

11 **Q** Could I see that?

12 **A** (Witness complies.)

13 **MR. MAYE:** Your Honor, I'm going to move to
14 admit this report in evidence. It does not have a
15 number. I'll pass it to the defense. They'd been
16 previously provided a copy.

17 (Pause.)

18 **MR. WILLIAMS:** Subject to prior objections,
19 Your Honor.

20 **THE COURT:** Subject to previous objection, mark
21 those in the record, please, ma'am.

22 (State's Exhibit Number 18, SLED report,
23 admitted into evidence.)

24 **MR. MAYE:** Please answer any questions
25 Mr. Williams has for you.

1 **THE COURT:** Cross.

2 **MR. WILLIAMS:** Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 **Q** Ma'am, as I understand it, essentially you were
6 the chemist who was working for SLED in May of 2006?

7 **A** Yes.

8 **Q** And the only thing that you know in terms of
9 testimony about this case is that you received those
10 items, which we've referenced, and that you tested
11 those items and that those items tested out to
12 methamphetamine?

13 **A** Correct.

14 **Q** You have no knowledge in regards to where those
15 items were found?

16 **A** No.

17 **Q** You have no knowledge as to how those items
18 were maintained or who maintained them?

19 **A** No.

20 **Q** You have no knowledge of what transpired with
21 these items after you tested them?

22 **A** No.

23 **Q** Did you perform any other tests on the bags or
24 items to determine whether or not an individual, a
25 particular individual, might have owned those, such

1 as fingerprint analysis or anything like that?

2 A No.

3 Q Did you perform -- did you scrape -- I guess
4 there was some sort of pipe or something like that.
5 Was there some sort of pipe that you tested for the
6 methamphetamine?

7 A Correct.

8 Q Did you check the pipe to see if there was any
9 DNA sampling that might be included on the mouth of
10 the pipe?

11 A No, I did not.

12 Q All right. Does SLED have DNA persons who deal
13 with DNA at SLED?

14 A Yes.

15 Q And, to your knowledge, was any sampling done
16 of the pipe which was found?

17 A Not to my knowledge.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 THE COURT: Thank you.

20 Redirect.

21 MR. MAYE: Nothing, Your Honor. Thank you.

22 THE COURT: Thank you, ma'am. You may step
23 down.

24 Call your next witness.

25 MR. MAYE: The State at this time rests, Your

1 (The jury returns to open court to report
2 its verdict at 5:05 p.m.)

3 **THE COURT:** Madame Clerk.

4 **THE CLERK:** Mr. Foreman, have you reached a
5 verdict?

6 **FOREMAN:** Yes, ma'am.

7 (The Clerk hands the verdicts to the Judge.)

8 VERDICT OF THE JURY

9 **THE COURT:** All right. This is indictment
10 2010-GS-41-0070, the State versus Jack Harrison,
11 Jr., as to the charge of possession of marijuana,
12 we, the jury, unanimously find the defendant guilty
13 of possession of marijuana, signed by the Foreman.

14 Indictment 2010-GS-41-0368, the State versus
15 Jack Harrison, Jr., as to the charge of possession
16 with intent to distribute methamphetamine, we, the
17 jury, unanimously find the defendant guilty of
18 possession with intent to distribute
19 methamphetamine, signed by the Foreman.

20 Ladies and gentlemen, if I've accurately stated
21 your verdicts, that is guilty as to both charges as
22 charged, will you please raise your right hand.

23 All 12 hands are raised.

24 Any matters to take up prior to the jury being
25 discharged, from the State?

1 really hurting you is your prior record and I hope
2 you really are sincere in your desire to change.

3 **DEFENDANT:** Yes, sir.

4 **SENTENCE OF THE COURT**

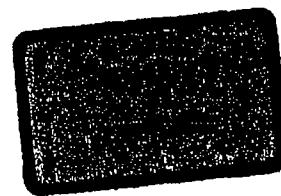
5 **THE COURT:** Under any scenario, I would not be
6 giving you probation. So even if the law allowed
7 it, I would not be giving it.

8 The sentence of the Court on misrepresenting
9 identity is 30 days time served, pay court costs
10 provided on indictment 368.

11 The sentence on possession of marijuana third
12 or subsequent is one year plus costs and assessments
13 concurrent. You've already served over a year. Pay
14 your court costs at the rate of \$50 a month
15 beginning 120 days after released from prison.

16 The most difficult one obviously is the
17 possession with intent to distribute
18 methamphetamine. The sentence is 18 years plus
19 costs and assessments concurrent. You're given
20 credit for jail time under 24-13-40. I've written
21 on your sentence sheet to give you credit from May
22 9, 2006 to November 12, 2009 plus two days you've
23 been in jail here.

24 Pay your court costs at \$75 a month beginning
25 120 days after you're released from prison. Good



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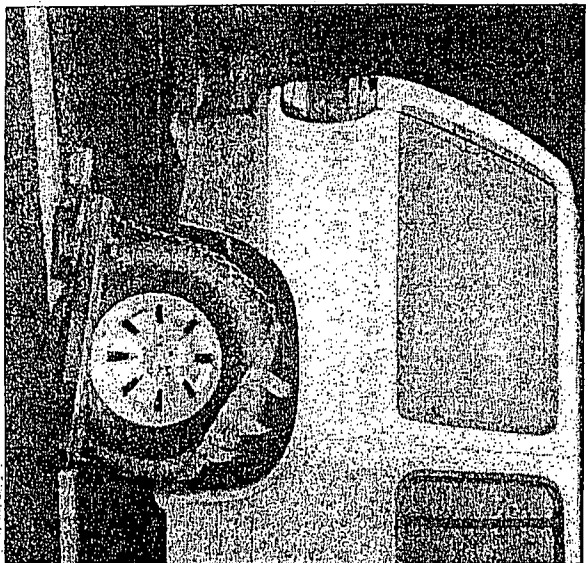
Thirty Years Experience

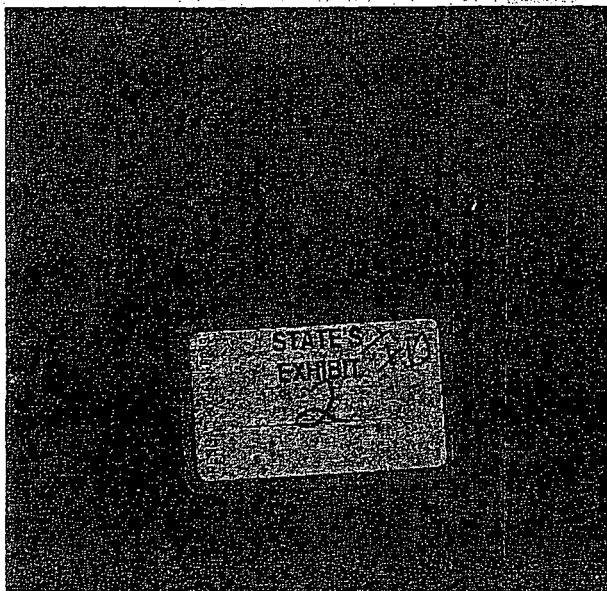
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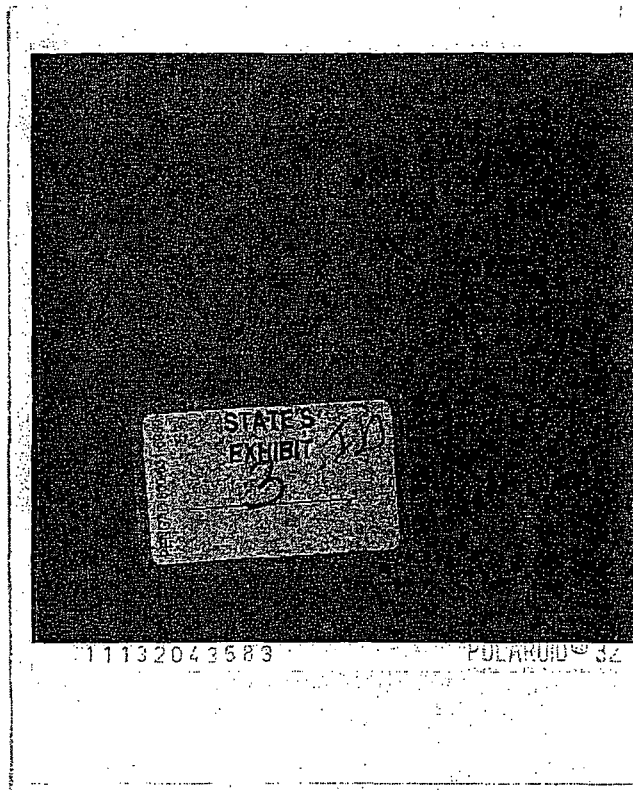




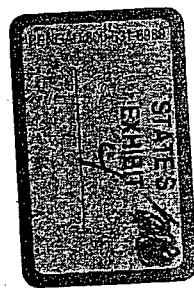
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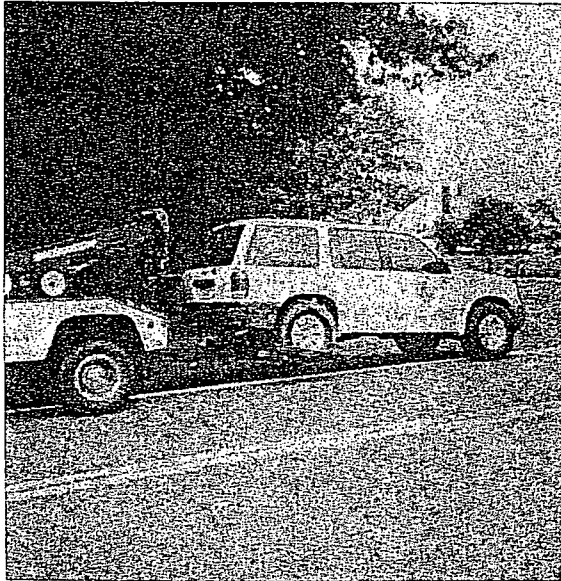
POLAROID 32





