

22473

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COREY WILLIAM BROWN,

APPELLANT

APPELLATE CASE NO. 2015-000094

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA  
2 COUNTY OF SPARTANBURG

) IN THE COURT OF GENERAL SESSIONS

3 The State,

4 -vs-

5 Corey William Brown,  
6 Defendant.

) TRANSCRIPT OF RECORD  
) 2010-GS-42-6208

) January 31, 2013  
) January 9, 2015  
) Spartanburg, South Carolina

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8  
9  
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE  
12  
13

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

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16 KINLI BARE, ESQUIRE  
17 Attorneys for the State

18 RICHARD H. WHELCHER, ESQUIRE  
19 Attorney for the Defendant  
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22 Linda D. Moffitt  
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SUPPRESSION EXHIBITS

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1 (Proceedings January 31, 2013)

2 THE COURT: All right. First case is Corey Brown.  
3 It's a jury trial. Are we ready for the jury?

4 MR. HUNTER: Yes, sir, Your Honor.

5 MR. WHELCHER: Yes, sir.

6 THE COURT: All right. Bring them around, please.  
7 Is this a trafficking case based upon actual or  
8 constructive possession?

9 MR. HUNTER: Actual, Your Honor.

10 I will be making a motion to amend the indictment just  
11 to change the date from the 29th to the 28th, Your Honor.  
12 It happened at that time between 11:00 and midnight, Your  
13 Honor.

14 THE COURT: Well, the indictment says on or about.  
15 What does that mean?

16 MR. HUNTER: Well, just for the -- the proof that  
17 we're going to be offering has a -- the evidence form has  
18 August 28th as the date that the evidence was put into it.

19 THE COURT: Well, is the 28th on or about the 29th?

20 MR. HUNTER: It is, Your Honor, but I don't want to  
21 confuse the jury.

22 THE COURT: Me neither. So why are we doing it?

23 MR. WHELCHER: I guess it's a typo, Your Honor. I  
24 have no idea.

25 THE COURT: All right. Do y'all agree to amend it?

1 MR. WHELCHER: Yes, sir.

2 THE COURT: You've talked to your client about it?

3 MR. WHELCHER: Not yet, Your Honor.

4 THE COURT: Well, then you can't agree to it until you  
5 talk to him, can you? Were you going to talk to him?

6 MR. WHELCHER: Yes, sir.

7 (Pause.)

8 MR. WHELCHER: Your Honor, Mr. Brown will be opposed  
9 to the amendment in the indictment.

10 THE COURT: Okay. Do y'all want to be heard?

11 MR. HUNTER: Your Honor, if I may, there's a case  
12 directly on point, State vs. Quarrels. This one was  
13 amended after the case was called.

14 The proof and evidence showed that the burglary  
15 happened on September 4th I believe instead of -- it  
16 actually happened a day earlier than the indictment said.  
17 The judge amended the indictment and the Court of  
18 Appeals -- excuse me -- the Supreme Court agreed that the  
19 indictment can be amended as long as it doesn't change the  
20 facts.

21 THE COURT: All right. Just a minute. We'll address  
22 that after the jury is selected.

23 (The following takes place in the presence of the jury  
24 venire.)

25 THE COURT: Good morning, ladies and gentlemen of the

1 let you know shortly when you can be excused. Thank you.

2 (Whereupon, the remaining members of the jury venire  
3 were excused.)

4 THE COURT: All right. Mr. Whelchel, you object to  
5 the state's motion to amend the indictment to reflect the  
6 date of the offense to be the 28th instead of the 29th.  
7 And what's the nature of your objection?

8 MR. WHELCHER: Your Honor, the indictment is notice to  
9 my client of what he's going to trial for, and the  
10 indictment is dated on the 29th.

11 THE COURT: Okay. And you would agree with me it does  
12 not change the nature of the offense.

13 MR. WHELCHER: No, sir.

14 THE COURT: Are you -- do you take the position that  
15 it's a surprise to the defendant that --

16 MR. WHELCHER: No, sir.

17 THE COURT: -- he's unable to respond to?

18 MR. WHELCHER: No, sir.

19 THE COURT: All right. Well, do you have some reason  
20 then why it's not appropriate for it to be amended?

21 MR. WHELCHER: Your Honor, the state is the authority  
22 who's required to draft the indictment. And, as I said  
23 before, this indictment is the notice to my client of what  
24 he's going to trial for. It doesn't change any --  
25 anything.

1 THE COURT: Doesn't change the nature of the offense  
2 and it doesn't change your preparation or his preparation  
3 for trial?

4 MR. WHELCHER: Doesn't change my preparation, no, sir.

5 THE COURT: Doesn't affect any alibi defense?

6 MR. WHELCHER: No, sir.

7 THE COURT: And would you agree with me that the  
8 28th of August is about the 29th of August?

9 MR. WHELCHER: On or about.

10 THE COURT: That's what I'm thinking.

11 All right. Motion to amend is granted. No prejudice  
12 to the defendant.

13 Okay. We have got a sentencing matter to deal with  
14 first.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. Are we ready for the jury in  
17 Mr. Brown's case?

18 MR. WHELCHER: May we approach, Your Honor?

19 (Bench conference held off the record.)

20 THE COURT: All right. The defense have any motions  
21 prior to proceeding?

22 MR. WHELCHER: Excuse me, Your Honor?

23 THE COURT: Do you have any motions prior to the jury  
24 being sworn?

25 MR. WHELCHER: No, sir, Your Honor. I've already made

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 the Batson motion.

2 THE COURT: Well, do you have any other motions,  
3 pretrial motions, you'd like to make?

4 MR. WHELCHER: No, sir. Yes, sir. I'm sorry.

5 Your Honor, we would make a motion to suppress the  
6 drugs that were found on my client, Your Honor, based on  
7 the unconstitutionality of the search.

8 THE COURT: Specifically, what?

9 MR. WHELCHER: Violates the federal and state  
10 constitution prohibition against unreasonable search and  
11 seizure, Your Honor.

12 THE COURT: Why do you contend it was not a proper  
13 search?

14 MR. WHELCHER: It was a Terry frisk, Your Honor, and  
15 there wasn't sufficient reason for him to conduct the Terry  
16 frisk.

17 THE COURT: Okay. All right.

18 MR. HUNTER: Your Honor, the state would call Officer  
19 Jonathan Lawson.

20 JONATHAN LAWSON, having been  
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. HUNTER

23 Q Please state your full name for the record.

24 A Jonathan Lawson.

25 Q How long have you been in law enforcement?

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 A Going on 11 years.

2 Q And briefly go through your duties as a law  
3 enforcement officer in those 11 years.

4 A My current assignment now as a law enforcement officer  
5 is on uniform patrol as a canine handler.

6 Q And prior to that?

7 A I was a narcotic investigator assigned to violent  
8 crime or vice organized crime unit, also to federal bureau  
9 of investigation drug task force.

10 Q How many years of experience do you have in drug  
11 investigations?

12 A Most of my career. I only really served two years on  
13 uniform patrol. So nine years.

14 Q Were you working on the night of August 28th of 2010?

15 A Yes, I was.

16 Q And where were you working?

17 A I was in the city limits of Spartanburg in the area  
18 of -- which is known to us as District 1, which is the  
19 north side of Spartanburg city.

20 Q Can you please describe that area?

21 A Yes. It's a very high crime area, low-fronted area,  
22 lots of drug activity in that area and violent crimes  
23 towards individuals.

24 Q And there's been articles in the newspaper recently  
25 about redeveloping that area, is that correct?

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 A Correct. There's multiple derelict houses that --  
2 which are boarded-up homes where they're tearing them down,  
3 and also where they're basically selling the properties off  
4 to other individuals to try to revitalize that area.

5 Q What did you observe the night of August 28th?

6 A I observed a Chrysler at the intersection of Farley  
7 Street and North Forest Street.

8 Q Was it parked or in traffic?

9 A At that time that vehicle had pulled over on the side  
10 of the road facing back towards Brawley Street. And then  
11 an Infinity pulled up immediately.

12 Observed the defendant, Mr. Brown, over here in the  
13 right wearing the blue, mostly dress shirt, get of that  
14 vehicle and get into the driver's side of the -- or the  
15 driver's seat of that Infinity.

16 The vehicle immediately pulled off. I noticed that  
17 there was two other individuals inside that vehicle as well  
18 that Mr. Brown was driving.

19 Proceeded to Brawley Street. On Farley Street went to  
20 make the left turn. Did not use a turn signal.

21 At that point in time the driver also pulled -- went  
22 down to Folsom Street and made a right onto Folsom Street  
23 and did not use a turn signal at that point either.

24 Continually followed the vehicle waiting on the  
25 vehicle information to come back through my mobile data

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 terminal. The tag information came back. I conducted a  
2 traffic stop on the vehicle in the parking lot of 600  
3 Magnolia Street, which is Freemont School Apartments..

4 Q what did you do at that time?

5 A I approached the driver's side of the vehicle and  
6 spoke to Mr. Brown.

7 Q What time was this?

8 A It was approximately or it was exactly 10:45 at night  
9 when the stop was conducted.

10 Q Was there anybody else with you?

11 A Yes, sir. Sergeant Mark Hillers.

12 Q Okay. When you went up to talk to Mr. Brown what was  
13 his demeanor?

14 A Appeared very nervous. He had beads of sweat on his  
15 head, continuously kept looking around and reaching down  
16 inside of his right -- right side of his body in between  
17 the center console and the seat and patting his right leg.

18 Q Did you speak to the other passenger?

19 A I did not, no, sir. I only spoke with Mr. --  
20 Mr. Brown at that time.

21 Q Did you receive his information?

22 A Yes, sir. I asked him at that time of the stop as I  
23 do any other traffic stop -- driver's license,  
24 registration, insurance information.

25 Q Once you received that, what did you do with it?

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 A I went back to my patrol vehicle while Sergeant  
2 Hillers stayed at the passenger side of that vehicle as --  
3 as my cover officer.

4 Q Where was Mr. Brown from?

5 A He actually -- his home address that he gave me is  
6 Ferguson Street in Moore.

7 Q Is that anywhere close to where you saw the Chrysler  
8 or when the car stopped?

9 A No, sir. It's not even in the same zip code.

10 Q At some point did an officer come over and tell you  
11 something's happening?

12 A Yes. Sergeant Hillers approached me once Lieutenant  
13 Munoz arrived on the scene to stand by on the driver's side  
14 of the vehicle. He approached me and advised that he  
15 believed that he thought Mr. Brown had thrown an object of  
16 some type or some sort out the driver-side front window of  
17 the vehicle.

18 Q And what did y'all do at that point?

19 A At that point in time I exited my vehicle and went  
20 back to Mr. Brown, asked Mr. Brown to step out of the  
21 vehicle.

22 Based on his reactions, his nervousness and the  
23 actions that Sergeant Hillers believed -- or at the time  
24 Sergeant Hillers believed -- he had seen, as I asked him to  
25 step out of the car the first time he said why, I don't

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 have any warrants on me and my license are good. I advised  
2 him to just step out of the vehicle to the right rear of  
3 the vehicle, I needed to ask him a few questions and talk  
4 to him.

5 Q Did you have to ask him a couple of times to exit the  
6 vehicle?

7 A Yes, sir, twice actually.

8 Q And what was his demeanor when he exited the vehicle?

9 A When he exited the vehicle he immediately looked right  
10 and looked left, which is a common sign to us law  
11 enforcement officers he was looking for a route to escape  
12 or to flee.

13 At that time I continuously stayed in front of him.  
14 Lieutenant Munoz was on one side. Sergeant Hillers was on  
15 the other side. They were still continuing as cover  
16 officers. And Mr. Brown immediately walked back to the  
17 back of the vehicle.

18 Q Why did you ask him outside the vehicle?

19 A I've asked multiple subjects out of the vehicle. It's  
20 nothing against Mr. Brown, but basically the way he was  
21 acting -- his nervousness, his appearance, his demeanor.

22 Q Had his license information come back yet?

23 A Not at that time. We were actually in the process of  
24 checking warrants, license, all of that stuff, which is a  
25 common thing that I normally do. And I can't speak for

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 Sergeant Hillers, but it's common what I do on every  
2 traffic stop I make.

3 Q When you got him to the back of the vehicle did you  
4 ask him for consent to search himself, search him?

5 A I asked him if he had any weapons on his persons,  
6 asked him if I could do a search of his persons. He asked  
7 me why, he didn't have any weapons.

8 I said, well, then, can I pat you down. He asked me  
9 once again why. I advised him, you know, officer-safety  
10 issue, I want to make sure you don't have any weapons when  
11 I'm out here talking to you. He continuously kept patting  
12 around on his right side of his pocket, which is another  
13 sign that I didn't know if he had a weapon on his persons.

14 At that point in time Mr. Brown turned around and  
15 placed his hands on the back of the vehicle. I asked him  
16 to spread his feet, step back away from the car a little  
17 bit, which he complied.

18 I took my right hand and conducted a patdown, no  
19 manipulation whatsoever, just a patdown, which is a  
20 follower of the body-line through the outside of the  
21 vehicle. It's a Terry frisk basically.

22 Q And what did you feel?

23 A I felt a large bulge in the right side of his pocket  
24 at that time.

25 Q What did it feel like to you from your training and

Jonathan Lawson (In-camera)  
Direct examination by Mr. Hunter

1 experience?

2 A Well, my experience as a narcotics investigator, it  
3 felt like a package of a narcotic, some type of package.  
4 Like I say, I did not manipulate. I just had to feel and  
5 do a patdown. That's immediately what it felt like, a  
6 package.

7 Q In fact, did you ask him what was in his pocket?

8 A Yes, sir, I did.

9 Q And what was his response?

10 A He advised me it was a package.

11 Q What did you say next?

12 A I asked him what kind of package, how much -- how much  
13 weed did he have on him. He said just a little bit.

14 At that point in time based on the fact of him telling  
15 me it was marijuana, which is commonly referred to on the  
16 street as weed, was going to detain him and remove the  
17 item. At that point in time he had been placed under  
18 arrest.

19 Q Did he not, in fact, also say it was a 20-bag?

20 A He most certainly did, yes, sir.

21 Q What is a 20-bag in reference to?

22 A A 20-bag is -- is a size, a weight and amount for \$20  
23 worth of -- of drugs.

24 Q Okay. At that point did you detain him?

25 A I did. I attempted to detain him, yes, sir.

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Wheelchel

1 Q And what did you find in his pocket?

2 A After detaining him and an altercation that had  
3 occurred, I located a plastic baggy in his right front  
4 pocket that contained a large quantity of cocaine, powder  
5 cocaine.

6 Q Please answer any questions Mr. Wheelchel may have for  
7 you.

8 A Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. WHEELCHEL

11 Q Mr. Lawson --

12 A Yes, sir.

13 Q -- when you first saw my client he was close to the  
14 intersection of Brawley and Farley Street, is that correct?

15 A No, sir. It was North Forest. Well, it's in between  
16 North Forest and Brawley Street, which is Farley Street.  
17 It's a little section right there.

18 Q Okay. But when you first saw him he was on the street  
19 walking, is that correct?

20 A No, sir, that's not correct.

21 Q Well, where was he?

22 A He had gotten out of a Chrysler vehicle that was  
23 parked there on that little intersection.

24 Q And walked to another vehicle.

25 A He immediately -- like I say, an Infinity pulled up,

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 and he got into the driver's seat of that Infinity.

2 Q The vehicle he got out of, do you remember the tag on  
3 that one?

4 A At the time I was not able to run the tag on that one.

5 Q Why is that?

6 A I just didn't. I was in the process of, like I say,  
7 observing him get out of one vehicle and walk to another,  
8 which seemed suspicious due to that area that's there.

9 Q Okay. What's your call site, sir?

10 A KILO 90, K90.

11 Q Ninety?

12 A Yes, sir.

13 Q Okay. You and Hillers were riding together?

14 A Yes, sir. It's a common thing that we do.

15 Q Okay. All right. So once you see my client get out  
16 of one vehicle and then get into another one, what happens  
17 then?

18 A He immediately pulled off in the vehicle, Mr. Brown  
19 did.

20 Q Uh-huh.

21 A Like I say, there was two other subjects in that  
22 vehicle.

23 He got to the intersection of -- I believe it's --  
24 Farley Street and Brawley Street, made a left turn right  
25 there without using a signal and then traveled towards

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Welchel

1 Folsom Street on Brawley and made another right turn with  
2 no turn signal, which at that time I conducted the traffic  
3 stop after we come off of Folsom onto Howard, and then onto  
4 Pearl Street in the parking lot of Freemont School  
5 Apartments.