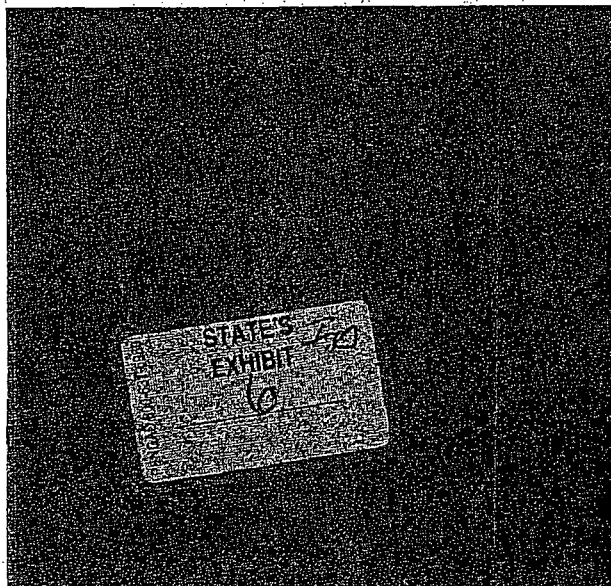






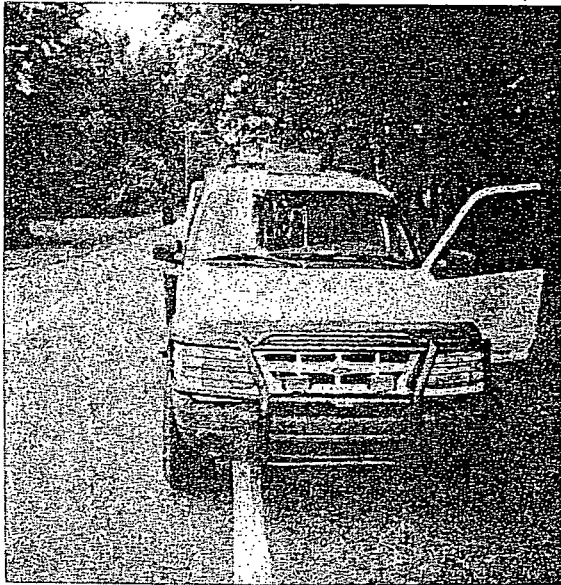


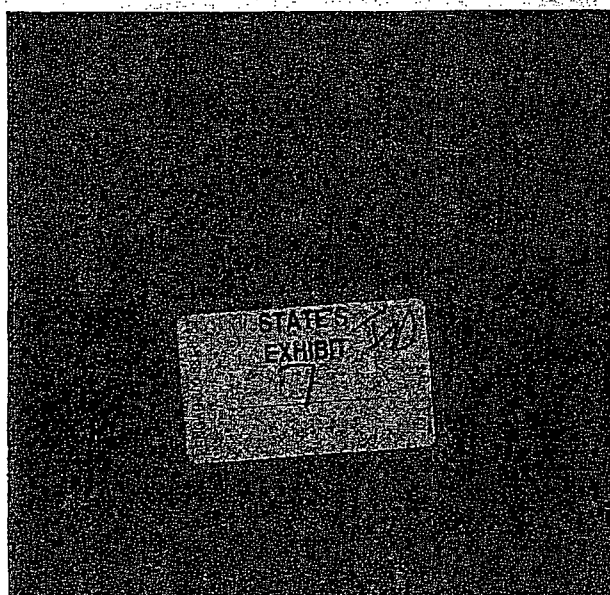




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POLAROID 52





STATES
EXHIBIT
17

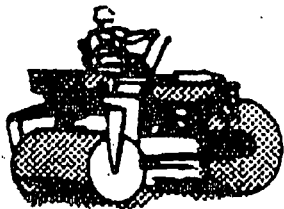
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POLAROID 52

CONTRACT

Date 5-9-06

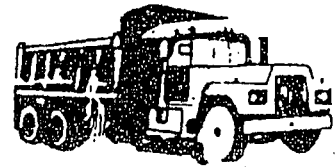
INVOICE NO. 6268



J&H ROAD CONSTRUCTION

We Use Hot Road Mix

404-569-7157



Customer Hona Lee New
Address [REDACTED]
Phone [REDACTED]
Town [REDACTED] 29380

Agreed to total price \$1.00 per sq. ft.

This price includes labor and material. Measure when finish all labor & material included.

Patch work - \$4.80 sq. ft. 1.00

Approximately _____ sq. ft.

Commercial Seal - 70¢ sq. ft. plus \$500.00 labor charge

Paid in full when job is complete.

Price of Job \$ _____

This blacktop is not leftover.

Paid in full by check # _____

Paid in full by cash _____

This does not reflect other contractor's prices, high or low.

Make check payable to contractor.

CONTRACTOR _____

CUSTOMER _____



WE DO NOT GUARANTEE
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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Stephen Byrd
Saluda County Sheriff's Office
100 Law Enforcement Drive
Saluda, SC 29138

DRUG ANALYSIS
September 20, 2006
SLED LAB: L06-07129
Your Case No: 200605594
Incident Date: 05/09/2006
[S] Jack Harrison, Jr

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

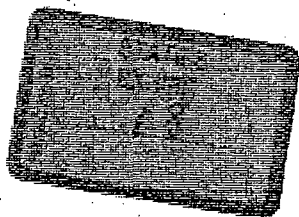
Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 On May 17, 2006, items were received in B175444 from Chris M Cockrell of the Saluda County Sheriff's Office.

Item: 1 Ziplock bag containing crystal substance.
RESULTS:
Methamphetamine found, 9.61 grams (148.30 grains), C-II.

Item: 2 Glass tube containing residue.
RESULTS:
Methamphetamine found, 0.08 grams (1.23 grains), C-II.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

September 20, 2006
L06-07129

Page 2

Chemical Analyst

Kukila N. Stanley

Kukila N. Stanley

cc: Saluda County Solicitor's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

FORM A

REPORT OF ANALYSIS FOR CONTROLLED DANGEROUS SUBSTANCES (Substance Found)

I, Kukila N. Stanley, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 1 years and 2 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 0 times. I have received the following training as a chemical analyst.

B.S. Chemistry, University of South Carolina, Columbia, SC, 2004
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2005
Legal's Training, South Carolina Criminal Justice Academy, 2005
Lab Technician, Hueck Foils LLC, Blythewood SC, 2004

Sub # 1 - On May 17, 2006, items were received in B175444 from Chris M Cockrell of the Saluda County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☐ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☐ Liquid Chromatography
☐ Ultraviolet Spectroscopy	☐ Physical Test
	☐ Published Literature

See Drug Analysis Report L06-07129 for Results.

Chemical Analyst

Kukila N. Stanley

Kukila N. Stanley

Date: September 20, 2006



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

CONTROL NO. B-17544

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL**

(Subsequent Change of Custody)

This is to certify that I Christopher M. Caldwell am employed by

(Name)

Saluda County Sheriff's Office

(Name of Agency or Department)

as Deputy

(Capacity of Employment)

and that on

10 May, 06, I received

(Date)

Personally

(Specify Whether by Mail or in Person)

from Stephen Byrd

(Name of Person)

of Saluda County Sheriff's Office

(Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

Stephen Byrd

(Name of Person Making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

Ziploc bag containing clear substance believed to be
ice/meth

Near glass pipe containing white substance believed
to be ice/meth

On 10 May, 06, I made delivery of the above described

(Date)

substance(s) or container(s) to Evidence box of

(Name)

Saluda County Sheriff's Office

(Law Enforcement Agency)

in substantially the same condition

as when I received it.

Christopher M. Caldwell

(Signature)

Place: Saluda, S.C.

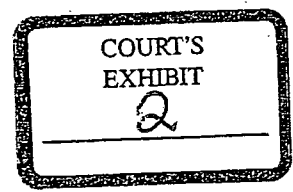
Date: 05-10-06

Sworn before me on this 10th day of May, 2006.

Donna S. Beach
Notary Public for South Carolina

My Commission expires: 02/14/2011

FD-503 (Rev. 1-10-05)



CONTROL NO. B-175444

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL**

(Subsequent Change of Custody)

This is to certify that I Chris Cockrell am employed by

(Name)

Saluda Co. SO as Investigator and that on

(Name of Agency or Department)

(Capacity of Employment)

05-17-06, I received Personally

(Date)

(Specify Whether by Mail or in Person)

from Donovan Shealy of Saluda Co. SO

(Name of Person)

(Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

Stephen Byrd

(Name of Person Making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

Ziploc bag containing clear substance believed to be ice/meth

Clear glass pipe containing white substance believed to be ice/meth

On May 17 2006 I made delivery of the above described

(Date)

substance(s) or container(s) to SL ED of

(Name)

SL ED in substantially the same condition

(Law Enforcement Agency)

as when I received it.

St. Christopher M. Cockrell

(Signature)

Place: Columbia, S.C.

Date: 05-17-06

Sworn before me on this _____ day of _____

Notary Public for South Carolina

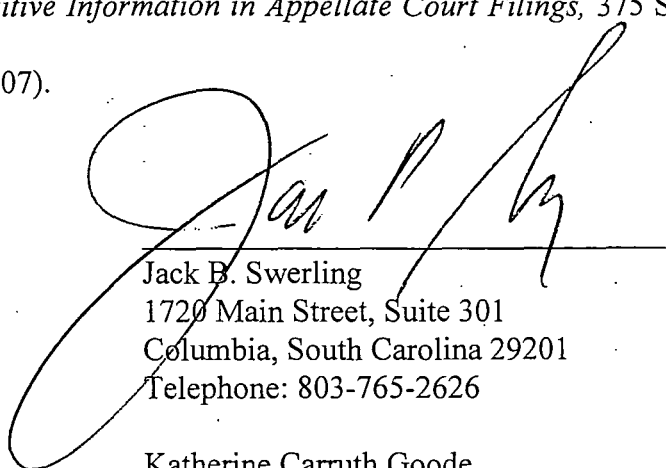
My Commission expires: _____

EVERETT 2000 1-3-00

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, counsel for appellant certifies that this record on appeal contains all material proposed to be included by any of the parties and not any other material.

Counsel further certifies that this record on appeal complies with the Order of the Supreme Court of South Carolina entitled *Re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings*, 375 S.C. 56, 650 S.E.2d 462 (August 13, 2007).



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Saluda County
Court of General Sessions
William P. Keesley, Circuit Court Judge

Case Nos.
2010-GS-41-070
2010-GS-41-367
2010-GS-41-368

State of South Carolina,

Respondent,

v.

Jack Harrison, Jr.,

Appellant

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting all the evidence obtained as a result of a traffic stop, where the stated basis for the stop was a ruse by which officers made a stop for which they did not have a reasonable suspicion or probable cause?
2. Did the trial court err in admitting the alleged marijuana and methamphetamine and evidence of the nature and weight of those substances, where the officers exceeded the appropriate parameters for a warrantless inventory search?
3. Did the trial court err in admitting the alleged methamphetamine and evidence of the nature and weight of that substance, where the state failed to establish the complete chain of custody of the substance from the time it was seized until it was analyzed?

STATEMENT OF THE CASE

Appellant, Jack Harrison, Jr., was indicted in Saluda County on charges of possession with intent to distribute methamphetamine, possession of marijuana, and misrepresenting identity to a law enforcement officer, charges that arose from a traffic stop on May 9, 2006. R. pp. 1-6. He was tried by a jury on July 20-21, 2010, Judge William P. Keesley presiding. R. p. 10. During the trial, the court accepted appellant's guilty plea to the charge of misrepresenting identity and deferred sentencing on that charge. R. pp. 92-96. The jury found him guilty of the remaining charges. R. p. 152. Judge Keesley sentenced him to concurrent terms of imprisonment of 30 days (misrepresenting identity), one year (possession of marijuana, third or subsequent offense), and 18 years (possession with intent to distribute methamphetamine), with credit for time served. R. pp. 7-9, 153.

ARGUMENT

- I. THE TRIAL COURT ERRED IN ADMITTING THE EVIDENCE OBTAINED AS A RESULT OF THE TRAFFIC STOP, WHERE THE STATED BASIS FOR THE STOP WAS A RUSE BY WHICH OFFICERS MADE A STOP FOR WHICH THEY DID NOT HAVE A REASONABLE SUSPICION OR PROBABLE CAUSE.

On May 9, 2006, an officer from the Saluda County Sheriff's Department began investigating what he believed may have been a paving scam. Captain Donovan Shealy went to the home of an elderly woman and met with her and a couple that lived across the road from her. They indicated a person had come there to solicit paving work and had given the woman a business card with a telephone number on it. Shealy testified he called the number and represented to the person who answered that he was the woman's grandson. According to Shealy, he told the person he had the money for the paving work and the person said he would be right back. Soon thereafter, a vehicle approached, and the couple indicated it was the same vehicle the person soliciting paving work had been driving. According to Shealy, the vehicle slowed down, seemed as if it were going to turn, then sped up and went on down the road. R. pp. 11-16.

Shealy testified he went after the vehicle and notified Deputy Steven Byrd to be on the lookout for the vehicle. Byrd met the vehicle and notified Shealy he was going to pull it over. Byrd claimed the vehicle had a shattered windshield, which ostensibly served as the basis for his stopping the vehicle. R. pp. 17, 33-34, 39. All the evidence pertaining to these charges was obtained as the result of this traffic stop, the ensuing questioning of the driver, and the search of the vehicle.

Shealy testified they had received several calls about a person soliciting paving work. R. p. 11. In the subsequent search of the vehicle, the officers found an unsigned

contract for such work. R. p. 19. On the unsigned contract, state's exhibit 10, prices had been marked out where negotiations had apparently taken place. R. p. 167. Shealy acknowledged this paper was an offer to do work. R. p. 24. He also acknowledged the person soliciting work had not taken money from anyone. R. pp. 24-25.

Shealy claimed the person soliciting paving work was "being suspicious." As the basis for this claim, he cited information learned about the person and items found in the vehicle *after* the traffic stop and the ensuing questioning and search. R. pp. 25-26.

Asked what evidence he had that the individual had violated the law, Shealy testified that the evidence "puts him at the location" and Shealy was "going to try to protect" the elderly lady. R. p. 30. However, he admitted the person had not hit her, had not forced his way into her home, but had simply negotiated with her on the price of a paving job. R. p. 30. He claimed the person "shouldn't keep coming back . . . coming back and harassing people," but he acknowledged the only time the person had returned to any potential customer was when Shealy called and asked him to return. R. pp. 30-31.

Shealy was asked to point out the broken windshield from a group of photographs the state introduced into evidence. With respect to the only photograph that depicted the front windshield, he stated, "It's on the left-hand side, the passenger side of the vehicle. . . it was right in that area (indicating). He might can pick up on it. It's got a glare on it. It's shattered here and it spread across on the bottom." R. p. 29, lines 3-4, 8-11; *see* R. p. 165. Shealy agreed that "[i]t's not a very accurate picture of a shattered windshield, no, sir." R. p. 29, lines 14-15. Asked if they weren't stopping the defendant because of a scratch in the windshield but because they thought he was involved in a paving scam, he

replied, “I was stopping him to identify him, right. . . . To obtain more information on this individual.” R. p. 29, lines 21-22, 24.

Byrd, who made the stop, also testified. Although he claimed the basis for the stop was the broken windshield, he stated that, if the vehicle had not had a cracked windshield, he probably would have stopped it anyway. R. p. 41, lines 14-20. On cross-examination, Byrd agreed the crack was on the passenger side. R. p. 43, lines 23-25. He admitted the “huge crack” was on the passenger side, but he claimed it “run across” to some extent to the driver’s side. R. p. 43, lines 6-8. Asked what photograph depicted the crack, he did not identify the only photograph of the front windshield, state’s exhibit 7, which Shealy had admitted did not accurately depict a shattered windshield. Instead, Byrd claimed the crack could be seen “through the back glass” on state’s exhibit 4, a photograph of the rear of the vehicle. R. p. 39, lines 14-17; pp. 159-60, 165-66.

The defense moved to suppress the evidence obtained as the result of this traffic stop. The court found the testimony of Byrd concerning the cracked windshield provided probable cause for the traffic stop and denied the suppression motion. R. pp. 50, 52. This Court should reverse. It is the state’s burden to establish the reasonableness of a stop under the state and federal constitutional protections against unreasonable searches and seizures. *See State v. Weaver*, 374 S.C. 313, 319-20, 649 S.E.2d 479, 482 (2007); *State v. Freiburger*, 366 S.C. 125, 131-32, 620 S.E.2d 737, 740 (2005), *cert. denied*, 547 U.S. 1147 (2006); *State v. Pichardo*, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005), *cert. denied*, April 5, 2007; *State v. Brannon*, 347 S.C. 85, 91, 552 S.E.2d 773, 776 (Ct. App. 2001). Based on the evidence presented by the state, the officers did not have a reasonable suspicion that appellant was engaged in criminal activity, and they did

not have probable cause to stop him for a traffic or equipment infraction. This stop violated the federal and state constitutional prohibitions of unreasonable searches and seizures. *See* U.S. Const. amends. IV; S.C. Const. art. I, § 10.

Under the cases construing these constitutional protections, an officer may stop and briefly detain a person for investigative purposes only when the officer has a reasonable suspicion supported by articulable facts that the person is involved in criminal activity. *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002); *State v. Willard*, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007). Reasonable suspicion exists where there is a particularized and objective basis that would lead one to suspect criminal activity. *Khingratsaiphon*, 352 S.C. at 69, 572 S.E.2d at 459; *Willard*, 374 S.C. at 374 S.C. at 134, 647 S.E.2d at 255. Reasonable suspicion is more than a general hunch but less than what is required for probable cause. *Willard*, 374 S.C. at 374 S.C. at 134, 647 S.E.2d at 255; *State v. Butler*, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000). In this case, the officers intended to stop the driver of the paving company vehicle to have him identify himself and get more information about him, based on Shealy's suspicion that he was engaged in some kind of paving scam. That suspicion was nothing more than a hunch. It was not based on any articulable facts or any particularized and objective basis for suspecting him of criminal activity.

The information known to Shealy did not provide a reasonable suspicion that the person soliciting paving work was engaged in illegal activity. He was driving a vehicle bearing the logo and name of a paving company, J & H Road Construction. *See* R. pp. 155-60. He gave the elderly woman a business card for that company, along with the telephone number. *See* R. p. 154. The unsigned contract found in the car was on a form

bearing the name of the same company. *See* R. p. 167. The person had done nothing more than solicit jobs and negotiate the price. He had received no money from any of the complaining parties. When the solicited parties did not agree to hire him, he left. Shealy's basis for claiming this person was "suspicious" – his giving false information about his identity and having alleged drugs in his possession – did not become known to the officers until *after* the vehicle had been stopped. Based on the information known to Shealy when he made the decision to locate and stop this vehicle, there was no reasonable suspicion of criminal activity to justify a stop of this individual.