6 Q Okay. And when you conduct a traffic stop such as you  
7 say you did, you call that license number in on the radio,  
8 is that correct?

9 A On the -- the vehicle that the subject would be  
10 driving, yes, sir.

11 Q Yes, sir.

12 A Is that the one that you were referring to a moment  
13 ago?

14 Q No.

15 A Okay. I wasn't sure which one you were referring to.

16 Q Okay. If you're not talking about it right now, I'll  
17 let you know.

18 when you conduct a traffic stop you make that call  
19 into headquarters or whatever it is. You call them on the  
20 radio.

21 A Correct.

22 Q So that they know that you're getting out of the car  
23 and they know specifically who you're with, is that right?

24 A That's correct.

25 Q Okay. And this traffic stop was conducted at 2237

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 according to the CAD that was provided to me by the  
2 solicitor's office. Are you aware of that?

3 A The times that the Spartanburg communications gave me  
4 were 2245, which was my case number and times that they  
5 give it.

6 Q I understand that. But you understand that your call  
7 went in at 2237.

8 A I'm -- if that's what you say, sir. I haven't seen  
9 what you have.

10 Q Okay. You wouldn't have any reason not to believe  
11 what the people at 9-1-1 and CAD tell you, is that right?

12 A I don't have any doubt.

13 Q And they're the ones who tell you what time the stop  
14 was when you call in and ask for time.

15 A Correct.

16 Q And they're the ones who give you ultimately a case  
17 number for a case.

18 A That is correct, yes, sir.

19 Q I just want to make sure that's how that works, making  
20 sure I understand it.

21 And you give them the information from the automobile  
22 that's being stopped. You call that in.

23 A Yes, sir.

24 Q And then they start the search for the information on  
25 that vehicle and contact you back, is that right?

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Welchel

- 1 A Some dispatchers do, and some don't.
- 2 Q Okay. Who was driving?
- 3 A I was. I was in my marked patrol vehicle.
- 4 Q And Hillers was riding with you?
- 5 A Yes, sir.
- 6 Q Okay. So was it you or Hillers that called in the
- 7 stop?
- 8 A Sergeant Hillers called in the stop.
- 9 Q Okay. And you know his call?
- 10 A CIERA 2, S2.
- 11 Q Okay. Now, you went to my client and obtained --
- 12 correct me if I'm wrong -- license, registration and
- 13 insurance information, or what?
- 14 A When I went to ask him for the vehicle information
- 15 that's what he gave me, yes, sir.
- 16 Q Okay. His license, his -- or the registration for the
- 17 vehicle and the insurance information.
- 18 A Correct.
- 19 Q Okay. And all of that checked out for the vehicle
- 20 that he was driving.
- 21 A At the time of the -- when I went back and checked it
- 22 did, yeah, it did, yes, sir.
- 23 Q Okay. And while you were back in the vehicle where
- 24 was sergeant Hillers?
- 25 A He was on the right side of the -- of the vehicle, the

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 Infinity that was stopped.

2 Q Okay. All of the time that my client was in his  
3 vehicle or was stopped, he was in his vehicle until you  
4 told him to get out, is that right?

5 A Yes, sir, I believe so.

6 Q Okay. And at some point Sergeant Hillers comes to you  
7 and says that he thinks my client has thrown something out  
8 the window?

9 A What appeared to be trying to attempt to throw  
10 something out or threw something out the window.

11 Q Okay. So subsequent to that -- correct me if I'm  
12 wrong, sir -- the video tape that y'all were making of this  
13 particular stop --

14 A Correct.

15 Q -- you stopped it and rewound it.

16 A Yes, sir, to -- to try to observe if we could see  
17 anything on there.

18 Q Okay.

19 A But I don't have the compatibility to go and zoom in  
20 on a -- basically on a video that's being recorded on that  
21 at that point in time.

22 Q Okay. Now, let me back up a minute. But my client --  
23 were you directly behind my client for all of these turns  
24 that were made between where you first saw him not make  
25 that turn?

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Wheeler

- 1 A Yes, I was.
- 2 Q And when ultimately you pulled into the parking lot at
- 3 the apartments there?
- 4 A That'd be correct.
- 5 Q Okay. He pulled into the parking lot, and you
- 6 blue-lighted him at the same time, is that correct?
- 7 A I actually blue-lighted him before he pulled into the
- 8 parking lot.
- 9 Q Where did you blue-light him?
- 10 A It was on Pearl Street. That's where the actual
- 11 initiation of the traffic stop began.
- 12 Q Okay.
- 13 A I don't know exactly --
- 14 Q Where on Pearl Street?
- 15 A I'm not sure if it was at the intersection of Howard
- 16 and Pearl or if it was at the intersection of Ridge and
- 17 Pearl. I can't -- can't recall.
- 18 Q Okay. Do you have your incident report with you?
- 19 A Yes, sir.
- 20 Q That says you initiated your traffic stop at the
- 21 parking lot --
- 22 A Okay.
- 23 Q -- of the apartments, is that right?
- 24 A Yeah. When I say initiated, that means it's where the
- 25 vehicle actually was stopped at or it came to a stop. That

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Welchel

1 was in the parking lot of 600 Magnolia Street.

2 Q All right, sir. Now, when you rewound the video -- is  
3 that what y'all did? You stopped it and rewound it?

4 A Yes, sir. Stopped it in the middle of the stop to go  
5 back to check.

6 Q Well, how long had you been there calling in his  
7 license and registration and things of that nature before  
8 Hillers came to you and said we need to rewind this video  
9 or whatever it was he said?

10 A Like I say, I don't recall. Like I said, the incident  
11 stop time from when I was obtained from dispatch or  
12 communications was given to me as 2245, which would be  
13 10:45 p.m. at night. And it shows that -- shows my time of  
14 arrival. And I left the actual location at 2315.

15 Q Yes, sir.

16 A So I don't know exactly what the time limit was that I  
17 asked for or when I went and ran the license and things  
18 like that. I couldn't tell you.

19 Q Well, you would do that immediately after you made the  
20 stop, I would assume, is that correct? After you get the  
21 information from this gentleman, is that right?

22 A Usually, yes, sir, in the process of that. It depends  
23 on how long it takes to get the information from the  
24 individual that's driving the vehicle.

25 Q Okay. But for the entire time that you're in your

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Wheelchel

- 1 vehicle waiting on this information my client is seated in  
2 his vehicle.
- 3 A Correct.
- 4 Q As are the other two people in the vehicle.
- 5 A Correct. There was a female in the right-front  
6 passenger.
- 7 Q All right, sir. The -- did you and Hillers rewind the  
8 video and watch it from the point of the stop until the  
9 point of you stopping the video?
- 10 A I believe so.
- 11 Q And how long did that take, sir?
- 12 A I don't know, sir. I don't have a time on that.
- 13 Q When you stopped the video that was in the process of  
14 recording this entire seizure, that stops the recording  
15 process from that point forward, is that correct?
- 16 A I'm assuming. I'm not an expert in that -- that  
17 field.
- 18 Q Okay. But when you rewound the video and you observed  
19 what you had filmed up until the point that you stopped the  
20 video, you and Sergeant Hillers -- Sergeant Hillers, right?
- 21 A Yes, sir.
- 22 Q You and he determined that nothing was thrown out of  
23 the vehicle.
- 24 A That I can't recall, sir.
- 25 Q Okay. Do you have any idea how long it was from the

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Welchel

1 time that you stopped this vehicle at 2237? I know that  
2 you have the number 2245 on your incident report, but  
3 according to the CAD the stop was at 2237. Do you  
4 understand that?

5 A I understand that. I'm just going by what they  
6 were -- I was given. I don't have access to CAD.

7 Q Okay. Do you understand -- know how long it was after  
8 your stop until you went back to the car and told my client  
9 to get out of the car?

10 A I couldn't tell you that. I don't know that, sir.

11 Q Okay. And have you seen the video that we do have?

12 A Yes, I have.

13 Q Okay. And the video that we do have is the video that  
14 starts up again after you and Sergeant Hillers determined  
15 that he did not throw anything out of the vehicle, is that  
16 right?

17 A I'm assuming if that's what the video shows.

18 Q Okay. Well, you're the one who took the video, right?

19 A It's from my car, yes, sir.

20 Q Okay. And you're the one who stopped it.

21 A Correct.

22 Q Okay. And you've seen this video that we're talking  
23 about.

24 A Yes, sir.

25 Q Okay. And the video is a fair and accurate

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 description of what happened out there except for the time  
2 that you've erased or was erased.

3 A Right. I didn't erase that, but yes, sir.

4 Q I'm talking about the time prior to --

5 A Right. I didn't -- I didn't erase that either. I  
6 don't have any control to do that.

7 Q I understand. All right, sir. Do you know if that's  
8 the video, sir?

9 A That appears to be the same one that Mr. Hunter has.  
10 (Whereupon, the video was played.)

11 Q Officer Lawson, at the beginning of the tape we hear  
12 you and Sergeant Hillers talking.

13 A Correct.

14 Q Okay. And I don't know whose voice is whose. You'll  
15 have to tell us.

16 A Okay.

17 Q One of you was talking about the fellow in the back  
18 seat presumably, said he's nervous as a cat.

19 A That would be Sergeant Hillers that was -- that was  
20 talking on that. And I'm not sure. I can't remember if he  
21 was talking about the passenger in the rear, the passenger  
22 in the front or Mr. Brown.

23 Q Okay. But he was -- the statement is he's nervous as  
24 a cat.

25 A Right. Someone in the vehicle was nervous as --

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 Q And when you get out of the vehicle there's you in the  
2 dark blue uniform.

3 A That's correct.

4 Q Lieutenant Munoz standing on the left side of the car.

5 A That's correct.

6 Q And the other officer, is that Officer Hillers who  
7 walks in front of the car?

8 A You're correct.

9 Q Okay. So there's three uniform officers there at that  
10 time, is that correct, sir?

11 A Yes, sir. Like I testified to earlier, Sergeant  
12 Hillers came back to my vehicle when Lieutenant Munoz  
13 arrived on the scene.

14 Q Okay. And then you decided to approach the vehicle  
15 and ask Mr. Brown to step out, is that right?

16 A That's correct.

17 Q Okay. You asked Mr. Brown what he was doing that  
18 night.

19 A I asked him where he was coming from, where was he  
20 going.

21 Q Excuse me?

22 A Where he was coming from and where he was going.  
23 That's common questions I ask everyone.

24 Q Okay. And I believe he told you he had -- he was  
25 trying to have a social engagement with a lady who was

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Wheelchel

- 1 occupying the right front seat.
- 2 A Yes, he said he was trying -- trying to get some
- 3 booty, his exact words.
- 4 Q Excuse me?
- 5 A He said he was trying to get some booty.
- 6 Q Okay. And he was returning the rear-seat passenger to
- 7 those apartments, is that right?
- 8 A He didn't say that at the time.
- 9 Q Oh, okay. But you take him out of the vehicle. And
- 10 when you take him out of the vehicle there's you and two
- 11 other officers out there present?
- 12 A Myself and Sergeant Hillers and Lieutenant Munoz.
- 13 Q Okay. And from the time you stopped him up until the
- 14 time you asked him to get out of the vehicle he had stayed
- 15 in the vehicle.
- 16 A Yeah, other than --
- 17 Q He hadn't got out prior to that.
- 18 A No, other than his hands going out the window.
- 19 Q Yeah. But he was talking to people at the apartment
- 20 where he stopped, is that right?
- 21 A I'm assuming that he was. I was busy worrying about
- 22 what I was doing in my patrol car with Sergeant Hillers as
- 23 my cover-up.
- 24 Q When did you give him his license back?
- 25 A I don't believe I ever gave him back his license until

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 he was transported to the detention facility.

2 Q When did you give him the ticket?

3 A Once he was transported to the Spartanburg County  
4 Detention Center because he was very, very volatile and --

5 Q When did you start to write the ticket?

6 A That would have had to have been after the whole  
7 incident.

8 Q So -- I'm sorry. I didn't mean to cut you off.

9 A I said after the incident.

10 Q So not until after you get him out of the car and have  
11 what we just saw on the video did you even start the ticket  
12 process.

13 A No, sir. I never -- I never do that until after my  
14 stop is completed.

15 Q Okay. But at that point you already knew that he had  
16 committed a traffic violation --

17 A Correct.

18 Q -- because he didn't use a signal when he turned left  
19 and right and all of that kind of stuff.

20 A Just like I testified to, yes, sir.

21 Q Okay. And you had already determined when you rewound  
22 the tape that he hadn't thrown anything out of the window.

23 A I can't testify to that because, like I told you  
24 earlier, I'm not sure if I said that or not.

25 Q Okay. But you and Sergeant Hillers viewed the video,

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Welchel

- 1 correct?
- 2 A Correct, yes, sir.
- 3 Q And determined according to Sergeant Hillers -- you've
- 4 seen his incident report or his statement?
- 5 A I haven't looked over his, no, sir.
- 6 Q Okay. But y'all were there in the car together.
- 7 A I was in the car at the time by myself, and he was,
- 8 like I say, the cover officer of the vehicle.
- 9 Q Okay. But at some point he comes back to your vehicle
- 10 and the two of you view the video.
- 11 A Yes, sir.
- 12 Q Okay. And y'all determine that nothing has been
- 13 thrown out the window.
- 14 A Apparently we did if he put it in his report.
- 15 Q And then at that point is when you go back to the
- 16 vehicle.
- 17 A Correct.
- 18 Q And get my client out of the vehicle.
- 19 A I asked him to step out, which he does.
- 20 Q And asked him where he'd been or where he's going.
- 21 A Correct.
- 22 Q Okay. And then at that point when he gets out of the
- 23 vehicle y'all are standing at the rear of the vehicle.
- 24 What was it he had in his hand?
- 25 A I couldn't -- I can't recall. I'm not sure. It might

Jonathan Lawson (In-camera)  
Cross-examination by Mr. Whelchel

1 have been like a cell phone.

2 Q was it like a water bottle or a Coke bottle or --

3 A I don't recall.

4 Q It wasn't a weapon or anything like that.

5 A No, sir.

6 Q Okay. And from the time you get him after you  
7 question him about where he's going and what his intent is  
8 or where he's been, you ask him if you can search him.

9 A Correct.

10 Q And he essentially said no.

11 A Correct. But I didn't search him.

12 Q I understand. You asked him if you can search the  
13 vehicle first, is that right?

14 A I asked him if there was anything on him or inside the  
15 vehicle that shouldn't be.

16 Q And he told you he didn't know, it wasn't his vehicle.

17 A He said he didn't know about the vehicle, it wasn't  
18 his. And I asked him if he had anything on him, and he  
19 said that, no, he didn't have anything.

20 Q He asked -- you asked him if you could search him, and  
21 he said something about, no, I don't think so because I've  
22 got my license and I'm good.

23 A He said --

24 Q Something like that.

25 A He said why do you want to search me, I've got my

Jonathan Lawson (In-camera)  
Redirect examination by Mr. Hunter

1 driver's license, is exactly what the video says.

2 Q Okay. But you hadn't given the license back to him  
3 yet.

4 A Correct.

5 Q Okay. And then you told him you were going to pat him  
6 down.

7 A Correct.

8 Q Okay.

9 A For the purposes of weapons.

10 Q Excuse me?

11 A For the purpose of weapons.

12 Q Okay.

13 MR. WHELCHER: That's all I would have of this  
14 witness, Your Honor.

15 MR. HUNTER: Your Honor, briefly.

16 The video that was shown on State's Exhibit 1, may we  
17 enter that into evidence for the purpose of this hearing?

18 THE COURT: It's admitted.

19 MR. WHELCHER: No objection.

20 (DVD marked State's Suppression Exhibit No. 1.)

21 REDIRECT EXAMINATION

22 BY MR. HUNTER

23 Q Mr. whelchel said the CAD shows 2237 as the time that  
24 y'all initiated the traffic stop. What time does that  
25 video show of you actually arresting him?

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 A On the actual video itself right there it shows 2245.

2 Q It's only eight minutes afterwards. Was the county  
3 warrant checked on at this time?

4 A No, sir. The county warrant check come back way after  
5 the -- basically the incident was almost over.

6 Q When you say the incident, you mean the finding of the  
7 drugs?

8 A Finding drugs, and he was already placed into  
9 handcuffs. And that's when it was advised that he was  
10 clear on warrants.

11 MR. HUNTER: That's it, Your Honor.

12 MR. WHELCHER: Beg the Court's indulgence.

13 (Pause.)

14 MR. HUNTER: That's it.

15 THE COURT: You may step down.

16 MS. BARE: Your Honor, the state calls Mark Hillers to  
17 the stand.

18 MARK HILLERS, having been  
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. BARE

21 Q Please state your name for the record.

22 A Mark Hillers.

23 Q And are you currently employed?

24 A Currently employed with Spartanburg Public Safety.

25 Q And what is your rank at the Spartanburg Public Safety

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

- 1 Department?
- 2 A My rank is sergeant.
- 3 Q How long have you been with the Public Safety
- 4 Department here in Spartanburg?
- 5 A Over ten years, a little over ten years.
- 6 Q And can you tell us just a little bit of your
- 7 background with the public safety department?
- 8 A I have about -- I'll just give you a little
- 9 experience. I've got four years on patrol. The remainder
- 10 has been in special assignments, plain-clothes capacity,
- 11 vice capacity, neighborhood improvement, violent crimes
- 12 task force, which I'm currently assigned to and was
- 13 assigned to at the time of this incident. I'm a SWAT team
- 14 leader on the SWAT team.
- 15 Q Now, does any of that work background -- I know you
- 16 said violent crimes. Does that include anything with
- 17 drugs?
- 18 A That's correct.
- 19 Q So what type of training have you had in the field of
- 20 drugs and narcotics?
- 21 A I have had numerous training on drug interdiction,
- 22 drug identification. The number, I couldn't give you an
- 23 exact number, but there's numerous, numerous classes and
- 24 training, as well as experience on the street because
- 25 that's my function. That's what I'm responsible for.

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 Q Now, I want to talk to you a little bit specifically  
2 about August 28th of 2010. Were you on patrol that night?

3 A I was. I was on patrol riding with Officer Lawson  
4 that night.

5 Q And what area were you riding in?

6 A We were riding in one of our hottest areas in the  
7 whole entire city, which is the north side from  
8 Farley-North Forest Street area.

9 Q Now, you said one of your hottest areas. Explain that  
10 to me just a little bit, please.

11 A Just a brief background is the violent crimes task  
12 force is a federal granted position. The statistics that  
13 come from the area that we were in is what justified this  
14 grant to have officers specifically tasked to certain  
15 areas, especially in that area right there off of Howard  
16 Street and Freemont and Pearl.

17 Q So statistically it's a high crime area?

18 A Yes, ma'am.

19 Q Now, while on duty that night what did you notice?

20 A On duty that night Officer Lawson -- we were on Farley  
21 Street at North Forest, which that intersection is  
22 notorious for drug houses, and still is to this day.

23 At that point, which I observed a light blue Chrysler  
24 that was parked on Farley Street. The section of Farley  
25 Street -- just to give you an estimate -- it's less than a

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 hundred yards, I would say. Just an estimate. It's  
2 between North Forest and Brawley Street.

3 On this street there are no houses. There's a side of  
4 a house on the right side and there's a church, a church  
5 parking lot, on the other side. It's not commonly parked  
6 on in this area. If people park and they're at the church,  
7 they're going to be in the church parking lot.

8 If people in that area are parking at the North Forest  
9 house, they usually park there on the sidewalk, which  
10 you're not supposed to, but that's a common practice, or in  
11 the driveways there, and the house is neighboring it -- is  
12 common places to park.

13 So that initially sparked our interest when we saw the  
14 car parked there.

15 Q So you saw the blue Chrysler parked on the side of the  
16 road. And then what else did you observe?

17 A I observed Mr. Brown. He was inside the vehicle. He  
18 gets out of the parked Chrysler. There's another green  
19 vehicle, which is an Infinity Q45 that's beside it,  
20 directly beside him.

21 Mr. Brown gets out of the vehicle, closes the door and  
22 looks like he checks for it to be locked and goes to the  
23 driver's side of the Q45, the Infinity, and travels down  
24 towards -- he gets in the vehicle, immediately takes --  
25 they take off and go to the intersection of Brawley and

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 Farley, make a left turn without using a turn signal.

2 Q Now, did you and Officer Lawson continue to follow  
3 this car?

4 A We did.

5 Q And you stated that you saw him make a left turn  
6 without a turn signal. Did you notice anything else to the  
7 driver?

8 A Correct. He --

9 Q What was that?

10 A He turned onto Brawley Street, was going down Brawley  
11 Street towards Arch and made a right turn on Folsom Street.  
12 It's an extremely -- up until now they have a burn study  
13 there where they're burning down houses, but it was an  
14 extremely high crime area with drugs.

15 He turns right onto Folsom Street without using a turn  
16 signal. Continued to follow the vehicle at this time  
17 getting a tag number, looking at different occupants and  
18 seeing where any backup might be around, is what we were  
19 doing.

20 We follow the vehicle. It goes to Folsom and Howard  
21 streets. It turns left, turns left onto Howard Street, and  
22 then turns right onto Pearl Street. On Pearl Street it's  
23 traveling up towards Magnolia Street where Freemont School  
24 Apartments are.

25 A traffic stop was initiated at the exact point. I

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 remember as the vehicle was turning into Freemont or just  
2 right before it, but I didn't activate the lights. I was  
3 paying attention to the vehicle and occupants.

4 The vehicle's pulled over, was in the parking lot of  
5 Freemont School Apartments as you saw on the video right  
6 there.

7 Q So after you initiated -- you and Officer Lawson  
8 initiated this traffic stop -- what did you specifically  
9 do?

10 A My specific function is the cover officer at this  
11 point. While Officer Lawson conducts the interview and  
12 gathers the appropriate documents and talks with the  
13 driver, I was looking at the passengers, giving him another  
14 set of eyes looking into the vehicle to make sure that  
15 there's no dangers, going on and looking for different  
16 indicators that would indicate a danger or criminal  
17 activity.

18 Q And I'm sorry. I'm not familiar with the term cover  
19 officer.

20 A Okay.

21 Q Is that what a cover officer does?

22 A Primary contact of the cover officer you'll have -- if  
23 you have two officers ideally it's proven to be a safer  
24 opportunity for your contact officer to be discussing and  
25 handling all of the business, the transfer of paperwork,

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 because they're going to be focused on the paperwork and  
2 talking with one person.

3 The other person needs to have a broader general look  
4 to be able to look at any dangers coming in, any dangers  
5 inside the vehicle and your surroundings.

6 Q So where did you physically stand as the cover officer  
7 to begin with?

8 A I was on the passenger side of the vehicle.

9 Q And while standing on the passenger side of the  
10 vehicle what did you initially notice?

11 A As I walked -- as I was on the passenger side I  
12 noticed very nervous indicators and behaviors, such as the  
13 Ronnie Lyles who was in the back seat began to talk to me.  
14 I wasn't even asking him any questions. I was just  
15 standing there doing my job, which is to make sure nobody  
16 pulled a weapon or had a weapon.

17 The passenger front would just stare straight ahead  
18 indicating nervousness, just straight ahead, just like  
19 this.

20 The driver -- the passenger behind the seat was  
21 opening bags and telling me he didn't have any drugs in it,  
22 look, I don't have any.

23 MR. WHELCHEL: Objection, Your Honor. It's hearsay.

24 THE COURT: Overruled.

25 A Okay. Well, the passenger was showing us a different

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 bag in the vehicle. And I continued just looking and not  
2 asking him any questions. And he continued to speak to me,  
3 continued to speak to me telling me what -- whose vehicle  
4 it was and just trying to justify. They just wasn't making  
5 much sense, just talking a hundred miles an hour, just  
6 constantly, constantly, constantly.

7 Officer Lawson was still speaking with the driver, Mr.  
8 Brown, at that time.

9 Q At any time were you able to observe Mr. Brown?

10 A I was.

11 Q And is this while you were still standing at the back  
12 side of the car, the passenger side?

13 A That's correct. At this point it's only two of us  
14 there. It's myself and Officer Lawson.

15 Officer Lawson begins to go back to the car and do  
16 some checks on his M.V.T. I'm not a hundred percent sure  
17 what checks he's doing. I can only assume what he was  
18 doing. But something related to the driver's license  
19 checks and stuff.

20 As he goes back to the car I then take a stance where  
21 I can make sure that nothing gets transferred, nobody pulls  
22 a weapon, nobody tries to discard evidence, because of the  
23 way they were all acting, it was just very, very nervous  
24 and it had us on high alert.

25 During this time I observed Mr. Brown start speaking

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 with -- I think you can see him right here on the  
2 stairwell. He begins speaking with people on the  
3 stairwell. But the manner that he's speaking at was  
4 extremely loud. It was very obvious he wanted me to hear  
5 what he was saying like, hey, how y'all doing, what y'all  
6 doing, hey, hey, hey. And then when he didn't think I was  
7 looking he stopped talking loud and started mouthing  
8 something, no sound coming out.

9 Q So you couldn't hear him at all at that point.

10 A Absolutely not. It was, hey, guys, what are you doing  
11 anyway. I couldn't make out what he was saying but I --  
12 that right there increased us even further that criminal  
13 activity was going on.

14 At that point I observed Mr. Brown's hand go out. I  
15 had -- I had to tell -- make sure that they would stay back  
16 at this time, because they were wanting -- everybody wanted  
17 to migrate towards the traffic stop. I wanted them to stay  
18 on the staircase.

19 At this point I see his hand go out the window.

20 Q And does that cause you some bit of alarm?

21 A Absolutely.

22 Q So what did you do then?

23 A At this point Lieutenant Munoz was arriving as to  
24 assist us with this traffic stop.

25 When Lieutenant Munoz come, I briefed him. I said,

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 listen, I believe he's either discarding or has discarded  
2 something in his pocket and these people might -- again, I  
3 said can you stand right here.

4 I checked the area. As I went to go check the area  
5 without saying anything to Mr. Brown, he says I didn't  
6 throw any drugs out the window.

7 Q Mr. Brown told you that.

8 A Mr. Brown told me that as I was looking on that area  
9 to see what he did after Lieutenant Munoz was arriving.

10 So he then, in fact, became the cover officer and I  
11 became, you know, as searching this area, the little area  
12 as you see between the driver's side and the stairwell to  
13 make sure nothing was dropped and nobody had picked it up.

14 At that point I briefed Lieutenant Munoz, and he  
15 stands at the driver's side just behind the driver's-side  
16 door on the driver's side of the vehicle.

17 I come back and tell Officer Lawson what I believe I  
18 saw. Wasn't sure if he discarded at that point or not. So  
19 at that point we rewound the tape that's in there to get  
20 better video to see if we did -- if they did -- if he did  
21 discard anything or not.

22 Q So because you couldn't see where you were standing if  
23 anything had been discarded, is that right?

24 A That's correct. I could -- I could see his arm go out  
25 the window. No reason for it to go out the window like

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 that. And I knew he was either trying to do something or  
2 signal because of the mouthing. So at that point I went  
3 back to verify to see if he did, to see if we had it on  
4 tape, which is common that we'll do. We rewind. Normally,  
5 it's after a stop, but during this stop right there because  
6 I saw it right then and there we went and rewound the tape  
7 and started looking.

8 We were unable to confirm or deny anything from the --  
9 from the footage. As you can see it's -- you know, we just  
10 couldn't tell if he did or not. We just --

11 Q I'm sorry. I didn't mean to cut you off. So we've  
12 seen part of this video.

13 After you and Officer Lawson review the previous part  
14 we see Officer Lawson get out of the car and approach  
15 Mr. Brown on the driver's side. Where did you go?

16 A At that point I went back to the passenger side of the  
17 vehicle. I was at the passenger side of the vehicle. I  
18 believe that's where I went to the passenger side of the  
19 vehicle until the actual -- because he looks at me as he's  
20 coming -- coming back when he gets out of the vehicle. So  
21 I was with him on the passenger rear.

22 Q You say he looks at you. Who do you mean by he?

23 A When Mr. Brown gets out of the car, as you can see in  
24 the video, he looks behind him. He's looking left; he's  
25 looking right, which is another indicator to us, you know,

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 either of a flight or a fight, is how we refer to it, those  
2 indicators.

3 Q Describe to me some of the other physical indicators  
4 you saw in Mr. Brown after he got out of the car.

5 A Very talkative, somewhat argumentative, the actions,  
6 his body person, I mean his body movements, and, as you'll  
7 see at a point in there, picks up his pants. These are all  
8 indicators of flight, primarily flight, for us that this is  
9 going to happen.

10 More likely than not something's going to happen when  
11 they look at the escape route. Just like me and you are  
12 looking at each other and speaking, if I start looking left  
13 and right, and, you know, I'm very uncomfortable obviously,  
14 to me that would an indicator that we're trained to look  
15 for.

16 Q Were you able to see Officer Lawson conduct the Terry  
17 frisk on Mr. Brown?

18 A I was.

19 Q Were you able to see Officer Lawson pull what I guess  
20 has been described as the -- a large bulge in his right  
21 front pocket? Were you able to see him pull that out?

22 A At that time he didn't pull it out. Are you talking  
23 about on the -- on the frisk we did for weapons?

24 Q Yes, sir.

25 A I was there while they had their discussion, and

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 that's when he pulled up his pants.

2 After the consent he said he didn't want it --  
3 basically, said he didn't want us to search. And when he  
4 said he was going to pat him down for weapons, he did, in  
5 fact, pat him down, and I watched him do it. He went along  
6 the side of him.

7 And immediately the same pocket that Officer Lawson  
8 advised me that he was patting in the car and that he had  
9 his hand beside was -- he was manipulating it as Corey  
10 Brown was in the car that Officer Lawson told me. I didn't  
11 see that at the time. But when he took him to the back of  
12 the vehicle he did another manipulation of it, pulls his  
13 pants up. As he does the patdown Officer Lawson  
14 immediately stops and says what -- what is that in your  
15 pocket. Now, the exact words, I can't remember. But it  
16 was to the effect of what is that in your pocket. And he  
17 replies that's a package.

18 Q So you heard Mr. Brown's response.

19 A Yes. Mr. Brown said it's a package, and at this --  
20 this point it was -- he was very, very, very noticeably  
21 nervous.

22 He wanted to get out of there just -- and at that  
23 point he -- he -- I think he said is it marijuana or dope,  
24 dope meaning crack or cocaine, is what's commonly referred  
25 to on the street as dope, and marijuana is commonly

Mark Hillers (In-camera)  
Direct examination by Ms. Bare

1 referred to as weed.

2 At that point he said it's just a little bag, is what  
3 I heard. I couldn't barely, because he was mumbling a  
4 little bit. It's a little bag.

5 And at that point to prevent Mr. Brown from fleeing or  
6 doing a felonious assault on one of us and get away, at  
7 that point Officer Lawson grabs his shirt to detain him.  
8 And I put him in what's called a transport risk lock.

9 Q Did you ever see the bag after it was taken out of  
10 Mr. Brown's pocket?

11 A I did.

12 Q And what did it appear to contain?

13 A It appeared to contain a large quantity of cocaine.

14 MS. BARE: Your Honor, may I have one moment?

15 (Pause.)

16 Q Sergeant Hillers, you have been speaking a lot about  
17 indicators, things that cause you some sort of suspicion.  
18 Was it through those indicators that you and/or Officer  
19 Lawson believed that there were drugs and weapons on  
20 Mr. Brown?

21 A That's correct.

22 Q Thank you.

23 MS. BARE: No further questions, Your Honor.  
24  
25

Mark Hillers (In-camera)  
Cross-examination by Mr. Wheelchel

1 CROSS-EXAMINATION

2 BY MR. WHEELCHEL

3 Q Your call sign is S2?

4 A That's correct.

5 Q And you're the one who called this in --

6 A I believe so.

7 Q -- at 10:37.

8 A I believe so.

9 Q Okay. So what's on here, this time that's reflected,  
10 is reflected because the video was stopped and rewound and  
11 started again, is that correct?

12 A I'm assuming. I have not seen this video.

13 Q You haven't seen that?

14 A I have not -- I haven't seen this in a long time. So  
15 today was the first time in a long time.

16 Q And while you were on the side of the car you were  
17 talking to the rear-seat passenger, is that correct?

18 A I wasn't talking to him. He was talking to me.

19 Q So you didn't answer any of his questions, any -- you  
20 didn't respond to him at all?

21 A I would nod. I don't think I answered any questions  
22 because I -- I felt that he was trying to take my attention  
23 off things.