Generally, the decision to stop an automobile is also deemed reasonable for Fourth Amendment purposes where the officer has probable cause to believe a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *State v. Banda*, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006); *see, e.g., State v. Jihad*, 347 S.C. 12, 15, 553 S.E.2d 249, 251 (2001) (probable cause existed where defendant was driving vehicle with non-functioning brake light). One decision has characterized the standard for initiating a stop for a traffic offense as reasonable suspicion. *See State v. Padgett*, 354 S.C. 268, 272-74, 580 S.E.2d 159, 162 (Ct. App. 2003), *cert. denied*, September 24, 2003. Under either standard, the state's evidence in this case did not establish either probable cause or a reasonable suspicion that a traffic infraction had occurred. Although the state claimed at trial that a broken windshield supported the stop, the state's own evidence undermines any claim that the driver's side windshield was in a condition that would warrant citation for any traffic or equipment violation.

The traffic code of this state does not contain a statute that prohibits driving with a cracked windshield *per se*. The statute that addresses the condition of a windshield is S.C. Code Ann. § 56-5-5000, which provides, in relevant part:

No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, sidewings or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway. . . .

The state introduced a number of photographs, but those photographs, including state's exhibits 4 (R. pp. 159-60) and 7 (R. pp. 165-66), do *not* depict a windshield in such condition that the officer could charge appellant with a violation of Section 56-5-5000. Byrd's assertion that a crack existed to some extent to the driver's side is not sufficient to support a charge under this section, where the physical evidence – the photograph of the windshield – does not support the officer's verbal claim. The state did not meet its burden of establishing the existence of probable cause or a reasonable suspicion that this driver had committed a traffic or equipment infraction.

Moreover, the state's own witnesses admitted they were going to make an investigatory stop, whether there was a crack in the windshield or not. Shealy pursued the vehicle and called Byrd to be on the lookout for the vehicle, for the express purpose of stopping the driver to identify him and get more information about him. Byrd confirmed he probably would have stopped the vehicle even if he had not observed a cracked windshield. He did not issue a citation for an equipment violation based on the cracked windshield. Under these circumstances, this Court should find that the purported "independent basis" for this stop was nothing but a ruse, trumped up by Byrd to justify what was an unwarranted, illegal traffic stop, and all evidence resulting from this stop should be suppressed. To the extent this argument may not be in keeping with prior

Fourth Amendment precedents, this Court should find, as a matter of South Carolina constitutional law, that officers may not trump up a claim of an equipment violation to justify an investigatory stop that is not supported by a reasonable suspicion of criminal activity. *See Arkansas v. Sullivan*, 532 U.S. 769, 772 (2001) (“a State is free *as a matter of its own law* to impose greater restrictions on police activity than those [the United States Supreme Court] holds to be necessary upon federal constitutional standards”) (emphasis in original) (citation omitted).

This is not a case in which it was undisputed that the driver had defective equipment that would warrant a citation. Although the officer who made the stop claimed the crack went to the driver’s side, the photographs do not bear out this testimony. These officers were going to stop this vehicle with or without an equipment violation. The state should not be allowed to validate an otherwise invalid stop simply because there happened to be a crack in the windshield. This is especially so where the witnesses admitted the crack was on the passenger side and the photographs do not show a crack on the driver’s side. Even if a slight crack extended to the driver’s side, as Byrd claimed, the evidence does not establish probable cause or a reasonable suspicion that it “obstructed the driver’s clear view of the highway or any intersecting highway.” *See* S.C. Code Ann. § 56-5-5000. The driver was not charged with an equipment violation based on the windshield, and the independent evidence – the photographs – do not support such a charge. Here, the state failed to establish probable cause or reasonable suspicion for this traffic stop, and all the evidence obtained as the result of the stop should have been suppressed.

II. THE TRIAL COURT ERRED IN ADMITTING THE ALLEGED DRUGS AND EVIDENCE OF THEIR NATURE AND WEIGHT, BECAUSE THE OFFICERS EXCEEDED THE APPROPRIATE PARAMETERS FOR A WARRANTLESS INVENTORY SEARCH.

After the stop and a check of records related to appellant, appellant was charged with driving under a suspension. Because the vehicle was going to be impounded, Byrd conducted an inventory search of the vehicle. A Desenex can was on the passenger seat. Rather than simply retrieving and inventorying this closed container, Byrd picked it up and shook it and it didn't sound right. R. p. 37, line 18. Shealy testified when they shook it, it didn't sound like liquid or anything was in it, "[s]o we went to messing with it and we opened up the bottom of it." R. p. 20, lines 22-24. Byrd said one screw in the bottom came off and the bottom fell off. R. p. 37, lines 19-21. Inside a compartment at the bottom of the can were the substances alleged to be marijuana and methamphetamine. R. pp. 20-21, 38. The defense moved to suppress the evidence related to the alleged drugs on the basis of the search of the Desenex can without first obtaining a search warrant. R. pp. 51-52. Although the court was "a little bit troubled" by this search, it denied the motion to suppress. R. p. 57. The discovery of the substances inside this closed container was the product of an unlawful warrantless search of the can, and the lower court erred in admitting the evidence related to the alleged drugs.

The stated basis for Byrd's search of the vehicle was to inventory its contents. R. p. 37. A warrantless search of a closed container during an inventory search is upheld only if it is conducted pursuant to police policy, standardized criteria, or established routine. *See Florida v. Wells*, 495 U.S. 1, 4 (1990); *Colorado v. Bertine*, 479 U.S. 367, 372-73 (1987); *State v. Brown*, 389 S.C. 473, 483-84, 698 S.E.2d 811, 817 (Ct. App. 2010). This rule "is based on the principle that an inventory search must not be a ruse for

a general rummaging in order to discover incriminating evidence.” *Wells*, 495 U.S. at 4. The policy or practice “should be designed to produce an inventory.” *Id.* Although a policy may give some latitude to an officer in determining what closed containers may be opened, the policy may not allow “so much latitude that inventory searches are turned into ‘a purposeful and general means of discovering evidence of crime.’” *Id.*, quoting *Bertine*, 479 U.S. at 376 (Blackmon, J., concurring). However, where there is *no policy* with respect to the opening of closed containers encountered during an inventory search, a search involving the opening of a closed container is not sufficiently regulated to satisfy the Fourth Amendment. *Wells*, 495 U.S. at 4-5.

As with the stop of the vehicle, it was the state’s burden to establish the legality of this warrantless search of the Desenex can. *See Weaver*, 374 S.C. at 319-20, 649 S.E.2d at 482; *Freiburger*, 366 S.C. at 131-32, 620 S.E.2d at 740. However, the state presented no evidence to show that the Saluda County Sheriff’s Department had a policy, any standardized criteria, or an established practice governing inventory searches and the handling of closed containers found in such searches. In the absence of such evidence, the state failed to establish that the officer’s search of this container was sufficiently regulated to satisfy the Fourth Amendment, and the evidence resulting from this search should have been suppressed. *See Wells*, 495 U.S. at 4-5 (suppressing evidence because of non-existence of policy); *Brown*, 389 S.C. at 484, 698 S.E.2d at 817 (suppressing evidence where state presented no testimony concerning standard procedures for inventory searches).

The search in this case contravened the principle that serves as the basis for the requirement that container searches during inventories must be pursuant to policy or

established practice. This inventory search was the very kind of “general rummaging in order to discover incriminating evidence” that *Wells* disapproved. *See Wells*, 495 U.S. at 4. The officers did not merely inventory the Desenex can. Rather, Byrd picked it up and shook it. When it did not sound right, they went further. According to Shealy, they opened up the bottom of it. R. p. 20, line 24. Byrd attempted to minimize their actions, claiming a screw simply came out and the bottom came off, but that occurred because he shook the can. R. p. 37, lines 18-21. Under either account, Byrd’s opening of the can was not pursuant to any stated policy for handling the contents of an impounded vehicle or in furtherance of the underlying goals of protecting an owner’s property while it is in police custody, preventing claims for lost or damaged property, and guarding police from danger. *See Bertine*, 479 U.S. at 372 (stating purposes of inventory searches). Rather, it was done for the “purposeful and general means of discovering evidence of crime” that the Fourth Amendment forbids. *See Wells*, 495 U.S. at 4; *Bertine*, 479 U.S. at 376 (Blackmon, J., concurring). Had Byrd not been acting for the sole, and improper, purpose of investigation, he would have simply taken the closed can into custody and listed it in his inventory. Instead, he picked it up and shook it so that a screw came out and the bottom fell off. R. p. 37, lines 18-21.

In denying the motion to suppress, the court stated “the thing just basically fell apart.” R. p. 57. This statement ignores Shealy’s testimony that they messed with the can and opened it. R. p. 20. It also is not supported by Byrd’s testimony (both in the suppression hearing and during the trial) that he shook the can before it fell apart. R. pp. 37, 68. Even accepting Byrd’s version of events, the can did not “just fall apart” – his shaking it caused it to fall apart. This action and the resulting discovery of the substances

alleged to be marijuana and methamphetamine was not pursuant to any policy or practice of the Sheriff's Department for searches of containers during inventory searches, and the evidence should have been suppressed.

III. THE TRIAL COURT ERRED IN ADMITTING THE SUBSTANCE ALLEGED TO BE METHAMPHETAMINE AND EVIDENCE OF ITS NATURE AND WEIGHT, BECAUSE THE STATE FAILED TO ESTABLISH THE COMPLETE CHAIN OF CUSTODY OF THE SUBSTANCE FROM THE TIME IT WAS SEIZED UNTIL IT WAS ANALYZED.