24 Q When all of this is going on -- the throwing things  
25 out the window and things like that -- y'all didn't take

Mark Hillers (In-camera)  
Cross-examination by Mr. Wheelchel

1 any of the people out of the vehicle prior to what's shown  
2 on the video, is that correct?

3 A At that point, no.

4 Q At the initial stop nobody was taken out of the  
5 vehicle.

6 A No.

7 Q Okay. And not until you think you see something  
8 thrown or because my client's hand goes out a window that's  
9 rolled down, is that right?

10 A That's correct.

11 Q Okay. Because you stopped the vehicle and told them  
12 to turn the car off, right?

13 A I didn't have any contact speaking with him about the  
14 turning the vehicle off, no. That's not correct.

15 Q And the car was stopped, and it was nighttime,  
16 correct, in August?

17 A That's correct.

18 Q Okay. Was the driver's window down or up?

19 A I didn't approach the driver's side. Are you talking  
20 about at the time of the --

21 Q While the stop's going on, after the stop. If his  
22 hand went out the window, I'm assuming the window was down.

23 A The window was down, but you're asking me at what  
24 point it was down at. I don't know.

25 Q Okay. At no point prior to Mr. Brown being asked out

Mark Hillers (In-camera)  
Cross-examination by Mr. Wheelchel

1 of the vehicle did you or any of the other officers there  
2 ask the front-seat passenger out, to step out of the  
3 vehicle.

4 A Yes. She was asked out of the vehicle.

5 Q Excuse me?

6 A Yes. She was removed from the vehicle.

7 Q No, no. Prior to Mr. Brown, prior to first --

8 A Okay. Prior to.

9 Q -- nobody else prior to Mr. Brown was asked to step  
10 out of the vehicle, is that right?

11 A No.

12 Q Not the lady up front or the guy in the back seat.

13 A Mr. Brown was the first one asked that.

14 Q Okay. And Mr. Brown was not asked to step out of the  
15 vehicle until after you and Mr. Lawson had reviewed the  
16 video, is that right?

17 A That's correct.

18 Q Okay. And after you had determined that he didn't  
19 throw anything out, is that right?

20 A I didn't say I determined that. I said it was  
21 inconclusive. I was unable to confirm nor deny.

22 Q Do you have your statement with you, sir --

23 A I have my supplemental report.

24 Q -- that you wrote up? Is that -- let me make sure  
25 we're talking about the same thing. Yeah. Do you see?

Mark Hillers (In-camera)  
Cross-examination by Mr. Wheeler

1 Can you read that, sir? That is your supplemental report,  
2 is that right?

3 A That's correct.

4 Q Lieutenant Munoz was on the scene by that time, is  
5 that correct, according to your --

6 A Which one? By which time?

7 Q You say you saw my client's hand go out the window.

8 A He was not on the scene at that exact time, no.

9 Q Okay. Your report is what you wrote a couple of days  
10 later.

11 A What's your question? What's the question?

12 Q You wrote this report a couple of days later.

13 A I'm not sure. I don't have a time and date when this  
14 was entered.

15 Q Okay. But it was written within a short time span  
16 after this particular incident happened.

17 A That's correct.

18 Q Okay. Can you find in your report, sir, where it  
19 says, "At that point I walked to the driver's side to see  
20 if he threw anything from the vehicle"?

21 A I see it.

22 Q Okay. And further down do you see where it says  
23 Lieutenant Munoz was on the scene?

24 A I see that.

25 Q Okay. So Lieutenant Munoz was there at that time.

Mark Hillers (In-camera)  
Cross-examination by Mr. Whelchel

1 A From my recollection, I remember him showing up  
2 afterwards.

3 Q Okay. But according to your report he was there at  
4 that time.

5 A If you look at the sequence of how this is written,  
6 that's several lines above, and I keep this in order. I  
7 see what your defendant did, and then I see Lieutenant  
8 Munoz was on the scene.

9 Q Okay.

10 A I don't know where you're deducting that he -- what  
11 time he came because I don't have that in here, that he was  
12 there on the scene. It doesn't say that he went, he got  
13 there, but I'm going off of what I remember. I remember  
14 him showing up afterwards.

15 This is a relatively very short period of time as you  
16 can see. You're talking about minutes.

17 Q Sixty seconds. I want you to correct me if I'm wrong,  
18 sir. Okay?

19 A Okay.

20 Q Find that part where it begins with Lieutenant Munoz.

21 (Pause.)

22 Q Okay. Have you found it?

23 A I did.

24 Q Okay. Your report reflects that Lieutenant Munoz was  
25 on the scene.

Mark Hillers (In-camera)  
Cross-examination by Mr. Wheelchel

1 "I asked him to stand where you can see the driver  
2 because I believed he was going to try and discard  
3 something to the individuals standing on the steps of  
4 Freemont School Apartments. I went back to Officer  
5 Lawson's patrol car and asked him to rewind the traffic  
6 stop on his in-car video so I can see if Mr. Brown threw  
7 anything out the window. We viewed the footage and  
8 determined that nothing had been thrown from the window."  
9 That's your report.

10 A That's correct.

11 Q Okay. And while you and Mr. Lawson -- forgot the  
12 name -- while you and Mr. Lawson were reviewing the video,  
13 Lieutenant Munoz was standing outside the vehicle, is that  
14 right?

15 A Yeah. He was standing beside it.

16 Q You see him when the video starts back up.

17 A Standing beside the vehicle, correct.

18 Q Okay. Thank you, sir.

19 MS. BARE: No further questions from the state, Your  
20 Honor.

21 THE COURT: You may step down.

22 Any other witnesses for the state?

23 MR. HUNTER: No further witnesses for the state.

24 THE COURT: How about the defendant?

25 MR. WHEELCHEL: Yes, sir, Your Honor. We would begin

Corey Brown (In-camera)  
Direct examination by Mr. Wheelchel

1 with Mr. Corey Brown.

2 THE COURT: Okay.

3 COREY BROWN, having been first  
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. WHELCHER

6 Q Mr. Brown, you've seen this video. That's you in the  
7 video, is that correct, sir?

8 A Yes, sir.

9 Q You're going to have to speak up.

10 A Yes, sir.

11 Q Okay. Corey, don't make me strain to hear you.

12 All right. You got out of your vehicle and into  
13 another vehicle on -- at Farley and Brawley, is that right,  
14 sir?

15 A Yes, sir.

16 Q Okay. Why?

17 A My car had tore up on Farley. My alternator had went  
18 out. I tried to jump it, and then Ronnie came through and  
19 he told me that I could use his car.

20 Q And Ronnie's the guy in the back seat.

21 A Yes.

22 Q Okay. Is there a relative of yours or some -- why  
23 were you on Farley Street?

24 A My stepfather stays on Farley Street.

25 Q Okay. Your car was parked across the street from the

Corey Brown (In-camera)  
Direct examination by Mr. Wheelchel

- 1 church, is that right?
- 2 A Yes, sir.
- 3 Q Where does your stepfather stay?
- 4 A He stays in the -- it was a lot of cars in front, the
- 5 house right here, and he stays in the next house right
- 6 beside the con -- this corner.
- 7 Q All right. Did you see the officers that night?
- 8 A Yes, sir.
- 9 Q Before you got in the car and cranked up and left?
- 10 A Well, I had left. I had went and got jumper cables,
- 11 and I tried to jump it off. So I took the jumper cables
- 12 back, and I came back.
- 13 Q Who did you try to jump it off with?
- 14 A I tried to use Ronnie's car to jump it off.
- 15 Q Okay.
- 16 A And then I came back and got my phone out of the car.
- 17 Q Where were the officers when y'all were trying to jump
- 18 these cars off?
- 19 A They was across the street.
- 20 Q Okay. Then what happened?
- 21 A I got in the car and I went to -- to Brawley, and I
- 22 used my signal light because Ronnie said use your signal
- 23 light because you know how they do. And I put the signal
- 24 light on and used the signal light the whole time. And
- 25 when we got to the spot they said that my signal lights

Corey Brown (In-camera)  
Direct examination by Mr. Welchel

1 wasn't working, but I -- I used both of them. They both  
2 blinking now. They was both blinking.

3 Q You were operating the signal lights while you were  
4 stopped there, is that right?

5 A Yeah. I was telling them, yeah, they was working, and  
6 I used them.

7 Q Okay. And from leaving -- once you got in the car,  
8 tell us where you went.

9 A I went to drop Ronnie off at the Freemont building.

10 Q Okay. And did you use your turn signal in all of  
11 those turns that you made?

12 A Yes, sir.

13 Q Okay. And did you stop at Freemont School Apartments  
14 because they blue-lighted you, or that was where you were  
15 going?

16 A That's where I was going.

17 Q Had you already pulled into the parking lot? Or tell  
18 me when it was that you first noticed the blue light.

19 A When I pulled in, as soon as I pulled in, it came  
20 behind me and it was light ru, ru, like came on and went  
21 off.

22 Q Okay.

23 A Was the kind of light, blue light.

24 Q All right. And then what happened?

25 A Well, the officer got outta the car, and he came.

Corey Brown (In-camera)  
Direct examination by Mr. Welchel

- 1 First, they walked around the car and everything. Then he  
2 came back.
- 3 Q Wait -- wait a minute. Wait a minute. You're going  
4 too fast.
- 5 A Okay. They walked around the car.
- 6 Q They who?
- 7 A The Hiller and -- and Lawson.
- 8 Q Okay.
- 9 A And then Lawson came to get my license. He asked for  
10 my license and registration, and I handed it to him.
- 11 Q Okay.
- 12 A And then Lawson and Hiller came back, and they asked  
13 me to step outta the car.
- 14 Q Okay. How long -- what did Lawson do with your  
15 license and registration once you gave it to him?
- 16 A He went back to the car with it.
- 17 Q Okay. And where was Mr. Hillers or Officer Hillers  
18 while Lawson was back in the vehicle?
- 19 A Both was back at the car at the time.
- 20 Q Okay. When did Hillers get out of the vehicle and  
21 start talking to Ronnie or the lady or whatever?
- 22 A Well, they hadn't done that yet. They came back to  
23 the car and asked me to get out again.
- 24 Q Okay.
- 25 A And I -- and I asked them was I under arrest or do I

Corey Brown (In-camera)  
Direct examination by Mr. Welchel

1 have a warrant, and they walked off.

2 Q Okay. Did you get out of the car?

3 A No.

4 Q Okay. How long had you been seated or stopped?

5 A About -- about 30 or 40 minutes.

6 Q Okay. Now, they gave you -- did they ever give you  
7 your license back?

8 A No, sir.

9 Q Okay. Did they ever give you a ticket?

10 A No, sir.

11 Q Okay. They told you why they stopped you though,  
12 right?

13 A Yes, sir.

14 Q Okay. And that was because you didn't use a turn  
15 signal.

16 A That's what they said.

17 Q Are you saying you did use a turn signal?

18 A Yes, sir.

19 Q Okay. When Officer Lawson came back to your vehicle,  
20 what did he say to you?

21 A The second time he came back he asked me to -- to get  
22 outta the car, and I asked him did I have a license, I  
23 mean, did I have a warrant or was I under arrest. He  
24 walked off again.

25 Q Okay. What happened next?

Corey Brown (In-camera)  
Direct examination by Mr. Welchel

- 1 A He came back again, and he opened the door and told me  
2 to get out. And I asked him again was I under arrest, do  
3 you have a warrant. And he walked off again.
- 4 Q Okay. What happened next?
- 5 A Then him and the big guy that was up there -- I guess  
6 Munoz -- they came right to the car like together, and he  
7 opened the door wide open like that. And he said step  
8 outta the car. And I asked -- and I asked him again.
- 9 Q Okay. Were you talking to the people up on the steps  
10 on that video?
- 11 A When I first pulled up Ronnie's girlfriend, the one  
12 that owns the car, was up there. I was asking her could I  
13 use the car.
- 14 Q Okay. But Ronnie had brought you the car.
- 15 A Yeah. He told me I had it.
- 16 Q To try to jump yours off, is that right?
- 17 A Yes, sir.
- 18 Q Okay. How many times did the officer come to the car  
19 between the time he initially stopped you and the time you  
20 actually got out of the car?
- 21 A Five times.
- 22 Q Okay. How many times did -- on the first time --  
23 pardon me. The first time is when you gave them your  
24 license, is that correct?
- 25 A Yes, sir.

Corey Brown (In-camera)  
Direct examination by Mr. Whelchel

1 Q And on any of those times in between did he ever  
2 return your license to you?

3 A No, sir.

4 Q And the time span between when he initially took your  
5 license and when he finally told you to get out of the car  
6 is how long, sir?

7 A Approximately about 30 or 40 minutes.

8 Q Okay. Did you have a watch on?

9 A I had my phone.

10 Q Okay. Did you try to throw anything out of the car?

11 A No, sir.

12 Q Okay. Now, when Officer Lawson came to the car the  
13 final time and asked you to step out, do you remember that,  
14 sir?

15 A Yes, sir.

16 Q Okay. And at that time Officer Lawson is standing  
17 beside your door as we saw on the video, is that right?

18 A Yes, sir.

19 Q And Lieutenant Munoz is standing there also, right?

20 A Yes, sir.

21 Q Okay. And Lieutenant Munoz told you to get out of the  
22 vehicle, is that right?

23 A Yes, sir.

24 Q Okay. So when you got out of the vehicle were you  
25 trying to run away from him?

Corey Brown (In-camera)  
Direct examination by Mr. Welchel

- 1 A No, sir.
- 2 Q What were you -- what were you holding in your hand,
- 3 Mr. Brown?
- 4 A I had apple juice and my phone.
- 5 Q Okay. Are you left or right handed?
- 6 A Right handed.
- 7 Q Okay. And do you remember which hand you had those
- 8 items in?
- 9 A I think in the left.
- 10 Q Okay. And when you got out of the vehicle you went to
- 11 the rear of your vehicle as you were told, is that right?
- 12 A Yes, sir.
- 13 Q Okay. They asked you what you were doing, where you
- 14 were going, or something like that.
- 15 A Yes, sir.
- 16 Q Okay. Tell me what you remember Sergeant Lawson
- 17 asking you when you got to the end of the vehicle, your
- 18 vehicle.
- 19 A He asked me could he search the car, and I said no.
- 20 Then he asked me could he search me, and I said no. And he
- 21 said why. I said because I have my license, you have my
- 22 license. That's what I said.
- 23 Q He hadn't returned that license to you yet at that
- 24 point.
- 25 A No, sir.

Corey Brown (In-camera)  
Cross-examination by Mr. Hunter

1 Q Before he asked you if he could search the vehicle and  
2 then search you, he asked you what you were doing and where  
3 you were going?

4 A Yes, sir.

5 Q Okay. What did you tell him?

6 A I told him I had a date and I was going out.

7 Q Is that the lady that was in the front seat with you?

8 A Yes, sir.

9 Q Okay. And then after you told him that he couldn't  
10 search the vehicle and he couldn't search you, what did he  
11 tell you?

12 A He said he was going to search me anyway for guns and  
13 knives.

14 Q Okay. And that's when you turned around. He said he  
15 was going to pat you down?

16 A Yes, sir. And I pulled my pants up and put my hands  
17 on the car.

18 Q Okay. Did you ever threaten either of these officers?

19 A No, sir.

20 Q Answer any questions Mr. Hunter might have.

21 CROSS-EXAMINATION

22 BY MR. HUNTER

23 Q You have bad luck don't you, Mr. Brown?

24 A I don't know.

25 Q First date, get pulled over by police and have

Corey Brown (In-camera)  
Cross-examination by Mr. Hunter

1 28 grams of cocaine in your pocket. Did you have 28 grams  
2 of cocaine in your pocket?

3 A Yes, sir.

4 Q You said this whole stop lasted 30 to 40 minutes, is  
5 that correct?

6 A Yes, sir.

7 Q And that Officer Lawson approached your car five  
8 times, is that correct?

9 A Yes, sir.

10 Q And so other than him asking for his [sic] license and  
11 the time that we see on the video, he approached your car  
12 three other times to get you out of that vehicle.