The defense objected to the chain of custody of the alleged methamphetamine and moved to exclude any evidence related to that substance. Byrd testified he put the alleged drugs in the evidence drop box the night of the arrest, May 9, 2006. R. pp. 79-80. Another officer, Chris Cockrell, testified he obtained the alleged methamphetamine from Shealy and transported it to SLED on May 17, 2006, and he stated he had no other involvement with the case except taking this evidence to SLED. R. pp. 99-100. During the cross-examination of Shealy, the evidence custodian, the defense elicited testimony concerning an affidavit of Cockrell that contradicted both his and Byrd's sworn testimony concerning who placed the evidence in the evidence locker and when. R. pp. 120-21. The affidavit was the first page of a chain of custody form, which was marked as a court's exhibit. R. p. 171. The affidavit stated:

This is to certify that I Christopher M. Cockrell am employed by Saluda County Sheriff's Office as Deputy and that on 10 May, 06, I received Personally from Stephen Byrd of Saluda County Sheriff's Office the following substance(s) or container(s) which were originally seized by Stephen Byrd:

Ziploc bag containing clear substance believed to be ice/meth

Clear glass pipe containing white substance believed to be ice/meth

On 10 May, 06, I made delivery of the above described substance(s) or container(s) to Evidence box of Saluda County Sheriff's Office in substantially the same condition as when I received it.

R. p. 171.¹ This affidavit bore the signature of Christopher M. Cockrell and an attestation by Donovan Shealy, as notary, that it was sworn before him on May 10, 2006. R. p. 171.

Cockrell testified he delivered the alleged methamphetamine to SLED on May 17, 2006, where he dropped it off with Coronda Williams. R. pp. 99-100. Coronda Williams, who formerly worked at SLED as an evidence forensic technician, testified she received the evidence from Cockrell on May 17, 2006, gave it a SLED lab number, and placed it in secure evidence storage. R. pp. 88-89. She did not give any description of what she meant by "secure evidence storage." Katrina Stanley, the chemical analyst, testified she retrieved the evidence from the evidence log-in department at SLED, without specifying when or from whom she received it. R. p. 127. Out of the presence of the jury, she stated she received it from a forensic technician that works in evidence log-in, but she did not identify that person. R. p. 128. Her report is dated September 20, 2006, over four months after Cockrell delivered the evidence to SLED. R. pp. 168-70. The report does not reveal when or from whom the chemist obtained the evidence or how she handled, maintained, or secured it while it was in her possession. R. pp. 168-70. No witness testified concerning who handled the evidence during the four-month period, where it was stored, what security measures were in place, or any other information about how the evidence was handled while it was at SLED.

¹ This affidavit appeared on a Form C (Rule 6) document, a fill-in-the-blanks form used to document the chain of custody. The blanks and the explanatory notes beneath the blanks concerning what information should be filled in are omitted in the quotation of the substance of the affidavit, above.

The defense objected to admission of the chemist's testimony concerning her analysis of the substance because of the state's failure to establish a sufficient chain of custody for the substance tested, based on (1) the discrepancy between the testimony of Byrd and Cockrell and the information contained in Cockrell's affidavit, and (2) the absence of evidence to establish the chain of custody of the evidence at SLED between the delivery to Williams and receipt of it by Stanley. R. pp. 127-37, 144-45.

The chain of custody requirement with respect to fungible evidence is strict. *Frieburger*, 366 S.C. at 134, 620 S.E.2d at 741. A party offering into evidence fungible items, such as drugs, must establish a complete chain of custody as far as practicable. *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007); *State v. Hatcher*, 384 S.C. 372, 375, 681 S.E.2d 925, 927 (Ct. App. 2009), *cert. granted*, July 22, 2010. Where an analyzed substance has passed through several hands, the identity of the individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. *Sweet*, 374 S.C. at 6, 647 S.E.2d at 205; *Benton v. Pellum*, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957). Although it is not required that every custodian of the item testify, the evidence must establish the identity of all those who have handled the item and reasonably demonstrate the manner in which it was handled in order to establish a sufficient chain of custody. *Sweet*, 374 S.C. at 6-7, 647 S.E.2d at 205-06; *Hatcher*, 384 S.C. at 377, 681 S.E.2d at 928. If the state fails to establish the identity of those who handled the item and the manner in which it was handled, the chain is incomplete and the evidence is inadmissible. *Sweet*, 374 S.C. at 7, 647 S.E.2d at 206; *Hatcher*, 384 S.C. at 376-78, 681 S.E.2d at 927-28.

The state failed to establish the chain of custody as far as practicable, and the substance, the chemist's report, and the chemist's testimony concerning the nature and weight of the substance were inadmissible. With respect to the four-month period that the evidence was at SLED, the state failed to establish both the identities of the various individuals who handled the evidence and the manner in which it was handled. Although every handler of the evidence did not have to testify, the state was required, at a minimum, to introduce evidence establishing who they were and what they did with the evidence after it was sent to SLED for testing.

The state did not contend that it had established the chain "as far as practicable." Rather, it contended it had complied with Rule 6 of the South Carolina Rules of Criminal Procedure and did not have to prove the internal chain of custody at SLED. R. p. 128. This argument, however, is not in keeping with the precedents of our appellate courts that require that *every person* in the chain be identified. Moreover, Rule 6(b) provides an alternative to in-court testimony of the persons in the chain of custody, unless the defense demands appearance of those persons.² That alternative method of proof requires "a certified or sworn statement signed by *each successive person having custody of the evidence* that he or she delivered it to the person stated." See Rule 6(b), SCRCrimP (emphasis added). Contrary to the state's assertion that it is not required to prove the internal chain of custody of evidence at SLED, Rule 6(b) mandates that it do so, either by certified or sworn statements or by live witnesses, if the defense so demands. Here, having failed to introduce any evidence that identified who handled the evidence between

² Both the defense and the state represented to the court that the defense had demanded that the state produce the chain of custody witnesses. R. p. 130, lines 3-9; p. 135, lines 10-12.

May 17, 2006, and September 20, 2006, and having failed to demonstrate how the evidence was handled from the time it arrived at SLED until the analysis was complete, the state did not meet its burden and the evidence was inadmissible.

With respect to the discrepancy concerning the custody of the evidence on May 9 and 10, the state argued it was not relying on the chain of custody form but on the live testimony. R. pp 132-34. Later, the state informed the court that the witnesses had refreshed their recollections and would change their testimony to be consistent with the information contained in the affidavit. R. pp. 138-39. The defense objected to allowing the state to have its witnesses change their testimony. R. pp. 139-40. Following this objection, the state reverted to its reliance on the live testimony of the witnesses, not the Rule 6 forms. R. p. 140. The prosecutor invoked the witness testimony even though he had previously acknowledged that the testimony was not accurate. R. p. 140. Following a recess, the court indicated it had reviewed the “real time notes” and found the chain of custody to be sufficient. R. p. 146. In stating the basis for its ruling, the court specifically noted the testimony of Byrd that he put the evidence into the evidence drop box. R. p. 147.

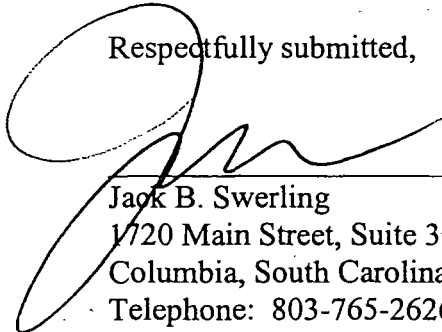
The court provided both sides the opportunity to proffer additional evidence on this issue and indicated it would allow the state to recall witnesses. R. p. 146. However, the state did not call either Byrd or Cockrell back to the stand to correct their earlier testimony, which it conceded was inaccurate. The court premised its finding that the chain of custody was sufficient, in part, on this inaccurate testimony. R. pp. 138-39; p. 140, lines 2-8; p. 147, lines 8-9. This finding, based on admittedly inaccurate information, was an abuse of discretion.

The court also based its finding, in part, on the testimony concerning the best kit, the serial number, the tamper-proof mechanisms, and the absence of tears, punctures, or a broken seal. R. p. 147. However, evidence that the item submitted for analysis had not been tampered with is not sufficient to overcome missing links in the chain of custody. *Hatcher*, 384 S.C. at 378, 681 S.E.2d at 928; *State v. Chisholm*, 355 S.C. 175, 180-81, 584 S.E.2d 401, 404 (Ct. App. 2003), *overruled on other grounds by State v. Taylor*, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004). The state failed to meet its burden of establishing the identity of all the persons who handled the evidence and the manner in which it was handled, and the alleged methamphetamine, chemist's report, and chemist's testimony about the substance should have been suppressed.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand this case for a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

The State,

Respondent

v.

Jack Harrison, Jr.,

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in admitting evidence obtained during the stop of Appellant.
- II. The trial court did not err in admitting the evidence obtained during the inventory search of the vehicle.
- III. The trial court did not err in admitting evidence regarding the drugs obtained from Appellant's vehicle because the state established a chain of custody as far as practicable.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court did not err in admitting evidence obtained during the stop of Appellant.

Appellant contends the trial court erred in admitting evidence resulting from a stop of Appellant. The Officers properly stopped Appellant based on reasonable suspicion that he was involved in criminal activity. Further, the traffic stop was valid and provided additional support for the stop by the Officers. As a result, the trial court properly admitted the evidence obtained during the stop of Appellant.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also, State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court’s ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge’s ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991).

“A police Officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the Officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); *see also*, United States v. Arvizu, 534 U.S. 266, 273 (2002); U.S. v. Sokolow, 490 U.S. 1, 7 (1989); Terry v. Ohio, 392 U.S. 1, 30 (1968). “[A] police Officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.” Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985).

Reasonable suspicion consists of “‘a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641, 644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). “Reasonable suspicion ‘is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal

technicians, act.” State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)).