13 A Yes, sir.

14 Q And you refused him each one of those times.

15 A No, sir.

16 Q What did you do?

17 A I asked him was I under arrest or do I have a warrant,  
18 and he walked away.

19 Q So you refused to get out of the vehicle.

20 A I just sat in my car. I was waiting. I asked him a  
21 question.

22 Q You said your stepfather lives on Farley Street.

23 A On Forest Street.

24 Q Forest Street. Who tried to jump your vehicle?

25 A Ronnie did in his car.

Corey Brown (In-camera)  
Cross-examination by Mr. Hunter

- 1 Q In his car.
- 2 A Uh-huh.
- 3 Q When the officers observed you they didn't see your
- 4 hood up, did they?
- 5 A We was just coming back from dropping the guy off with
- 6 the jumper cables.
- 7 Q Oh, so now there's somebody else with jumper cables.
- 8 You said Mr. Lyles jumped you off.
- 9 A Yes, with his car, but he didn't have jumper cables.
- 10 Q So who's this third -- third person?
- 11 A It was a guy that said he had jumper cables. And he
- 12 went to his house to get the jumper cables and came back.
- 13 Q A guy with jumper cables. And when the officers saw
- 14 you, they saw you getting out of your car at Mr. Lyles'
- 15 car, correct?
- 16 A No. I had got outta Lyles' car and went in my car,
- 17 moved it down some because I couldn't crank it. Then I got
- 18 out of it, got my phone and then got back in the driver's
- 19 side.
- 20 Q Are you familiar with Farley Street?
- 21 A It's right beside the corner of Forest, yeah.
- 22 Q How would you describe that area?
- 23 A Well, I know about Folsom Street being that way, but
- 24 not Forest.
- 25 Q Folsom is what, one block over?

Corey Brown (In-camera)  
Cross-examination by Mr. Hunter

1 A Yeah.

2 Q Okay. If Mr. Wilson's correct and dispatch has the  
3 stop at 2237 and this arrest is at 2245, where are your 32  
4 others minutes in your car stop that you claim to have  
5 happened?

6 A They erased the tape.

7 Q So they erased 32 minutes of tape.

8 A Yes. It doesn't show them coming to my car five  
9 times.

10 Q Shows them coming to you once.

11 A But they said they came twice though, right?

12 Q Anybody else to testify they came five times?

13 A Yeah. They have somebody to testify. Yeah. I do  
14 have somebody to testify. They're just not in here.

15 MR. HUNTER: No further questions.

16 MR. WHELCHER: No, sir.

17 THE COURT: Step down.

18 Any other witness?

19 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

20 (Pause.)

21 MR. WHELCHER: May we have a brief recess, Your Honor,  
22 or if you'll just give me a couple of minutes, we may not  
23 need the recess. I just want to know which one you want to  
24 do. I have to talk to my investigator. He's getting  
25 people here.

1 THE COURT: All right. Well, I'm going to let the  
2 jury go to lunch then.

3 All right. Bring the jury in.

4 (The following takes place in the presence of the  
5 jury.)

6 THE COURT: Ladies and gentlemen, thank you for your  
7 patience. I've had some other matters to deal with, and I  
8 still have some additional things that I have to address  
9 before we can actually begin with the trial of this case.

10 So we're going to rather than hold you back there any  
11 further, I'm going to excuse you for lunch, and then I'll  
12 ask you to please report back to that jury room at  
13 2:00 o'clock this afternoon. And we should be in a  
14 position at that time to begin with the trial of the case.

15 So you are excused now for lunch. Please report to  
16 your jury room at 2:00 o'clock this afternoon.

17 (The following takes place outside the presence of the  
18 jury.)

19 THE COURT: All right. Do you need to find your  
20 investigator? Why isn't he here with us?

21 (Whereupon, a recess was taken.)

22 MR. WHELCHER: Mike West.

23

24

25

Mike West (In-camera)  
Direct examination by Mr. Wheelchel

1 MIKE WEST, having been first  
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WHELCHER

4 MR. HUNTER: Your Honor, before he begins, he's going  
5 put some information into evidence that the state has not  
6 provided the defense -- the defense has not provided to the  
7 state.

8 THE COURT: Well, we'll find out what it is, and then  
9 we'll talk about it.

10 Q Your name is Mike West.

11 A Yes, sir.

12 Q And where are you employed, Mr. West?

13 A Spartanburg 9-1-1.

14 Q What do you do at 9-1-1?

15 A I am training coordinator and public education  
16 coordinator for the console.

17 Q Okay. And you are one of the people who maintain the  
18 records of what we call the CAD reports, is that correct?

19 A Yes, sir.

20 Q Okay. And you also make or keep the C.D.s of the  
21 traffic call or the radio traffic between officers, is that  
22 correct, sir?

23 A Every radio traffic and phone traffic in and out of  
24 the con-center is digitally recorded in a server in the  
25 back in our con-center and we all -- all the admin staff

Mike West (In-camera)  
Direct examination by Mr. Wheelchel

1 have access to it. And when requested we will pull certain  
2 tapes and make copies on C.D.s, yes, sir.

3 Q All right, sir. Those CAD, what would he call CAD,  
4 reports, sir --

5 A Yes, sir. This is a copy of what we call the audit  
6 trail. It's everything that CAD inputs and any individual  
7 inputs into a call once a call is initiated.

8 Q Okay. In addition to providing those do you also  
9 make -- makes copies of the voice transmissions between the  
10 officers when they call in a case, is that correct?

11 A Yes, sir.

12 Q And it is 9-1-1 that gives them the case number, is  
13 that right?

14 A Yes, sir.

15 Q And it's 9-1-1 that tells them what time that they  
16 made a stop or something like that when they call in and  
17 ask for a time.

18 A Yes, sir.

19 Q Okay. And it's actually 9-1-1 that they're calling  
20 into or what we call 9-1-1 -- communications that they're  
21 calling into when they say traffic stop --

22 A Yes, sir.

23 Q -- and y'all mark the time.

24 A Yes, sir. Our 9-1-1 call-takers are also dispatchers,  
25 yes, sir.

Mike West (In-camera)  
Direct examination by Mr. Welchel

- 1 Q Okay. And you had a traffic stop here today at 2237.
- 2 A Yes, sir.
- 3 Q All right, sir. And it's at CIERA 2.
- 4 A Yes, sir.
- 5 Q Okay. And farther down that list, sir, you see at
- 6 2254.
- 7 A Yes, sir.
- 8 Q What does that say, sir?
- 9 A Says 90. It's on a T-stop, which is a traffic stop.
- 10 Q Traffic stop for 90?
- 11 A Yes, sir.
- 12 Q Where does it say it is?
- 13 A It says it's at Freemont school.
- 14 Q Okay. And what time would that be, sir?
- 15 A At 2254 and seven seconds.
- 16 Q Okay. And you have brought with you this C.D. that is
- 17 the recording of all of this info, is that right?
- 18 A Yes, sir.
- 19 (Whereupon, the 9-1-1 call was played.)
- 20 Q Can you show us how, sir, to play specific recordings
- 21 from these recordings?
- 22 A Yes, sir.
- 23 Q Step down and look at those, or maybe you can see them
- 24 from there.
- 25 A If you -- if you highlight them all, select them all,

Mike West (In-camera)  
Direct examination by Mr. Welchel

1 and then over in -- tell it to line them up according to  
2 name, it should line them up properly where they'll play as  
3 they're called in, which is the way I had them on this one  
4 here. And it should have the time. If you expand the name  
5 of the file it will tell you the time that it was -- that  
6 it occurred.

7 (Whereupon, the 9-1-1 call was played.)

8 Q That's the original call for the stop, is that  
9 correct, sir?

10 A I -- I can't see. Do you want -- can I come down  
11 there and line them up for you on that one?

12 Q It's fine with me.

13 THE COURT: Yes.

14 (Whereupon, the witness left the stand.)

15 A You're looking for 2254?

16 Q I'm looking for the initial call.

17 A The initial call?

18 Q Yes, sir. Can you just line them up in chronological  
19 order?

20 A That's what I just told him to do. We'll see if it  
21 did it here in just a second.

22 Q Thank you, sir.

23 A See if this does it for it. That's showing that one  
24 as being the first one right here.

25 Q Okay. This may make it simpler. Can you play the

Mike West (In-camera)  
Direct examination by Mr. Whelchel

- 1 traffic stop according to the recording from 2236.44?
- 2 A This is it right here.
- 3 Q Okay. Play it, please, sir.
- 4 A Okay. I want to get them -- this is -- should do it
- 5 right here. Playing in chronological order.
- 6 (Whereupon, the 9-1-1 call was played.)
- 7 Q Can you play 2244?
- 8 A 2244?
- 9 Q Yes, sir. Can you play 2244.54?
- 10 (Whereupon, the 9-1-1 call was played.)
- 11 Q Now can you play 2251.20?
- 12 (Whereupon, the 9-1-1 call was played.)
- 13 A That's not it. This is 5120.
- 14 (Whereupon, the 9-1-1 call was played.)
- 15 Q Can you play 2254.07?
- 16 A It seems to not be on these recordings here.
- 17 Q Can you set it so it plays from beginning to end?
- 18 A I don't know what recording system he's here, but the
- 19 way I'm doing it, it should do it. It does on any of the
- 20 Microsoft players simply by selecting select-all and
- 21 clicking on play. It should start playing one right after
- 22 the other on all the Microsoft recorders. I'm not sure
- 23 what he's got, what this is.
- 24 (Whereupon, the 9-1-1 call was played.)
- 25 A Do you want my C.D.? It's on the C.D.

Mike West (In-camera)  
Direct examination by Mr. Whelchel

1 Q Yeah.

2 THE COURT: Why don't y'all get it for him?

3 (Whereupon, the 9-1-1 call was played.)

4 Q And the CAD is essentially the printed version of what  
5 we just heard.

6 A A CAD is a printed version of what the CAD  
7 automatically puts in it and what we type into it. It  
8 doesn't copy and record anything from the audio part at  
9 all.

10 Q Okay. Here at 2254.07 --

11 A Uh-huh.

12 Q -- tell me what that says there, sir.

13 A It says 90, and he's called out on the same incident  
14 number, which is a traffic stop, is what it is.

15 Q Okay. At 2254.07.

16 A Yes, sir.

17 Q At Freemont School Apartments.

18 A Yes, sir.

19 Q What does U.S.A. there mean?

20 A U.S. is an indicator that the CAD uses for unit  
21 status. A is for arrive. So when he called out on the  
22 scene the computer automatically puts the unit status, and  
23 we tell it it's A for arrived. And that's what it's  
24 telling us. It's unit status, arrived.

25 Q So he's arriving at --

Mike West (In-camera)  
Cross-examination by Mr. Hunter

- 1 A At -- at 2254.07.
- 2 Q Thank you. And that's the night unit.
- 3 A Yes, sir.
- 4 Q Thank you. Answer any questions Mr. Hunter might
- 5 have.
- 6 CROSS-EXAMINATION
- 7 BY MR. HUNTER
- 8 Q With your system are you able to tell if two officers
- 9 are together?
- 10 A To two officers are at dinner?
- 11 Q Are together.
- 12 A Are together. If they sign on together, yes, sir.
- 13 Q Okay. But if they make a -- if they make a call to
- 14 dispatch using just one officer's name would you be able to
- 15 tell if another officer was with them?
- 16 A Not just by that, no, sir.
- 17 Q When you listen to this first 2237 call, correct --
- 18 A Yes, sir.
- 19 Q -- you heard a dog in the background, did you not?
- 20 A Yes, sir.
- 21 Q Okay. And we were asking -- excuse me. We heard all
- 22 of this. Was the case number given for this incident?
- 23 A A case number was given for this incident. Ninety
- 24 asked for was given.
- 25 Q And why do you ask for a case number?

Mike West (In-camera)  
Cross-examination by Mr. Hunter

1 A They -- they generate the case numbers for their  
2 recording so they can record which case it was that they  
3 made this report on for the month. And the computer  
4 doesn't automatically generate it. We have to type in a  
5 command to generate it.

6 Q And we also heard I believe at around 2249. Did you  
7 hear a dispatcher give a case number to 90?

8 A Yes, sir, I did.

9 Q And did you also hear them call out a time that 90  
10 asked for the case number?

11 A He -- well, what we commonly do, ask for a case  
12 number. We give an en route and arrival time. And in this  
13 case he didn't have an en route time. He just told us that  
14 he was there, so it's just an arrival time.

15 Q Okay. So you don't know if he's been there the whole  
16 time for, just from --

17 A Not from this, I do not know.

18 Q Okay. And do you know these two officers?

19 A No, sir.

20 Q Okay. So the initial stop on the car is at 2237?

21 A Yes, sir.

22 Q And a case number is given when?

23 A At 2306 and 55 seconds a report number is generated,  
24 which is a case number.

25 Q What's this case number 824?

Mike West (In-camera)  
Cross-examination by Mr. Hunter

- 1 A That's the report number. Now, that is different than  
2 the incident number which is in bold black at the top.
- 3 Q That's what -- what's the incident number?
- 4 A That is the inci -- the counts, how many incidents our  
5 CAD has generated on this for Spartanburg police for the  
6 month.
- 7 Q I'll play you what's been 2249.03.  
8 (Whereupon, the 9-1-1 call was played.)
- 9 Q All right. That second one that played, that was  
10 2249.11, correct? That was two separate ones that played.
- 11 A Yes, sir.
- 12 Q Okay. And 2249.11 was 90, correct?
- 13 A Yes, sir.
- 14 Q Which we know to be Officer Lawson.
- 15 A I don't know that.
- 16 Q Okay. It's Officer Lawson.
- 17 A Okay.
- 18 Q What has he asked for?
- 19 A He's asked for some shackles.
- 20 Q Shackles.
- 21 A Yes, sir.
- 22 Q Which means someone's already been arrested.
- 23 A I would assume, yes.
- 24 Q Okay.
- 25 MR. HUNTER: No further questions.

1 MR. WHELCHER: That's all I have, Your Honor.

2 THE COURT: You may step down.

3 Any other witnesses?

4 MR. WHELCHER: That's all we would have, Your Honor.

5 THE COURT: Okay. Court's in recess until

6 2:00 o'clock.

7 Let me see the lawyers in chambers, please.

8 (Whereupon, a recess was taken.)

9 THE COURT: All right. Any matters we need to address  
10 before the jury is brought in?

11 MR. WHELCHER: No, sir, Your Honor. My client -- go  
12 ahead.

13 MR. HUNTER: I was just going to say nothing from the  
14 state.

15 MR. WHELCHER: My client has agreed to go forward with  
16 a bench trial, Your Honor.

17 THE COURT: Okay. Mr. Brown, your lawyer tells me  
18 that you are satisfied with going forward and having the  
19 Court try it without a jury participating. Is that true?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you've had plenty of time to think  
22 about that decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And Mr. Welchel's explained to you the  
25 benefits of having a jury decide the case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you understand that you've got a  
3 right to require the jury to -- excuse me -- the right to  
4 require the state to present their case to the jury and  
5 have those 12 jurors determine your guilt beyond a  
6 reasonable doubt? Do you understand that?

7 THE DEFENDANT: Yes, sir, meaning that they pick the  
8 12? Say that again.

9 THE COURT: I'm saying do you understand that you have  
10 a right to require the state to prove your guilt to those  
11 12 jurors beyond a reasonable doubt.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you understand that in order for a  
14 jury to find you guilty all 12 have to be convinced of your  
15 guilt beyond a reasonable doubt.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In other words, it can't be a split  
18 decision. All 12 have to be convinced that you're guilty  
19 beyond a reasonable doubt before they could find you  
20 guilty.

21 Do you understand if you have a bench trial before me  
22 that you'll be giving up your right for the jury to make  
23 that determination?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And is that what you want to do?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you've had plenty of time to talk with  
3 your lawyer about it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you need to discuss it with him any  
6 further?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have any questions you'd like to  
9 ask me about it?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. I find that the defendant has  
12 been fully informed of his right to a jury trial, that he  
13 agrees or wishes to waive that right and have the case  
14 tried before the Court.

15 Is the state in agreement?

16 MR. HUNTER: The state consents to a bench trial, Your  
17 Honor.

18 THE COURT: All right. Pursuant to Rule 12 we'll have  
19 a bench trial -- excuse me -- Rule 14.

20 Bring the jury in, please.

21 (The following takes place in the presence of the  
22 jury.)

23 THE COURT: Good afternoon, ladies and gentlemen.

24 We're going to be able to resolve this case without  
25 the necessity of your participation.

1        So you're going to be excused for the purpose of not  
2 only this case but for the rest of the week. We have other  
3 nonjury matters that we'll address this afternoon, as well  
4 as tomorrow.

5        So while you are excused I do want to thank you for  
6 your participation as jurors this week. I do hope that  
7 that service has been somewhat beneficial for you, and I  
8 certainly hope that it has not imposed too much of a  
9 hardship on you.