“In this highly fact-specific inquiry, reasonable suspicion ‘is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.’” State v. Wallace, 392 S.C. 47, ___, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting Foreman, 369 F.3d at 781). The reasonable suspicion standard “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). “Reasonable suspicion is more than a general hunch but less than what is required for probable cause.” State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (“Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.”). Reasonable suspicion “is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.” Foreman, 369 F.3d 776, 781.

When evaluating an investigatory stop’s validity, a court must consider the totality of circumstances. Sokolow, 490 U.S. at 8, 109 S.Ct. 1581. Therefore, courts must “consider the totality of the circumstances” and “give due weight to common sense judgments reached by Officers in light of their experience and training.” United States v. Perkins, 363 F.3d 317, 321 (4th Cir. 2004); see also United States v. Branch, 537 F.3d 328 (4th Cir. 2008) (judicial review of evidence offered to demonstrate reasonable suspicion must be commonsensical,

focus on the evidence as a whole, and be cognizant of both context and the particular experience of police Officers). Furthermore, an individual's innocent and lawful actions may, in certain situations, combine to suggest criminal activity. State v. Taylor, 388 S.C. 101, 110, 694 S.E.2d 60, 64 (Ct. App. 2010) (citing Illinois v. Wardlow, 528 U.S. 119, 125 (2000)). "Nervous, evasive behavior is also considered a pertinent factor when determining reasonable suspicion. Similarly, evasion can contribute to reasonable suspicion." Taylor, 388 S.C. at 111, 694 S.E.2d at 65 (internal citations omitted).

In this case, the Officer clearly had a reasonable suspicion to have Appellant stopped for investigatory purposes. The Saluda County Sheriff's Department received multiple complaints regarding an individual soliciting money up front to allegedly perform paving work. (T.48-49; R. 11-12). Investigator Shealy testified the area from which the calls were received is his hometown area and he knew of no paving being performed. (T.49; R. 12). Investigator Shealy spoke with one of the targets of the solicitation, Ms. Nye. She told him a gentleman in a white vehicle solicited \$700 from her to do some paving. She provided the investigator a business card provided by the white male that had approached her about the paving job. Ms. Nye was able to provide Investigator Shealy a description of the vehicle and a description of the individual. (T.50-51; R. 13-14).

Investigator Shealy then called the number on the card and indicated Ms. Nye had changed her mind and wanted to meet about the paving job. While waiting for the individual to return, Investigator Shealy talked with other neighbors who had been solicited. (T.52; R. 15). As a white Ford explored slowed down in front of the house, the other neighbors identified it as the one that had tried to obtain money for paving. (T.52-53; R. 15-16). The

vehicle slowed to turn into the house and when it saw the Officer's vehicle, it sped up and went down the road. (T.53; R. 16).

Based on the action of the driver of the white Ford Explorer, the Officers had reasonable suspicion to make an investigatory stop. The driver was soliciting money from elderly individuals promising to do paving work in an area in which no paving was being done. The Officer was familiar with the area and knew no paving was taking place. Further, when he called the individual back to a victim's house, the individual did not stop when he saw the police. Instead he accelerated off after seeing the Officer's vehicle parked at the residence. These factors created a reasonable suspicion the driver, later identified as Appellant, was involved in criminal activity warranting an investigatory stop. State v. Morris, 312 S.C. 116, 118, 439 S.E.2d 291, 292 (Ct. App. 1993) (quoting United States v. Hensley, 469 U.S. 221, 234, 105 S.Ct. 675, 683, 83 L.Ed.2d 604, 616 (1985)) (reasonable suspicion of committing a crime justified "a brief stop to check [Appellant's] identification, pose questions, and inform [Appellant] that the ... police wished to question him.").

Additionally, as the trial court found, the Officer that performed the traffic stop of Appellant had proper probable cause to make the stop based on a violation of several motor vehicle statutes. Investigator Byrd received a call from Investigator Shealy to be on the look out for the white Ford Explorer. (T.69-70; R. 32-33). The Officer testified he witnessed Appellant traveling towards him, and Appellant's windshield was significantly cracked from the passenger's side and it continued over to the driver's side. (T.70-71; State's Exhibit 4; R. 33-34; 159). He initiated the traffic stop as a result of the information from Investigator

Shealy, but also believed the broken windshield provided a basis for the stop. (T.71; 76; 123; R. 34; 39; 61).

Generally, the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). See also, Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985) (Officer may stop automobile and briefly detain occupants, even without probable cause to arrest, if he has reasonable suspicion occupants are involved in criminal activity). Pursuant to the motor vehicle statutes vehicles must be in a safe condition to operate and must have all equipment in proper condition and adjustment:

It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such an unsafe condition as to endanger any person or property or which does not contain those parts or is not at all times equipped with lights, brakes, steering and other equipment in proper condition and adjustment as required in this article or which is equipped in any manner in violation of this article or for any person to do any act forbidden or fail to perform any act required under this article.

S.C. Code Ann. § 56-5-4410 (Supp. 2010). Further, the statutes provide:

No person shall drive or move on any highway any vehicle unless the equipment thereon is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

S.C. Code Ann. § 56-5-5310 (Supp. 2010). Finally, specifically in regards to windshields, the motor vehicle statutes provide:

No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield,

sidewings or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

S.C. Code Ann. § 56-5-5000 (Supp. 2010).

Appellant's vehicle was not in proper condition and the windshield was not in proper or safe operating condition because it was cracked from the passenger's side over to the driver's side of the windshield. The testimony of both Investigators regarding the condition of the windshield provides the requisite probable cause to stop Appellant for the traffic violation, whether or not its condition is clearly displayed in the photographs. As a result, the trial court properly found Investigator Byrd had probable cause to stop Appellant for the traffic violation. (T.87; R. 50).

Once a vehicle has been stopped for a traffic violation, the Officer “may request a driver's license and vehicle registration, run a computer check, and issue a citation.” United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998) (citation omitted). If the Officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances. State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) (citing Blassingame, 338 S.C. at 248, 525 S.E.2d at 539; State v. Kirkpatrick, 320 S.C. 38, 462 S.E.2d 884 (Ct. App. 1995)).

In this case, after Investigator Byrd properly stopped Appellant and then had his suspicions further aroused when Appellant presented him with a false ID. (T.121; 124; R. 59; 62). After determining the first identification he received was not Appellant, Investigator Byrd determined Appellant was driving without a valid driver's license. (T.125; R. 63). At this point, Appellant was arrested for driving under suspension.

Investigatory Byrd had reasonable suspicion to stop Appellant due to the suspected criminal activity and the circumstances surrounding the paving scheme. Further, he properly stopped Appellant due to the visible broken windshield. Finally, Appellant was properly detained as a result of his presentation of a false identification and the subsequent discovery he was driving on a suspended license.

II. The trial court did not err in admitting the evidence obtained during the inventory search of the vehicle.

Appellant contends the trial court erred in admitting the drugs and evidence found in the Desenex can with a false bottom because the search conducted by the Officers exceeded the scope of a proper inventory search. The Officers properly conducted an inventory search once Appellant was arrested for driving under suspension. Further, the search authorized them to collect and catalog the Desenex can, which simply fell apart during the inventory search. Finally, the argument as raised by Appellant is not properly preserved for review on appeal.

Preservation

First, the issue as raised on appeal is not properly preserved for review. An issue must be raised to and ruled on by the trial court in order for it to be preserved for review on appeal. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004) (to be preserved for appeal, issue must be raised to and ruled on by trial court). Additionally, a party cannot argue one ground below and then argue a different ground on appeal. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (defendant may not argue one ground below and another on appeal); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (same); State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) (same).

At trial, Appellant argued the Officer should have obtained a search warrant in order to open the Desenex can. On appeal, Appellant maintains the State failed to present evidence of a standard policy governing the practice of inventory searches. He further contends because no policy was articulated, the search of the Desenex can exceeded the permissible

scope of the inventory search. Appellant never raised this issue to the trial court. Further, the trial court's ruling indicated the drugs would not be suppressed because when the Desenex can was first confiscated, it "basically fell apart" revealing the drugs. The court clearly did not rule on any issue regarding whether the State demonstrated a policy for opening an unopened container and Appellant attempts to raise a different theory on appeal. Accordingly, the issue is not preserved for review on appeal.

Merits

On the merits, the Officers did not violate Appellant's Fourth Amendment rights by exceeding the scope of a valid inventory search. The testimony established the Desenex can simply fell apart when it was originally found by Investigator Byrd. The contents then fell out of the can and no further "search" was required. Further, the Officers testified their practice was to catalog everything in conducting an inventory search and this is what Investigator Byrd was doing at the time the drugs were located.

"[W]hen the police take custody of any sort of container (such as) an automobile . . . it is reasonable to search the container to itemize the property to be held by the police. (This reflects) the underlying principle that the fourth amendment proscribes only Unreasonable searches." S. Dakota v. Opperman, 428 U.S. 364, 371, 96 S. Ct. 3092, 3098, 49 L. Ed. 2d 1000 (1976) (citing United States v. Gravitt, 484 F.2d 375, 378 (5th Cir. 1973)). The United States Supreme Court (USSC) has found "[i]f the police are following standard procedures, they may inventory impounded property, including closed containers, to protect an owner's property while it is in police custody." State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811,

817 (Ct. App. 2010) (citing Colorado v. Bertine, 479 U.S. 367, 372-73, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987)).

The USSC explained: "Our view that standardized criteria, or established routine, must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1, 4, 110 S. Ct. 1632, 1635, 109 L. Ed. 2d 1 (1990) (internal citations omitted). The Court continued:

A police Officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. Thus, while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents Officers determine they are unable to ascertain from examining the containers' exteriors.

Id. at 4.

In the instant case, Appellant vehicle was impounded because he was arrested for driving under suspension. The Investigators testified they conduct an inventory of the vehicle before it is towed. (T.56-57; 126-127; R. 19-20; 64-65). Specifically, Investigator Shealy testified they always inventory the contents of a vehicle before it is towed as "department policy." (T.56-57; R.19-20). Investigator Byrd explained: "We inventory the vehicle, everything in the vehicle and what compartments or what area the vehicle is in, that way nothing takes missing out the vehicle and they've got a true and accurate record." He indicated the reason for the inventory was because "[p]eople's belongings are in vehicles and wating them to get back everything that's theirs." (T.127; R. 65).

The Investigators identified the policy of the department was to conduct the inventory search prior to a vehicle being towed when its driver has been arrested. Further, they testified "everything" in the vehicle is examined and inventoried so that it could be returned to its owner. As a result, the Investigators conducted the inventory search in accordance with the standardized practice and policy of their department when they located and examined the Desenex can.

Further, the nature of the can raised the Investigator's suspicion. The can when picked up did not sound like it had liquid in it to spray. (T.57; 74; R.20; 37). The fact the can did not sound like a typical spray can would entitle the Investigators to examine it more closely. See Wells, 495 U.S. at 4.

In this case, no further examination was necessary because when the bottle was shook, the bottom came apart. The Officer who located the Desenex can indicated he did not take apart the can. He testified: "Picked it up, shook it, it didn't sound right. Just one screw in the bottom come off of it, you just more or less touched it and the bottom come off of it and there was meth in the container." (T.74; 166-167; R.37; 85-86).

Accordingly, even if the issue is preserved for review on appeal, the issue is without merit. Investigator Byrd conducted a valid and proper inventory search of Appellant's vehicle when he was arrested. As a result of the search he located the Desenex can. The Investigators had the right to more closely examine the can because it was suspicious as it did not contain liquid and did not sound right when shook. In this case, no further examination was necessary as the bottom of the can fell off and its contents, including the meth and marijuana, were exposed. The proper inventory search in this case, conducted

pursuant to department policy, did not turn into “a purposeful and general means of discovering evidence of crime” as is precluded by the Fourth Amendment. See Wells, 495 U.S. at 4 (citing Bertine, 479 U.S., at 376 (Blackmun, J., concurring)). Therefore, the trial court properly admitted into evidence the drugs and other items found as a result of the inventory search.

III. The trial court did not err in admitting evidence regarding the drugs obtained from Appellant's vehicle because the State established a chain of custody as far as practicable.

Appellant contends trial court erred in admitting the methamphetamine because the State failed to establish a complete chain of custody. The State established the chain of custody as far as practicable with all individuals identified and the means of transporting the substance as well as its storage explained. Any conflict in the testimony, just as with any weak link in the chain of custody, does not go to the admissibility of the drugs but to the weight given by the jury.

“[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable.” See State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007) (citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957)).

Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.

State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (citing Sweet, 374 S.C. at 6, 647 S.E.2d at 205). In other words, where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). Further, the proof of the chain of

custody need not negate all possibility of tampering but must establish a chain as far as practicable. State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989).

In South Carolina Dep't of Soc. Servs. v. Cochran, the South Carolina Supreme Court stated "we have never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." South Carolina Dep't of Soc. Servs. v. Cochran, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005). The Court in Cochran found: "Generally, we will uphold the chain of custody if the safeguards instituted ensure the integrity of the evidence, even if every person associated with the procedure is not personally identified." Id.

In Hatcher, the Supreme Court found the chain of custody was sufficiently established even though no testimony linked the Officers who transported the drugs to SLED and the agent who analyzed the drugs. The Court found the failure to personally identify the technician at SLED that received the evidence as well as the exact handling of the evidence while in SLED's custody was not required to establish a chain of custody as far as practicable. See Hatcher, 392 S.C. at 95, 708 S.E.2d at 755. The Court concluded: "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be. The record here indicates the drugs received for testing were in fact, those taken from Hatcher without any alteration, tampering, or substitution." Id.

Further, any discrepancy as to the dates items were placed into the secure evidence locker does not go to its admissibility but instead merely affects the weight of the evidence. In State v. Johnson, 318 S.C. 194, 456 S.E.2d 442 (Ct. App. 1995), two Officers testified to a different sequence of events and dates for how evidence was deposited into the secure

evidence storage. The Court found "Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time. A reconciliation of this discrepancy was not necessary to establish the chain of custody, but merely reflected upon the credibility of the evidence rather than its admissibility" State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995).

This case presents a factual scenario very similar to those found in Johnson and Hatcher. While there is a discrepancy as to who and when the evidence was placed into the secure evidence locker, both individuals were identified and testified. Any issue regarding whether Investigator Byrd or Deputy Cockrell placed the evidence into the drop box only goes to its weight and not its admissibility under Johnson.

Further, the State presented a complete chain of custody as far as practicable. Investigator Byrd indicated he placed the evidence into a Best Evidence Kit with number B-175444, which was sealed and was tamper proof. (T.141-142; R.79-80). Investigator Shealy testified he retrieved the Kit from the evidence drop box and gave it to Deputy Cockrell to deliver to SLED. He testified it was sealed at the time he retrieved it and when given to Deputy Cockrell. (T.217; R.116). Deputy Cockrell testified he received the Kit, number B-175444, from Investigator Shealy and transported it to SLED on May 17, 2006. He testified it was sealed and never tampered with when he delivered it to Coronda Williams at SLED.

Coronda Williams testified she received the Kit from Deputy Cockrell on May 17, 2006. She indicated it was in the best kit and not tampered with when she placed it into SLED's secure evidence storage. (T.173-174; R. 88-89). Agent Stanley testified she

retrieved the best kit with number B-175444 for testing of a substance. (T.236; R. 126). She indicated there was no evidence of any tampering and it was still properly sealed. (T.253; R. 143). Agent Stanley opened the packaging and after analysis determined it was 9.69 grams of methamphetamine. (T.265; R. 148).

As in Hatcher, the failure to personally identify any technician who may have had contact with the drugs in SLED's evidence storage or retrieved them for Agent Stanley is not fatal to the chain of custody in this case. The chain was completed as far as practicable, identifying the custodians of the evidence as well as the condition of the Best Evidence Kit from the time it was initially sealed by Investigator Byrd until it was opened for testing by Agent Stanley. There was no evidence of tampering and as in Hatcher, the "ultimate goal" was satisfied in that the State demonstrated the substance seized by Investigator Byrd was the same substance tested by Agent Stanley.

The State presented a complete unbroken chain of custody from the time the drugs were seized until they were analyzed. Any discrepancy in who actually placed the drugs into the evidence locker merely inures to the credibility and weight of the evidence and not its admissibility. The State presented a continuous chain of custody, identifying all who handled the drugs as well as the condition of the best evidence kit when handled, from the time Investigator Best took possession until Agent Stanley tested them. Accordingly, the trial court properly admitted the drugs and the test results demonstrating the substance was approximately 9.69 grams of methamphetamine.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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October 20, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

The State,

Respondent,

v.

Jack Harrison, Jr.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 20th day of October, 2011.



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THE STATE OF SOUTH CAROLINA
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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting all the evidence obtained as a result of a traffic stop, where the stated basis for the stop was a ruse by which officers made a stop for which they did not have a reasonable suspicion or probable cause?
2. Did the trial court err in admitting the alleged marijuana and methamphetamine and evidence of the nature and weight of those substances, where the officers exceeded the appropriate parameters for a warrantless inventory search?
3. Did the trial court err in admitting the alleged methamphetamine and evidence of the nature and weight of that substance, where the state failed to establish the complete chain of custody of the substance from the time it was seized until it was analyzed?

ARGUMENT IN REPLY

- I. THE TRIAL COURT ERRED IN ADMITTING THE EVIDENCE OBTAINED AS A RESULT OF THE TRAFFIC STOP, WHERE THE STATED BASIS FOR THE STOP WAS A RUSE BY WHICH OFFICERS MADE A STOP FOR WHICH THEY DID NOT HAVE A REASONABLE SUSPICION OR PROBABLE CAUSE.

Appellant challenges the legality of the traffic stop and the admission of all evidence obtained as the result of that stop, because the police did not have a reasonable suspicion the driver was engaged in criminal activity and because they did not have probable cause, or even a reasonable suspicion, for a traffic stop.

The state contends the officers' suspicions concerning a paving scam were a sufficient basis for the stop, citing *State v. Morris*, 312 S.C. 116, 439 S.E.2d 291 (Ct. App. 1993). *Morris* involved very different facts than those presented here. The police had an eyewitness report of a kidnapping. The witness identified several suspects by their nicknames, one of which was "Duck Booty." Officers knew "Duck Booty" to be

the nickname of the defendant. The police obtained information concerning the vehicle of the defendant and its personalized license plate in order to stop him to question him about the kidnapping. An officer saw the vehicle and stopped it. While one officer questioned him, another looked into the vehicle and saw an open beer container. The defendant was arrested and drugs were found in an inventory search of the vehicle. The Court upheld the investigatory stop of the vehicle, finding the kidnapping report from an eyewitness provided a reasonable suspicion to support the stop. *See Morris*, 312 S.C. at 117-18, 439 S.E.2d at 292.

This case is not like *Morris*, where the police had an eyewitness report of a criminal act. Here, there was no evidence whatsoever that the driver of the paving vehicle had engaged in criminal activity. There was no particularized and objective basis to believe there had been any criminal activity. The officers had nothing more than a “general hunch.”