10        You won't need to call back or report back any  
11 further. You will receive a pay voucher. It'll be mailed  
12 to you at the address that appears on your juror summons.  
13 So if the address on your juror summons is not your correct  
14 mailing address and you have not already provided the clerk  
15 with a different address, be sure you let the bailiff and  
16 the clerk know of that need to change your address. And  
17 they'll so so that you'll be certain to receive your pay  
18 voucher.

19        Okay. Thank you again for your participation. Have a  
20 good weekend.

21        If you need to see the clerk let the bailiff know and  
22 she'll take the information for you.

23        (Whereupon, the trial jury was excused.)

24        THE COURT: All right. The motion-to-suppress hearing  
25 has been held.

1           Do y'all wish to make any statement, argument or  
2 otherwise?

3           MR. WHELCHER: Yes, sir.

4           Your Honor, in this particular situation the state  
5 must show that the officer when they conducted this patdown  
6 frisk had an articulable suspicion that he and other -- he  
7 and/or other officers may be in danger and that the suspect  
8 or the defendant in this case, and in all the other cases  
9 involving Terry type frisks, were in some type of danger  
10 and that there was articulable facts or that he can --  
11 reasonable suspicion that he can articulate that there are  
12 reasons to believe this person who he's going to pat down  
13 is armed and dangerous.

14          In this particular case the defendant and two  
15 passengers in the vehicle are left in the vehicle for a  
16 substantial amount of time while a video tape is being  
17 replayed and reviewed. And it is not until after the  
18 officers -- according to the testimony we have had so  
19 far -- not until after the officers determined that nothing  
20 had been thrown out of the car that the officer decides  
21 that he will go to the car and remove my client from the  
22 car.

23          When my client is removed from the car, Your Honor --  
24 and there's no question with the case law that the officers  
25 have the right to remove the driver and passenger from the

1 vehicle for their safety.

2 The question is in order to conduct a Terry type frisk  
3 or patdown there has to be facts or something that leads to  
4 some type of articulable suspicion that my client is armed  
5 and dangerous. There's been no testimony before this Court  
6 today that they believed my client to be armed and  
7 dangerous.

8 They did testify that this all took place from  
9 beginning to end in a high crime area. But the Supreme  
10 Court, federal and state, has ruled that just because  
11 somebody happens to be located in a place that is a high  
12 crime area does not allow the officers to search them any  
13 time and every time they are stopped.

14 I would cite, Your Honor, the South Carolina case of  
15 Sikes vs. State, 323 South Carolina 28. In talking about  
16 the facts in Sikes vs. State our Supreme Court said here  
17 the officer's reasonable suspicion was that the car was  
18 either stolen or the driver was uninsured.

19 And under the Knight decision, Your Honor, neither of  
20 these reasons give them suspicioned reasons to conduct a  
21 Terry frisk.

22 It goes on to say, "Moreover, even assuming  
23 argumentative that the stop is reasonable, certainly a  
24 20-minute detention while the officers went fishing for  
25 evidence of some crime was not briefed within the

1 definition announced in Delaware vs. Crowse," which, as  
2 Your Honor already knows, is the subterfuge stop case from  
3 I forget how far back but a very old case.

4 They go on to say here, Your Honor. They quote State  
5 vs. Dan, 246 Kansas 220 that the seizure of the occupants  
6 while the vehicle -- of the vehicle while routine records  
7 checks were made for the occupants was unreasonable.

8 The officer testified that in this case and in all the  
9 cases he makes he doesn't even start the process of writing  
10 the ticket until after he does that warrants check.

11 They don't get to do a warrants check. They don't get  
12 to do a warrants check simply because they have those  
13 people stopped in front of them. There has to be  
14 articulable suspicion, some type of reason for them to  
15 believe that my client was armed and dangerous.

16 The facts don't bear that out. We see on the video or  
17 we could see on the video if we had all of it, but we know  
18 that the stop took place at about 2237. We know that he  
19 called for a case number at 2306.

20 So somewhere in between 2237 and 2306 is where my  
21 client is unreasonably detained and unreasonably searched.  
22 And you can see on the video that the video lasts, Your  
23 Honor, from the part that concerns my client from the time  
24 they approach the vehicle to the time the officer says I'm  
25 going to do a patdown.

1        Now, the officers have to be afraid for their safety  
2 or other officers' safety.

3        In this particular incident there's my client and two  
4 others in the vehicle which they haven't bothered to get  
5 out and pat down until now.

6        When they get my client out of the car he's asked  
7 twice. He's told at one point by I think it's Officer  
8 Munoz get out of the car or step out of the vehicle.

9        He's required to get out of the vehicle. He walks to  
10 the rear of the vehicle. His hands are up. You can see  
11 that he's carrying a Coke bottle or what -- I forget what  
12 it was. Something in his hand. I think he said it was his  
13 phone. He has all of that in his hands in plain sight.

14       And what's telling, Your Honor, if you'll review the  
15 video you'll see what the officers do. He gets out of the  
16 car and walks around to the back of the vehicle. And they  
17 get out and they walk with him. Nobody seems to be afraid;  
18 nobody seems to be concerned.

19       It's not until my client gets to that vehicle, to the  
20 rear of that vehicle, and they ask him where he's going and  
21 what he's doing, and he's telling -- he tells the officers  
22 going on a date with this woman.

23       Then they ask him can I search your car. Not my car,  
24 no. Can I search your person? You've got no reason to  
25 search me. There's nothing. I've got my license. And

1 he's already given them the license. The officer testified  
2 he don't know when he gave him his license back.

3 The problem is the officer used this as a fishing  
4 expedition and prolonged the stop. Once he finds out that  
5 he's got the license, the vehicle comes back fine, he  
6 should stop right there. But it doesn't stop.

7 It goes on from 2237 to 2306, I believe, before --  
8 when he calls in for a case number. I believe the facts in  
9 this case show that the stop of my client -- and when I say  
10 stop, Your Honor, I'm talking about the actual seizure of  
11 him out of the vehicle.

12 Now, the question prior to that is whether or not the  
13 stop itself is a viable stop. My client said the turn  
14 signals were working fine. You can see on the video that  
15 the turn signals were working fine because you can see them  
16 working.

17 And my client saw the officers out there that night.  
18 And I have trouble believing that in that neighborhood if  
19 it's a big crime neighborhood like they would have us  
20 believe he in front of these officers is not going to use  
21 his turn signals.

22 But even if you forget for the moment the fact that  
23 the stop itself is bad and assume that the stop is good,  
24 the removal of him from the car and the search that took  
25 place of my client outside of his vehicle under these

1 circumstances without articulable suspension, that he was  
2 armed and dangerous and a threat to them, goes beyond the  
3 scope of a Terry frisk and cannot be allowed. And we would  
4 ask that this case, that this drug seizure as a result of  
5 this search, be suppressed.

6 I would also quote, Your Honor, State vs. Johnson --  
7 and I don't remember if I talked about this earlier --  
8 which they make reference to in the Sikes case says that  
9 the leap from asking for the passenger's name and date of  
10 birth to running a warrants check on her severed the  
11 rational inference from specific and articulable facts and  
12 generated into an attempt to support an as yet  
13 unparticularated -- unparticularized suspicion or hunch.  
14 The same thing happened here.

15 THE COURT: What's the cite on Johnson?

16 MR. WHELCHER: Excuse me?

17 THE COURT: What was the cite on Johnson?

18 MR. WHELCHER: Excuse me, Your Honor. That's State  
19 vs. Johnson 805 Pacific 2d. 761. It's a Utah case, but  
20 that is cited in Sikes vs. State.

21 THE COURT: Oh, it's in Sikes. Okay.

22 MR. WHELCHER: That's in Sikes, Your Honor.

23 THE COURT: Okay.

24 MR. WHELCHER: In addition to that I would cite State  
25 vs. Tindall, a 2010 South Carolina Supreme Court case very

1 similar to this one, Your Honor. The difference in that  
2 one is this.

3 THE COURT: The cite is what?

4 MR. WHELCHEL: Excuse me? The cite? I'm sorry, Your  
5 Honor. 388 South Carolina 518.

6 Tindall was convicted of trafficking in cocaine. He  
7 appealed his conviction, and the State Supreme Court  
8 overturned his conviction. And what he had learned in that  
9 situation and what the Court says in that particular case  
10 is this: "The question therefore becomes whether the  
11 officer reasonably suspected a serious crime at the point  
12 in which he chose not to conclude the traffic stop.  
13 Despite his stated intention to issue a warning ticket, he  
14 instead, quote, opted to continue questioning."

15 And they found out that Mr. Tindall was driving to  
16 Durham to meet his brother. He was in a rental car. When  
17 he got out he did -- Your Honor may recognize this case --  
18 he got out what they -- and did what they call a felony  
19 stretch when he gets out of the car. He stretches and  
20 somehow manages -- involved in a felony.

21 Tindall seemed nervous. My client seemed nervous. I  
22 think everybody who gets stopped by the police at some  
23 point or another becomes nervous about what may or may not  
24 happen.

25 Then the Court said, "That we find these facts did not

1 provide the officer with a reasonable suspicion that a  
2 serious crime was afoot. Consequently, continued detention  
3 was illegal, and the drugs discovered during the search of  
4 the vehicle must be suppressed."

5 And they said even though he consented to the search,  
6 it doesn't matter. You've got to have reasonable  
7 articulable suspicion that a crime is afoot and/or -- and  
8 mostly "or". In this case there is a belief that my client  
9 is armed and dangerous.

10 The last case I would cite, Your Honor, is State vs.  
11 Woodruff. The cite is 344 South Carolina 537. It was a  
12 June 1998 traffic stop with a 30-minute detention.

13 Two videos were made, Your Honor, at approximately  
14 10:22 a.m. on the morning of June the 4th. The officer  
15 stopped the vehicle for a traffic stop. And in that  
16 situation or in that case our Court of Appeals applying the  
17 decision in Terry vs. Ohio said this: "Applying its  
18 decision in Terry, the Supreme Court in Mims ruled that  
19 subsequent to a valid Terry stop for a traffic violation a  
20 police officer may search the individual for weapons where  
21 the officer has reason to believe the person is armed and  
22 dangerous."

23 They go on to further say, Your Honor, in assessing  
24 whether a suspect is armed and dangerous the officer need  
25 not to be absolutely certain that the individual is armed.

1 "The issue is whether a reasonably prudent man in the  
2 circumstances would be warranted in the belief that his  
3 safety or that of others is in danger." That's Terry at  
4 392 U.S. at 27, Your Honor.

5 And they go on further to say, "In justifying the  
6 particular intrusion the police officer must be able to  
7 point to specific and articulable facts which taken  
8 together with rational inferences from those facts  
9 reasonably warrant the intrusion."

10 When an officer stops a vehicle for a traffic  
11 violation he may briefly detain the vehicle and its  
12 occupants while he examines the vehicle registration and  
13 the driver's license. That's the Delaware vs. Crowe case  
14 I spoke of earlier, Your Honor. That's 440 U.S. 648.

15 And in this case also, Your Honor, the facts were very  
16 similar to these. The Court ruled that they were not  
17 articulable facts testified to that would allow the search  
18 to be -- the fruits of the search to be used against the  
19 defendant.

20 It is our position in this case, Your Honor, that  
21 there's been no testimony at this point in this suppression  
22 hearing that there was any articulable reason for them to  
23 believe that my client was armed and dangerous at the time.

24 The video has been moved into evidence by the state,  
25 Your Honor. If you will recall the video or look at the

1 video again from the time -- I don't know how long he's  
2 there before they take him out because of the time being  
3 messed up with the video.

4 we know the stop is at 2237, but from the time they  
5 take him out of the vehicle or require him to step out of  
6 the vehicle it's just over 60 seconds until the officer  
7 after he refuses to be -- to allow a search of the vehicle  
8 and to allow himself to be patted down -- that's when the  
9 officer says I'm going to pat you down.

10 We would move to suppress the fruits of the search,  
11 Your Honor.

12 THE COURT: Mr. Hunter.

13 MR. HUNTER: Your Honor, I'm going to hand up a copy  
14 that's been presented to the defense -- two cases. First,  
15 Supreme Court, State vs. Banda, South Carolina 371 and  
16 South Carolina 245, a 2006 case, and 329 South Carolina  
17 550. It's a Court of Appeals, the State vs. Calvin Smith,  
18 a case from 1998, Your Honor.

19 As I heard Mr. Welchel speak, if I'm not mistaken,  
20 his original motion was to suppress the evidence based on a  
21 lack of reasonable articulable suspicion that the  
22 defendant was armed and dangerous or, as you see from the  
23 Banda case, if the officers believe that the individual --  
24 if there are drugs in the vehicle because of the nexus  
25 between guns and drugs that our Supreme Court recognizes

1 the reasonable activity of drug -- reasonable suspicion of  
2 drug activity, you then also have the right to Terry frisk  
3 the individual.

4 Mr. Welchel also went -- excuse me -- into the  
5 probable cause of the stop, as well as to the unreasonable  
6 detention. However, I don't believe those were made at his  
7 original motion. So I'm going to stick with the motion  
8 that was made, was the reasonable suspicion.

9 If you look at the State vs. Smith case, Your Honor,  
10 those facts were very similar to this case. It's a Rock  
11 Hill case in which a lieutenant pulled the person over for  
12 speeding. It was at night and it was a deserted road.

13 An officer arrived to back up and went to the side of  
14 the driver's vehicle and noticed that the driver was acting  
15 a little bit edgy looking around, etc. "Smith was  
16 fidgeting and looking around on the inside like looking for  
17 a weapon." This is under 800, facts. Based on those facts  
18 alone the Court said there was reasonable articulable  
19 suspicion to get this individual Smith out of the vehicle  
20 and pat him down for weapons.

21 In this case it's very similar because we have, even  
22 though it's not a deserted road, it is at night. Both  
23 officers testified that this was a high crime area. In  
24 fact, they're burning houses, as Sergeant Hillers said.  
25 They're redeveloping the neighborhood.

1        Even the defendant admitted that Folsom Street is not  
2 an area that's very good. He admitted that that was a bad  
3 area -- the defendant himself.

4        His car originally parked on the street where there  
5 are no houses. There's a church on one side and a side of  
6 a house on another.

7        The officers observed him getting out of that vehicle  
8 into the driver's seat of another vehicle where he then  
9 goes and fails to use his turn signal twice before being  
10 pulled over into the Freemont School Apartments.

11        When Officer Lawson first approaches the defendant in  
12 the driver's seat he is nervous. He's acting fidgety.  
13 He's sweating. And Officer Lawson testified that he saw  
14 him touching the right side of his pants, that he didn't  
15 know what was down there, just like the Smith case, Your  
16 Honor.

17        He gets the license information and comes back to the  
18 car. And Hillers is set up as the cover officer so he can  
19 observe the people in the car.

20        When Hillers approaches the car without asking the  
21 back-seat passenger anything, the back-seat passenger  
22 starts opening bags telling him we don't have anything  
23 here, we don't have anything.

24        He sees the defendant yelling to three other people  
25 that have started coming out onto the stoop as you can see

1 in the video.

2 After Officer Hillers recognizes that he's yelling, he  
3 then sees the defendant start mouthing words so that the  
4 officer could not hear what he was saying.

5 His hands are going out the window, and he can't tell  
6 if he's dropping something or not. So when he walks over  
7 to see if he dropped something the defendant without being  
8 asked by Hillers says I didn't drop drugs.

9 The defendant is the one who gives a reasonable  
10 suspicion to the officer that there are drugs in the car.  
11 He's bringing up drugs. The passenger is saying we don't  
12 have anything in the vehicle. All of this is raising the  
13 suspicion. They don't know what he has on his right side,  
14 whether it's drugs or a weapon. So that's why they get him  
15 out of the vehicle and do the Terry frisk, Your Honor.

16 As we see from the CAD that Mr. West brought in, the  
17 call was made at 2237, and I don't think there's an issue  
18 with that.

19 At 2249, just 12 minutes later, they ask for shackles.  
20 You're not asking for shackles unless you've already  
21 arrested someone.

22 If you watch this further, the video -- we didn't show  
23 the whole thing. However it is in evidence. You'll see  
24 that Mr. Brown resisted, and you'll actually hear the radio  
25 calls on the video, Your Honor.

1 All in all due to the facts that the officer presented  
2 during his testimony it's the state's position that  
3 reasonable articulable suspension existed at the time that  
4 they got Mr. Brown out of the vehicle and patted him down  
5 and that the case should not -- that the evidence should  
6 not be suppressed.