Nor did the officers have probable cause, or even a reasonable suspicion, to support a traffic stop. The state relies on three statutes to argue the cracked windshield provided a basis for this stop. Two of those statutes do not specifically pertain to windshields. They generally prohibit driving a vehicle in an unsafe condition or with equipment that is not in proper working order. *See* S.C. Code Ann. §§ 56-5-4410, -5310. The state claims the car was not in proper or safe operating condition because of the crack in the windshield. While there was testimony concerning a crack in the windshield, there is no evidence that the crack rendered the car unsafe or that it was not in proper operating condition. R. pp. 17, 29, 33-34, 39, 41-42, 43-44. Those statutes did not provide a basis for this traffic stop. The state does not contend that the condition of the

windshield obstructed the driver's clear view of the highway or any intersecting highway, in violation of the only statute that specifically addresses windshields. *See* S.C. Code Ann. § 56-5-5000. The photographs in evidence show that it did not. *See* R. pp. 159-60, 165-66. The crack in the windshield was a ruse to justify a stop the officers intended to make anyway but which was not supported by reasonable suspicion of criminal activity. For the reasons more fully developed in appellant's opening brief, this Court should reverse the lower court's admission of the evidence obtained as a result of the stop.

II. THE TRIAL COURT ERRED IN ADMITTING THE ALLEGED DRUGS AND EVIDENCE OF THEIR NATURE AND WEIGHT, BECAUSE THE OFFICERS EXCEEDED THE APPROPRIATE PARAMETERS FOR A WARRANTLESS INVENTORY SEARCH.

A. Preservation.

The state contends the issue of the warrantless search of the Desenex can is not preserved for appellate review, arguing the issue raised on appeal is different than that argued in the court below. Under the rules of error preservation applied in this state, the issue is preserved and properly before the appellate court for determination.

The motion to suppress the evidence from the Desenex can was specific, and the issue argued on appeal is the same as that argued in the court below. The defense specifically challenged the admission of the drugs found in the can on the basis that the officers did not obtain a warrant to open the can. Reference to a general rule is sufficient to preserve an evidentiary issue for appeal. *Cf. State v. Weaverling*, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999) (defense asked court to exclude evidence of prior bad acts but did not argue inadmissibility under any *Lyle* exception; state contended issue was not preserved because defense failed to state grounds or argue that evidence did not fit within an exception to the general rule; Court of Appeals held issue was preserved by

reference to the general rule). Counsel's reference to the general warrant requirement preserved this issue, and counsel was not required to argue why the facts did not fit within a specific exception to the warrant requirement. Nothing more was required to place before the trial court the issue of the legality of the search of this closed container seized during the traffic stop. However, if greater specificity were required, the specific grounds are apparent from the record and the issue is preserved.

A claim of error that affects a substantial right may be predicated upon an evidentiary ruling where "a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context." Rule 103(a)(1), SCRE. Where the specific ground is not stated but is apparent from the context and it is clear the judge understands the ground, the issue is preserved. *State v. Sweet*, 342 S.C. 342, 347, 536 S.E.2d 91, 93 (Ct. App. 2000); *State v. Holliday*, 333 S.C. 332, 338-39, 509 S.E.2d 280, 283 (Ct. App. 1998). In this case, the specificity requirement is met and the issue is preserved.

The court conducted a pre-trial hearing on the evidentiary issues. At the conclusion of the testimony of officers Shealy and Byrd, the defense presented argument with respect to the legality of the traffic stop (Issue 1). R. pp. 47-49. During a pause, the court discussed the law applicable to the traffic stop. R. pp. 49-50. The court then moved on to the events occurring after the stop, even though the defense had not yet made its motion to suppress the evidence resulting from the search of the can. The court discussed the law applicable to inventory searches and closed containers, specifically noting the existence of case law that deals with not being able to open closed containers unless there is an established policy concerning what can be opened and what cannot be

opened during an inventory search. R. p. 51, line 25 – p. 52, line 3. Later, when the defense moved to suppress the evidence from the can, counsel referred to what the court had already mentioned and sought suppression on the basis of the officers' failure to obtain a search warrant before opening the can. R. p. 55, line 20 – p. 56, line 5. The court heard argument from the solicitor that the can was seized as part of an inventory search and the bottom fell out of it. R. p. 56. The court denied the motion, stating, "I will say I'm a little bit troubled by it, but that was the testimony that basically they shook it, it was obviously something wrong with it and the thing just basically fell apart and there the drugs were." R. p. 57, lines 2-5.

In the context of the court's prior comments and counsel's reference to the court's comments when making the motion, the grounds for suppression of evidence obtained from the can are clear – it was a closed container that could not be opened as part of an inventory search without a warrant, unless the circumstances were within the parameters outlined in the case law governing searches of closed containers. The judge clearly understood the basis for the objection, even to the point of indicating he was "a bit troubled" by the issue. It would not have been troubling unless the court believed the can could not be opened during an inventory search under the applicable case law, which the court had already mentioned. The court denied the motion, however, based on a factual finding that the officers did not open the can but that the can just fell apart.

A party is not required to use the exact name of a legal doctrine or any particular wording, where the context reveals the basis for the objection. *See State v. Byers*, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011); *State v. Foster*, 354 S.C. 614, 620 n.4, 582 S.E.2d 426, 429 n.4 (2003). Specific grounds are not required where the judge's

comments demonstrate his awareness of the grounds. *See State v. Blalock*, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); *Sweet*, 342 S.C. at 347, 536 S.E.2d at 93; *Holliday*, 333 S.C. at 338-39, 509 S.E.2d at 283. Here, in the context of the court's comments, the comments made earlier about the case law governing closed containers and the additional comments made when ruling on the motion, the grounds were clear and known to the judge. The issue is preserved.

B. Merits.

The state acknowledges the case law governing opening of closed containers found during inventory searches and the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. As noted in the opening brief, a warrantless search of a closed container during an inventory search is upheld only if it is conducted pursuant to police policy, standardized criteria, or established routine. *See Florida v. Wells*, 495 U.S. 1, 4 (1990); *Colorado v. Bertine*, 479 U.S. 367, 372-73 (1987); *State v. Brown*, 389 S.C. 473, 483-84, 698 S.E.2d 811, 817 (Ct. App. 2010). The state contends the search of this can was a valid inventory search pursuant to department policy, based on Shealy's and Byrd's testimony concerning the department's policy and custom of inventorying the contents of a vehicle. Evidence of a policy to inventory the contents of impounded vehicles is not the kind of policy evidence the Supreme Court's decisions require. Rather, the state must introduce evidence of the department's policy, criteria, or routine with respect to *opening containers* found during the inventory. The record is wholly devoid of any evidence of the department's policies with respect to containers in general or aerosol cans in particular.

The state further contends the nature of the can raised the officers' suspicions, thereby justifying their actions. But the *Wells* decision specifically refutes this argument: police discretion in opening containers must be "exercised according to standard criteria and on the basis of *something other than suspicion of evidence of criminal activity*." See *Wells*, 495 U.S. at 3-4 (emphasis added). Here, the officers' actions – shaking and messing with the can until it came open based on *suspicion* – is the very conduct *Wells* forbids. This was exactly the kind of "general rummaging" to find incriminating evidence that is prohibited. *Id.*, 495 U.S. at 4; see *Bertine*, 479 U.S. at 376 (Blackmon, J., concurring). The officers' suspicions should have prompted them to seek a warrant, not to proceed with a warrantless search of the can.

The state attempts to minimize the officers' actions, as the officers did in the court below, based on Byrd's claim that the bottom simply came apart. Despite that claim, other testimony of both Shealy and Byrd makes clear the can did not just fall apart – it was their affirmative acts that caused it to fall apart. They were admittedly acting on their suspicions in an effort to find incriminating evidence, a prohibited purpose. The court erred in denying the motion to suppress this evidence.

III. THE TRIAL COURT ERRED IN ADMITTING THE SUBSTANCE ALLEGED TO BE METHAMPHETAMINE AND EVIDENCE OF ITS NATURE AND WEIGHT, BECAUSE THE STATE FAILED TO ESTABLISH THE COMPLETE CHAIN OF CUSTODY OF THE SUBSTANCE FROM THE TIME IT WAS SEIZED UNTIL IT WAS ANALYZED.

Appellant challenges the admission of evidence related to the alleged methamphetamine because of the state's failure to establish a complete chain of custody. In his opening brief, appellant relied on the Court of Appeals' decision in *State v. Hatcher*, 384 S.C. 372, 681 S.E.2d 925 (Ct. App. 2009), which has since been reversed

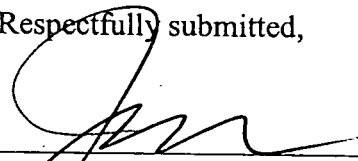
by the Supreme Court, 392 S.C. 86, 708 S.E.2d 750 (2011). The facts of *Hatcher* are similar to those of this case with respect to the gaps in the chain of custody of the substance after its delivery to SLED. However, in this case, a separate flaw in the chain existed, one not present in *Hatcher* – the discrepancies with respect to the identity of the handlers of the alleged drugs between the time the drugs were obtained from the vehicle and the time they were placed in the evidence drop box, as well as when that occurred. As the Supreme Court reiterated, “the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody. Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be.” *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755.

Contrary to the state’s argument, this case is not akin to *State v. Johnson*, 318 S.C. 194, 456 S.E.2d 442 (Ct. App. 1995), where there was a discrepancy only in the *date* the evidence was transferred from one person to another. Here, there was a discrepancy as to the date of deposit but also a discrepancy in the *identity* of the custodian who made the deposit. The state admitted the testimony of its witnesses was not correct, but the court relied on the incorrect testimony in making its decision to admit the evidence. R. p. 138, lines 4-19; p. 147, lines 8-9. Under these circumstances, the state did not meet its burden to establish the chain as far as practicable. See *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). This Court should reverse the admission of the evidence of the alleged methamphetamine, the chemist’s report, and the chemist’s testimony concerning the nature of the substance.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand this case for a new trial.

Respectfully submitted,



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