7 THE COURT: Do you need to reply to anything?

8 MR. WHELCHER: No, sir.

9 THE COURT: All right. I'm going to review the --  
10 I'll review the case law before I decide the motion, but  
11 I'm going to go ahead and take the testimony in the event  
12 that it's not granted.

13 MR. HUNTER: The state would call Officer Lawson.

14 THE COURT: I assume that everybody's in agreement  
15 that the testimony that's already been provided during the  
16 suppression-motion hearing can be used for the purpose of  
17 the trial too.

18 MR. WHELCHER: Yes, sir.

19 THE COURT: And if you need to supplement anything,  
20 you can, but we don't need to rehash the same testimony.

21 MR. HUNTER: I understand, Your Honor.

22 THE COURT: Okay. You've already been sworn. You  
23 remain under oath for the purpose of these questions too.

24 THE WITNESS: Yes, sir.  
25

Jonathan Lawson  
Direct examination by Mr. Hunter

1 JONATHAN LAWSON, having been  
2 previously duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. HUNTER

4 MR. HUNTER: I know I stated earlier this State's  
5 Exhibit 1 was entered for the purpose of that hearing. At  
6 this time the state would see to admit State's Exhibit 1  
7 during the bench trial.

8 THE COURT: It's admitted.

9 (D.V.D. marked State's Exhibit No. 1.)

10 Q All right. When we stopped at the hearing, Officer  
11 Lawson, we asked did you find anything in his pocket.

12 A That's correct. I did.

13 Q Okay. What did you locate?

14 A I located in his right front, Mr. Brown's right front,  
15 pants pocket a plastic baggy that contained a large  
16 quantity of white powder substance.

17 Q Where is the Freemont School Apartments located? I  
18 know you said it earlier but just --

19 A 600 Magnolia Street.

20 Q City?

21 A Yes, sir, in the city limits of Spartanburg.

22 Q County?

23 A City limits. Yeah. Spartanburg County. I'm sorry.

24 Q Let me show you what's been marked State's Exhibit 2.  
25 Do you recognize that item?

Jonathan Lawson  
Direct examination by Mr. Hunter

1 A Yes. This is the white powder substance in the clear  
2 plastic baggy that it was inside of.

3 Q And where was it located when you found it?

4 A This was located in the right front pants pocket of  
5 Mr. Brown.

6 Q Okay. And once you received it, recovered it, what  
7 did you do?

8 A I immediately -- I did a presumptive field test on it  
9 to show that it did test positive for the presence of  
10 cocaine utilizing Valtox.

11 At that point in time I took it back to our police  
12 department. I put it inside of this baggy here, the clear  
13 plastic zip-lock, and I placed it inside the BEST envelope,  
14 which is numbered 154401, which has got my name and  
15 signature. I sealed it.

16 Q Is that the same, it's essentially the same, condition  
17 as when you found it?

18 A It's other -- exactly other than it's out of the bag,  
19 which is what happened to it --

20 Q Are you familiar with the BEST bag?

21 A Yes, I am.

22 Q And what is it?

23 A This is how we send off any controlled substance other  
24 than marijuana to Ashley Harris, Lieutenant Ashley Harris,  
25 at the Spartanburg County Sheriff's Office to have a

Jonathan Lawson  
Cross-examination by Mr. Whelchel

1 chemical analysis test ran on it.

2 Q All right. Once you put it in the BEST bag, what did  
3 you do with it?

4 A Like I testified to just a second ago, I had to seal  
5 it. I placed it inside of another large looking envelope  
6 that's got the same control number on it as it is that's  
7 assigned to this bag. I placed it inside this evidence  
8 envelope along with the forms that come with it.

9 Q That's fine.

10 A And then I placed it into a secured evidence drop  
11 station at the Spartanburg City Police Department.

12 Q When did you do that?

13 A The evidence was dropped on August 28th of 2010 at  
14 approximately 11:50 in the evening -- p.m. -- 11:50 p.m.

15 Q And where is this drop box located?

16 A It's actually behind several secured doors in the back  
17 of the city police department in the evidence area.

18 Q Please answer any questions Mr. Whelchel might have  
19 for you.

20 CROSS-EXAMINATION

21 BY MR. WHELCHER

22 Q You dropped it when? I didn't hear.

23 A August 28th -- or excuse me -- August 28th at -- of  
24 2010 at approximately 2350 hours, which would be 11:50 p.m.

25 Q Ten minutes before midnight.

Mylnor Beach  
Direct examination by Mr. Hunter

- 1 A I didn't hear you.
- 2 Q Ten minutes before midnight.
- 3 A Yes, sir.
- 4 Q All right.
- 5 THE COURT: You may step down.
- 6 MR. HUNTER: The state would call Mylnor Beach, Your
- 7 Honor.
- 8 MYLNOR BEACH, having been
- 9 first duly sworn, testified as follows:
- 10 DIRECT EXAMINATION BY MR. HUNTER
- 11 Q Please state your full name.
- 12 A Mylnor Beach.
- 13 Q What is your occupation?
- 14 A Property and evidence technician, City of Spartanburg
- 15 Public Safety department.
- 16 Q And what are your duties as a property technician?
- 17 A To receive any property or evidence that's turned in
- 18 by the police officers, check it for accuracy, receive it
- 19 in, log it into the computer and assign a location and put
- 20 it in that location, and to protect the integrity of the
- 21 evidence.
- 22 Q And were you working on the time between
- 23 August 28th and August 29th of 2010?
- 24 A I was working on August the 29th.
- 25 Q Okay. Let me show you what's in front of you --

Mylnor Beach  
Direct examination by Mr. Hunter

1 State's Exhibit 2. Did you recognize that item?

2 A I recognize the evidence envelope. I received it  
3 on --

4 Q Excuse me. It's item No. 2 behind the envelope.  
5 Don't worry about the envelope.

6 A This?

7 Q Yes.

8 A Can I check my paperwork?

9 (Pause.)

10 A Yes, sir. This is a BEST envelope, control No.  
11 S154401 that I received on case No. 08082410 on August the  
12 29th. And I received that in at 8:30 in the morning.

13 Q Okay. Where -- where did you receive it from?

14 A I received it from the drop box in the drop area at  
15 city hall.

16 Q What is the drop box?

17 A It is a metal box that looks very similar to a post  
18 office box that's locked.

19 Once officers drop anything into that and they release  
20 the door, you cannot get a hand, stick or anything like  
21 that down inside to tamper with it. There's only three  
22 people that have a key to that lock -- myself, my partner  
23 and our major.

24 Q Okay. And once you -- so on August 29th you take it  
25 out of the drop box?

Mylnor Beach  
Direct examination by Mr. Hunter

1 A Yes, sir. I did.

2 Q What did you do with it at that point?

3 A At that time we -- we had a log that we verified that  
4 the case numbers and all matched up and took it inside the  
5 office area, signed the necessary paperwork. I filled out  
6 a form C that goes along with the BEST envelopes. And at  
7 that time once it was logged into the computer I took it in  
8 and put it in our drug room in location D42. And the drug  
9 room is the most secured area of property and evidence.

10 Q After it was in the drug room, where did you take it?

11 A Took it to Spartanburg County Sheriff's Department to  
12 Lieutenant Ashley Harris --

13 Q On what date?

14 A -- for testing.

15 Q On what date?

16 A September the 10th of 2010.

17 Q So when it was first in your possession on  
18 August 29th from the drop box until September 10 --

19 A Yes, sir.

20 Q -- is it in the same condition today as it was then?

21 A Yes, sir.

22 Q Please answer any questions Mr. Whelchel might have  
23 for you.

24 MR. WHELCHER: None, Your Honor.

25 THE COURT: You may step down.

Ashley Harris  
Direct examination by Mr. Hunter

1 MR. HUNTER: The state would call Ashley Harris.

2 May Mr. Beach be excused, Your Honor?

3 THE COURT: He may be.

4 (Whereupon, the witness was excused.)

5 ASHLEY HARRIS, having been  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. HUNTER

8 Q Please state your name for the record.

9 A Ashley Harris.

10 Q Where are you employed?

11 A I work for the Spartanburg County Sheriff's Office.

12 Q And how are you employed there?

13 A I am the lieutenant over the forensic lab.

14 Q How long have you been in that position?

15 A I've been a little over -- almost 14 years now at the  
16 sheriff's office. I had two years prior experience before  
17 that working at SLED -- South Carolina State Law  
18 Enforcement Division in Columbia.

19 Q What are your job duties as it relates to narcotics?

20 A I am responsible for testing controlled substances or  
21 things that are thought to be controlled substances  
22 submitted to the lab. We do an analysis on it to determine  
23 what it is and then produce a report obtaining its identity  
24 and its weight for court purposes.

25 Q Okay. How did you get into this?

Ashley Harris  
Direct examination by Mr. Hunter

1 A Into this case or --

2 Q Into the -- into this field.

3 A I have a bachelor of science in chemistry from Wofford  
4 College here in Spartanburg and a master's degree in  
5 analytical chemistry from Furman University in Greenville.

6 I actually was working on my Ph.D. in analytical  
7 chemistry and took a job at SLED in their forensic  
8 analysis, in the drug analysis section, in the forensics.  
9 And I was doing it for a little over two and half -- right  
10 at two and a half years. Spartanburg got a federal grant  
11 to open their own lab, and I started, came up here to open  
12 the lab.

13 Q So you've been testing chemical substances for how  
14 long?

15 A A little over 16 years now.

16 Q All right. What type of training and experience after  
17 college have you received in that field?

18 A Well, I went through the training at the -- at SLED in  
19 the -- in the forensic drug analysis unit. It was about a  
20 5-month training course to be certified to do forensic drug  
21 analysis.

22 We have continuing education where we have to get at  
23 least 40 hours within our primary certification, which  
24 drugs is my primary certification, each year including  
25 instrumentation, new trends, clandestine labs and the like.

Ashley Harris  
Direct examination by Mr. Hunter

1 MR. WHELCHER: Your Honor, we're fine with his  
2 qualifications.

3 MR. HUNTER: Your Honor, at this time the state would  
4 offer Ashley Harris as an expert in the field of  
5 analysis of narcotics.

6 THE COURT: He so qualified without objection.

7 Q Let me show you what's been marked State's Exhibit 2.  
8 Do you recognize that?

9 A Yes, sir, I do.

10 Q And how do you recognize that?

11 A When a piece of evidence is submitted into the lab it  
12 is -- first thing we do is we log it in. It's given a  
13 unique lab number. The lab number in this case is  
14 L-10-0853, which is written on the outside of the bag and  
15 on the heat-sealed envelope it's placed in after it's  
16 analyzed.

17 Q Okay.

18 A And it has my initials on it, and also I have a  
19 transfer sheet for this case.

20 Q Briefly explain what the BEST bag is.

21 A BEST bag was a system that was created back in the  
22 80's by SLED, the state law enforcement division, to give a  
23 uniform way of submission for drug analysis because of the  
24 large volume of drug cases that are submitted for forensic  
25 analysis.

Ashley Harris  
Direct examination by Mr. Hunter

1           When I left SLED we took the idea and kinda mimicked  
2 it at Spartanburg making an evidence bag that is tamper  
3 evident to let someone know if someone tries to get in it.  
4 And all the agencies that submit to our lab utilize this  
5 for submission.

6           It has markings down the side and a glue strip across  
7 the top. And once it's sealed there's basically no way to  
8 open it without just distorting the bag or having to cut it  
9 because of the -- of the nature of the way the bag is made.  
10 So it becomes obvious if someone has tampered with it.

11 Q       Can you tell me when you received this bag?

12 A       Yes, sir. I received the actual bag on September the  
13 10th of 2010.

14 Q       From?

15 A       Mylnor Beach of the Spartanburg Department of Public  
16 Safety.

17 Q       And when you received the bag -- you said it's tamper  
18 evident. Had it been tampered with?

19 A       No, sir. When something is submitted for analysis the  
20 first thing we do is just kinda look it over and make sure  
21 that it hasn't been tampered with, the chain of custody,  
22 the property -- proper, all of the paperwork's in place.

23           At that point we actually log the case in and give it  
24 a lab number. Then it goes into a cue waiting to be  
25 analyzed.

Ashley Harris  
Direct examination by Mr. Hunter

1           In this particular case there was three days from the  
2 time it was submitted to the time it was actually analyzed.  
3 And upon the date of analysis we give it a better even more  
4 in-depth view of it to make sure it hasn't been tampered  
5 with -- look for cuts, opening striations, anything that's  
6 been -- any markings that it's been tampered with. And I  
7 make a notation on the outside of the bag to show that it  
8 has not been tampered with.

9 Q     Okay. And did you test the substances inside the bag?

10 A     Yes, sir. On 9/13 of 2010 I opened it up again after  
11 analyzing it to make sure it hadn't been tampered with, and  
12 I simply wrote the letters okay and my initials and the  
13 date on the outside.

14           I opened the evidence up and removed it and performed  
15 presumptive tests and a confirmatory test and then after  
16 taking the samples for those two tests obtained a weight  
17 and produced a report of my findings.

18 Q     We'll first start with the weight. What was the  
19 weight of this substance?

20 A     The weight that was taken after the presumptive and  
21 confirmatory tests were taken was a total of 27.34 grams.

22 Q     So you actually took some of the substance away before  
23 you weighed it.

24 A     Yes, sir. If -- in the event someone wants to reweigh  
25 it, I want the weight that's reflected on the time they

Ashley Harris  
Direct examination by Mr. Hunter

1 weigh to be exactly the same as what I found. So we take  
2 any samples that we're going to take for analysis away  
3 first prior to getting the weight.

4 Q And how do you weigh it?

5 A We lay it on an analytical balance that's in the lab.  
6 It's calibrated on a monthly basis in house, and then we  
7 hire an outside firm to come in and actually test the  
8 balance once a year to prove that it's functioning properly  
9 and run it through a series of tests. And on a monthly  
10 test we actually will just check to make sure that's in  
11 range. And we'll use a set of calibrated weights to make  
12 sure that it's still functioning properly.

13 Q In your expert opinion what was the weight of the  
14 substance?

15 A 27.34 grams.

16 Q Okay. Now, you said you did a presumptive test and a  
17 confirmatory test. Can you briefly explain those?

18 A Yes, sir. A presumptive test is -- is merely a simple  
19 test that gives you an idea of what something may be.

20 In a case -- this particular case we used a color  
21 test. We took some of the sample and placed it into a  
22 ceramic spot well and added some chemicals to it and looked  
23 for a color test.

24 If the color test in this particular instance, if it  
25 tests -- if it turns blue it's an indication that it's

Ashley Harris  
Direct examination by Mr. Hunter

1 cocaine. There are other things that are out there, so  
2 that's why we take one more step further and go to a  
3 confirmatory test. The confirmatory test in this  
4 particular case is gas chromatography coupled with mass  
5 spectrometry or G.C.M.S.

6 Q And did you perform those tests on this?

7 A Yes, sir, I did.

8 Q And in your expert opinion what was the result of  
9 those tests?

10 A It tested positive for cocaine.

11 Q At 27.34 grams?

12 A Yes, sir, 27.34.

13 Q Please answer any questions Mr. Welchel -- or excuse  
14 me.

15 MR. HUNTER: Your Honor, at this time the state would  
16 offer State's Exhibit 2 into evidence.

17 MR. WELCHEL: No objection.

18 THE COURT: It's admitted.

19 (Cocaine marked State's Exhibit No. 2.)

20 Q Please answer any questions Mr. Welchel may have for  
21 you.

22 MR. WELCHEL: None, Your Honor.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you, sir.

25 MR. HUNTER: The state rests, Your Honor.

Ashley Harris  
Direct examination by Mr. Hunter

1 THE COURT: Motion?

2 MR. WHELCHER: Your Honor, at this time I would make a  
3 motion for a directed verdict of not guilty based on the  
4 insufficiency of the evidence presented by the state, and  
5 specifically going back to my earlier motion that these  
6 drugs should never have been entered into evidence, Your  
7 Honor, the suppression motion.

8 THE COURT: All right. I'm going to deny it at the  
9 present time --

10 MR. WHELCHER: I understand.

11 THE COURT: -- conditioned upon my review of the case  
12 law and determination as to whether or not the motion to  
13 suppress should be granted or not.

14 Have you talked to him about testifying?

15 MR. WHELCHER: Beg the Court's indulgence.

16 (Pause.)

17 MR. WHELCHER: My client does not want to testify,  
18 Your Honor.

19 THE COURT: All right. Mr. Brown, your lawyer's told  
20 me that you don't want to provide any additional testimony.

21 Mr. whelchel, do you want the testimony he's already  
22 provided in the motion hearing to be considered for the  
23 purpose of the trial on guilt --

24 MR. WHELCHER: Yes, sir.

25 THE COURT: -- or not?

Ashley Harris  
Direct examination by Mr. Hunter

1 MR. WHELCHER: On guilt, Your Honor?

2 THE COURT: Yes, sir.

3 In other words, it's going to be considered on the  
4 motion to suppress.

5 MR. WHELCHER: I understand that.

6 THE COURT: My question is do you want it to be  
7 considered on -- if the motion is denied do you want me to  
8 consider that testimony in relationship to whether or not  
9 he's been proven guilty.

10 MR. WHELCHER: Again, Your Honor.

11 (Pause.)

12 MR. WHELCHER: He wants his prior testimony, Your  
13 Honor, to be considered by the Court in the use of the  
14 suppression motion only.

15 THE COURT: Okay. All right. Mr. Brown, do you  
16 understand you've got a right to testify or call other  
17 witnesses or present evidence in the trial of your case,  
18 that is in my determination as to whether or not your guilt  
19 has been proven beyond a reasonable doubt? And you can  
20 testify or not. That's simply your decision.

21 You always have an absolute right to remain silent  
22 when you're charged with a crime and to rest upon the  
23 state's burden of proving your guilt beyond a reasonable  
24 doubt, and you don't have to testify or take the witness  
25 stand and answer questions that might tend to prove your

Ashley Harris  
Direct examination by Mr. Hunter

1 own guilt.

2 Do you understand you have the right to testify if you  
3 wish to?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you also understand you have the  
6 right not to testify if you do not want to?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And have you and Mr. Welchel discussed  
9 the advantages and disadvantages of your testifying, as  
10 well as not testifying?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you appreciate what those advantages  
13 and disadvantages are?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And have you made a decision about whether  
16 or not you'll present or provide any additional evidence in  
17 the case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what's your decision?

20 THE DEFENDANT: I don't want to testify.

21 THE COURT: Okay. Is that a decision that you've  
22 reached of your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Anybody coax you into that decision?

25 THE DEFENDANT: No, sir.

Ashley Harris  
Direct examination by Mr. Hunter

1 THE COURT: Anybody force you into it?

2 THE DEFENDANT: No, sir.

3 THE COURT: Did anybody even suggest that that's the  
4 decision you ought to make?

5 THE DEFENDANT: No, sir.

6 THE COURT: You made that decision on your own?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You're satisfied with it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Anything further?

11 MR. WHELCHER: No, sir.

12 THE COURT: All right. I'll review the matter and  
13 issue an order.

14 MR. WHELCHER: Thank you, Your Honor.

15 THE COURT: This matter stands adjourned.

16 END OF PROCEEDINGS JANUARY 31, 2013

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## Sentence

1 (Proceedings January 9, 2015)

2 THE COURT: All right. This is Corey Brown.

3 Mr. Wheelchel, you represent him.

4 We previously had a hearing on a motion to suppress,  
5 and I've considered the evidence in the case and denied  
6 that motion and based upon the facts find the defendant to  
7 be guilty of the crime of trafficking in cocaine.

8 All right. Are y'all prepared for the imposition of  
9 sentence?

10 MR. WHELCHER: May I see the sentencing sheet, Your  
11 Honor? Thank you, sir.

12 (Pause.)

13 MR. WHELCHER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 All right.

16 MR. HUNTER: Would you like me to restate the facts,  
17 Your Honor?

18 THE COURT: Yes, sir, briefly.

19 MR. HUNTER: Your Honor, excuse me?

20 THE COURT: Briefly.

21 MR. HUNTER: Okay. This incident occurred  
22 August 29th of 2010, a car stop in which after the officers  
23 frisked Mr. Brown 27.3 grams of cocaine were found on his  
24 person.

25 Your Honor, he has a prior record of a '92 possession

## Sentence

1 of cocaine and a '95 possession of crack, and then a D.U.S.  
2 and a public disorderly since then, but no other record,  
3 Your Honor.

4 THE COURT: He has two prior drug convictions?

5 MR. HUNTER: One of which would not count. So this  
6 would be a second offense under the laws.

7 THE COURT: Second offense trafficking not less than  
8 five not more than 30?

9 MR. HUNTER: Correct, Your Honor.

10 THE COURT: All right. Mr. Wheelchel.

11 MR. WHELCHER: Thank you, Your Honor.

12 Your Honor, Mr. Brown is 43. He has a son who is 22.  
13 He quit school in the 12th grade at Manchester High School.  
14 He was living in New Hampshire at the time. But since that  
15 time he has obtained a G.E.D.

16 And before he was arrested on this charge, Your Honor,  
17 he had worked the last year and a half at Sparcon Textiles  
18 here in Spartanburg. He worked at the warehouses that  
19 Sparcon has. I actually did some work for Sparcon when I  
20 was in private practice.

21 Your Honor, my client has been incarcerated on these  
22 charges for 808 days as of today. We would ask that the  
23 Court show mercy on him and sentence him to the minimum  
24 sentence of the five years.

25 Your Honor, he has family here. Ms. Amie, would you

## Sentence

1 stand up, please? She's been in contact with me, Your  
2 Honor, and wanted to be here for the sentencing.

3 THE COURT: All right. Mr. Brown, anything you want  
4 to add?

5 THE DEFENDANT: Well, I mean, I've been waiting 24  
6 months for a verdict, and I don't understand, you know,  
7 like I guess if I had money this would have been thrown  
8 out because the officers tampered with the evidence --  
9 audio, video. You know, they -- they lied, you know. I  
10 just -- I don't understand, but I apologize and I ask for  
11 mercy too.

12 THE COURT: Well, how would the money cause you to  
13 avoid this?

14 THE DEFENDANT: I don't know. Seems like it would  
15 have been thrown out at a preliminary hearing, I mean  
16 like.

17 THE COURT: Well, how would money get it thrown out at  
18 a preliminary hearing?

19 THE DEFENDANT: Maybe I could afford a lawyer or  
20 something.

21 THE COURT: You have a lawyer.

22 THE DEFENDANT: Yeah, I do.

23 THE COURT: All right. Anything else anybody needs to  
24 tell me?

25 MR. WHELCHER: No, sir.

## Sentence

1       THE COURT: On Indictment 2010-6208, sentence is you  
2 be confined to the Department of Corrections for a period  
3 of five years.

4       Give him credit for any time he's entitled to pursuant  
5 to 24-13-40.

6       END OF REQUESTED TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

STATE OF SOUTH CAROLINA )

vs. )

Corey Brown )

Defendant. )

IN THE COURT OF GENERAL SESSIONS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Order Denying Defendant's Motion  
to Suppress Evidence

Indictment: 2010-GS-42-6208

M424801

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CLERK OF COURT  
SPARTANBURG, S.C.  
2014 AUG 19 PM 12:39  
M. HOPE BLACKLEY

A Bench Trial was held on January 31, 2013 in this matter. The defendant was represented by Richard Whelchel of the 7<sup>th</sup> Circuit Public Defender's Office while the State was represented by James Hunter and Kinli Bare of the 7<sup>th</sup> Circuit Solicitor's Office. Prior to trial, the defense made a motion to suppress any and all evidence in the case pursuant to Terry v. Ohio, 392 U.S. 1, 88 S. Ct 1868 (1968), specifically arguing that the police lacked reasonable suspicion to perform a pat down, which ultimately led to the discovery of cocaine. The court held a suppression hearing in which the court heard testimony from Officer Jonathan Lawson and Sergeant Mark Hillers of the Spartanburg Public Safety Department for the state as well as Mike West of 911 Communications/Dispatch and Corey Brown for the defense. This court finds that police had reasonable articulable suspicion that drugs and or weapons were present to support a pat down of the defendant.

Officer Lawson and Sgt. Hillers were on routine patrol on Farley St. after 10 P.M. on the Northside of the city of Spartanburg, a high crime area known for its drug activity. They observe Brown exit a parked car on Farley St. and enter the driver's side of another vehicle. The officers follow that vehicle and initiate a traffic stop when Brown fails to use his turn signal on two separate turns. The defendant pulls in and stops at the Freemont School Apartments on Magnolia St. Officer Lawson approaches the driver's side of the vehicle and notices the

defendant is nervous and fidgety. Officer Lawson also notices that Brown is sweating and keeps touching the right side of his pants with his hand where Officer Lawson could not see what he is touching.

Sgt. Hillers approaches the passenger side of the vehicle. He observes Ronnie Lyles as the driver's side rear seat passenger and Theresa Lanton in the front passenger seat. Hillers observes Ms. Lanton stare straight ahead during this encounter while Lyles begins speaking to Hillers without being questioned. Lyles begins to open up bags in the backseat and telling Hillers that they don't have anything. Hillers also notices that Lyles was shaking and stuttering while trying to show the officers the inside of the bags. As Officer Lawson walks back to the patrol car to check license information, Hillers observes the defendant begin to yell at people gathering at the entrance of the Apartments. Hillers then observes Brown trying to communicate with the crowd by moving his lips without sound. Hillers then observes Brown's hand go out the window, and walks to the driver's side to investigate. Prior to asking Brown anything, Brown tells Hillers that he did not throw any drugs out the window.

Based on Brown's action and words, Hiller and Lawson attempt to rewind the in-car video to ascertain if Brown threw anything out the window. During the review of the video, it appears that Brown has not thrown anything out of the car; however, the officer's believe that based on the totality of the circumstances, that reasonable articulable suspicion existed to have Brown exit the car and perform a pat-down. Brown is asked multiple times from two separate officers to exit the vehicle and walk to the trunk. After a short period of non-compliance, Brown walks to the trunk where he denies consent to search his person. Officer Lawson informs Brown that he was going to pat him down for weapons and begins the pat down. Lawson feels a bulge in Brown's right pocket that through his training and experience, leads Lawson to believe

illegal narcotics. Lawson asks Brown about the bulge, which Brown admits is a "20 bag" a common street name for a package of narcotics. After a struggle with the officers, Brown is handcuffed, and officers locate a bag of white powder that tests positive for cocaine at 27.34 grams in Brown's right pocket.

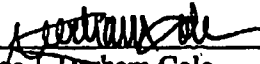
In Terry v. Ohio, 392 U.S.1, 88 S.Ct. 1868 (1968), the US Supreme Court held that a police officer must have reasonable articulable suspicion that a person is armed and dangerous before conducting a pat down. In determining whether a suspect is armed and dangerous, "the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of other was in danger." Terry, 393 U.S. at 27, 88 S. Ct. at 1880. An officer must rely on specific and articulable facts together with rational inferences drawn from those facts in order to pat down a suspect. Terry, 393 U.S. at 21, 88 S.Ct. at 1880. In State v. Banda, 371 S.C. 245, 639 S.E.2d 36, (2006), the Supreme Court of South Carolina once again recognized the "indisputable nexus between drugs and guns", where the danger associated with drugs can justify a pat down absent other factors that could lessen officer's safety concerns. In State v. Taylor, 401 S.C. 104, 736 S.E.2d 663, the South Carolina Supreme Court recognized that while lateness of the hour and the presence of a suspect in a high crime area along are not enough to support reasonable suspicion, they are factors to be considered by an officer.

When viewed from the point of view of a reasonably prudent officer, this court finds that police had reasonable articulable suspicion to support a frisk of Brown, where police had reasonable suspicion that drugs and or weapons were present. Brown was pulled over after 10 p.m. in a high crime area where drug activity was known to occur. On cross-examination, the defendant admitted that the area in which the stop occurred was a bad part of town. When officers first observed Brown he was in a parked vehicle that was not in front of any home.

When Lawson first approached Brown, he was nervous, fidgety, sweating, and continually reaching down to touch the right side of his pants, much like the defendant in State v. Smith, 329 S.C. 550, 495 S.E.2d 798 (1998). Further, without being asked, the defendant and his back seat passenger attempted to persuade the police that nothing illegal was in the vehicle. Brown even stated that he didn't throw drugs out of the window prior to being asked about his hands coming out of the window. Drugs had never been mentioned in the traffic stop until that point. Brown's yelling and subsequent mouthing of words to the crowd gathering at that apartment's steps further raised the officer's suspicion in this case. All of the above facts and the reasonable inferences from those facts gave officers the reasonable suspicion that Brown was either armed or dangerous or carrying drugs and thus allowing the officers a chance to pat down Brown for weapons.

IT IS THEREFORE ORDERED, that the defendant's motion to suppress any and all evidence recovered from the pat down of the defendant is DENIED.

IT IS SO ORDERED.

  
 Judge J. Derham Cole

6/19, 2014

A 4

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 MINOR BLACKLEY

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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS |
| COUNTY OF SPARTANBURG   | ) | FOR THE SEVENTH JUDICIAL CIRCUIT |
| STATE OF SOUTH CAROLINA | ) |                                  |
| vs.                     | ) | Order Denying Defendant's Motion |
|                         | ) | to Suppress Evidence             |
| Corey Brown             | ) |                                  |
|                         | ) | Indictment: 2010-GS-42-6208      |
| Defendant.              | ) |                                  |

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M. HOPE BEACHLEY

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SCANNED

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M. HOEHLER  
BLACKLEY

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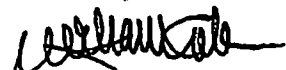
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Judge J. Derham Cole

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

119, 2015

# 1

WITNESSES

1. SENTENCE MADE

2. REPORT ENDED

3. SPARTANBURG CITY PUBLIC SAFETY

4. INDEXED

5. RETURN WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENTAL D  
RECORDS

8. TRAFFIC VIOLATION CITY

COMPUTER

COMPUTER

ARREST WARRANT NUMBER

M424801

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury  
Date: NOV 24 2010

VERDICT

GUILTY after bench  
trial.

Foreperson of Petit Jury  
Date:

DOCKET NO.

10-GS-42-6208

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 29 2010

TERM

THE STATE

VS.

COREY W BROWN

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2010 DEC -2 PM 12:03  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

## INDICTMENT

At a Court of General Sessions, convened on NOV 24 2010 the  
Grand Jurors of Spartanburg County present upon their oath:

**TRAFFICKING IN COCAINE**

That Corey W. Brown did in Spartanburg County on or about August 20, 2010, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
ASSISTANT SOLICITOR

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG  
STATE VS.

Corey William Brown

AKA:

Race: BLACK Sex: M Age: 43

DOB: [REDACTED] SS#: [REDACTED]

Address:

City/State/Zip: MOORE, SC 29369-0000

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Prvs / Trafficking Cocaine 10-289 2nd (530 & 50K) NS NPin violation of § 44-53-0370(e)(2)(a)2 of the S.C. Code of Laws, bearing CDR Code # 6387☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 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: 72215 77517 Corey Brown 7/16/15 6057

HUNTER, JAMES EDWARD

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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or paymentof \$ —; 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 the 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 ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.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/ca | \$        |
| Proviso 90.5 (SCCA Surcharge)          | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 8.40   |
| TOTAL                                  |         | \$ 888.40 |

Clerk of Court/ Deputy Clerk: K. G. M. KinnerCourt Reporter: L. M. Jett

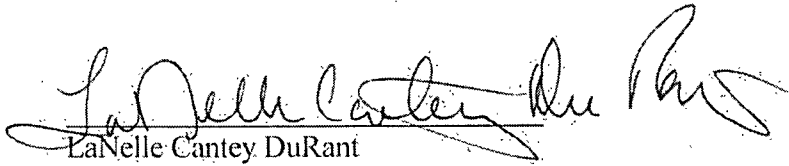
SCCA/217 (03/2011)

Presiding Judge: [Signature]Judge Code: 2023Sentence Date: January 9, 2015

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 11th, 2016



LaNelle Cantey DuRant  
Appellate Defender

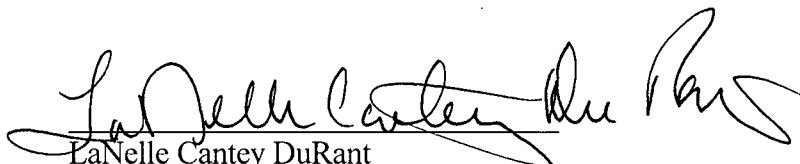
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT.

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February 11th, 2016



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Appellate Defender

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

ATTORNEY FOR APPELLANT

**RECEIVED**  
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SC Court of Appeals