FORM 13
BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas Clifton Newman, Circuit Court Judge

Case No. 2015-CP-400-1604

The City of Columbia,..... Respondent,

v.

Cedric Xavier Heyward,..... Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND AN ILLEGAL EXTENSION OF A TRAFFIC STOP?

2. DID THE TRIAL COURT ERR IN ADMITTING THE CHAIN OF CUSTODY?

STATEMENT OF THE CASE

On May 27, 2011, appellant Cedric Xavier Heyward was arrested for possession of marijuana. On March 4, 2015, a jury trial was held in the City of Columbia Municipal Court. Appellant was found guilty by the jury and sentenced by the Honorable Dana D. Turner.

On March 13, 2015, Appellant appealed to the 5th Court of Common Pleas regarding the lower court's failure to find a violation of chain of custody SCRP Rule 6(b), an illegal extension of a traffic stop, and an illegal search under the Fourth amendment. On August 14, 2015, the Honorable Clifton B. Newman heard oral arguments. By order of the court, dated January 13, 2016, the appeal was denied.

On February 12, 2016, Appellant filed a timely Notice of Appeal.

FACTS

Sometime in or around May of 2011, officers of the Columbia Police Department received an anonymous tip about narcotics being sold at an apartment complex. According to Sgt. Williams, who testified at trial, the tip was a general description of: "a black male that was selling narcotics from an actual apartment there," Trial Tr, 65, Mar. 11, 2016. Sgt. Williams also testified that he believed that the tip was that narcotics were being sold from building fourteen in the apartment complex. *Id.* On May 27, 2011, Officer Arnold of the Columbia Police Department observed the Appellant leaving the apartment complex. *Id at 27.* At trial, Officer Arnold testified that he believed that Appellant matched the description of the person or persons described in the tip. *Id.* Arnold alerted Sergeant Webb, and Sergeant Webb followed appellant in a marked patrol car. Later, Sergeant Webb pulled the Appellant over for changing lanes unlawfully and failure to use a turn signal.

The entire traffic stop was recorded by Sgt. Webb's dashboard camera, and the recording was entered as evidence and played for the jury at trial[1]. *Id* at 40. At one minute and one second into the recording, Sgt. Webb made contact with the Appellant, and takes some documents. City's Exh. 1 at 1:01. Sgt. Webb then returned to his cruiser at approximately three minutes and forty five seconds into the recording, and turned the audio on about five seconds later. *Id.,* at 3:45. At five minutes and thirty one seconds, Sgt. Webb exited the vehicle and said to an unidentified officer standing nearby "Find out if Chris has got Zorro.[2]" *Id.*, at 5:31.

[1] Hereinafter referred to as City's Exhibit #1

[2] Although never made explicit, presumably Chris is Sgt. CB Williams, the K-9 handler.

Next, Sgt. Webb asked Appellant to exit his vehicle so that he can explain to Appellant the reason for the stop. *Id.*, at 5:50. They both approach the rear of the vehicle. Sgt. Webb then began to write a warning citation for the tail light. *Id.*, at 6:13.

At about five minutes into the stop, Sgt. Webb engaged Appellant in small talk. After a few seconds, Sgt. Webb asked Appellant if he is aware of any narcotics sales in the area. *Id.*, at 8:02. Sgt. Webb then asked Appellant whether there were any narcotics in Appellant's vehicle. *Id.*, at 8:43. About three minutes after the small talk began, Sgt. Webb asked Appellant for consent to search the vehicle. *Id.*, at 8:53. Appellant withheld his consent. *Id.*, at 9:02. After Appellant denied Sgt. Webb permission to search Appellant's car, Sgt. Webb asks Appellant to step to one side so that Sgt. Webb can write down Appellant's license number. *Id.*, at 9:23.

Shortly thereafter, Sgt. Webb returned to his patrol car. *Id.*, at 9:49. While in his patrol car, Sgt. Webb engaged in a conversation with Chris that lasted approximately two and a half minutes. *Id.*, at 9:49-11:09. During that conversation, Sgt. Webb checked on Chris's location and provided directions to Sgt. Webb's location. *Id.*, at 10:33.

Chris finally arrived nearly thirteen minutes into the traffic stop. *Id.*, at 13:40. Shortly after Chris's arrival, Sgt. Webb radioed in Appellants name. *Id.*, at 14:00. The audio isn't perfectly clear, but it sounds as though Sgt. Webb is asking dispatch to "check one last thing." *Id.*

After Sgt. Webb radioed Appellant's name, Sgt. Williams began the free air sniff with his K-9, Zorro. Sgt. Williams began the sniff at the front driver's side corner of the car. He led Zorro past the open door to the rear driver's corner of the car, and then turned to the rear passenger corner. When he reached the rear passenger corner, Sgt. Williams pivots Zorro, and

they retrace their route around the car. Zorro then enters the car through the open driver side door and alerts to a narcotic odor on the passenger side dash board. *Id.,* at 14:00-14:47

Appellant is then taken into custody, and Sgt. Webb retrieved a pill bottle from the car. He exclaimed "That's what I'm talkin' about boy!" then approached the hood with the pill bottle. Appellant was then arrested for simple possession of marijuana. *Id.,* at 15:28.

ARGUMENT

1. BECAUSE RESPONDENT INTENTIONALLY EXTENDED THE TRAFFIC STOP WITHOUT ANY REASONABLE SUSPICION TO ALLOW THE K-9 UNIT TIME TO ARRIVE ON SCENE, THE COURT ERRED IN FAILING TO SUPRESS EVIDENCE OBTAINED AS A RESULT OF THIS ILLEGAL FOURTH AMENDMENT SEIZURE.

The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. AMEND. IV. Article One, Section Ten of the South Carolina Constitution expands on this protection by explicitly forbidding "invasions of privacy," S.C. Const. Art I, § 10. Any evidence recovered from an illegal search or seizure should be suppressed. *Mapp v. Ohio,* 367 U.S. 643 at 655 (1961).

For the purposes of Fourth Amendment analysis, "[t]emporary detention of an individual in the course of a routine traffic stop constitutes a Fourth Amendment seizure." *State v. Tindall*, 388 S.C. 518, 521 (2010); *see also Florida v. Bostick*, 501 U.S. 429, 434 (1991) (holding that a seizure occurs where a reasonable person would not feel free to terminate the police encounter and leave);

see generally U.S. v DiGiovanni, 650 F.3d 498 (4th Cir. 2011) . During a traffic stop, "a law enforcement officer may request a driver's license and vehicle registration, run a computer check, and issue a citation." *Tindall*, 388 S.C. at 521. However, "[a]ny further detention for questioning is beyond the scope of the stop and *therefore illegal* unless the officer has reasonable suspicion of a *serious crime*." *Id.* (quoting United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998) (emphasis added)).

A dog sniff constitutes a departure from the officer's purpose in effectuating a traffic stop, changing the purpose of the stop from addressing the traffic violation to ordinary criminal investigation. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005); *and Indianapolis v. Edmond*, 531 U. S. 32, 40–41 (2000). Therefore, a dog sniff is permissible in only two circumstances: when the officer has reasonable suspicion of criminal activity or when the dog sniff does not extend the traffic stop. *Rodriguez v. United States*, 575 U.S. ___ at 2 (2015).

Reasonable suspicion requires that an officer "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). In the present case, the officer argued that he had reasonable suspicion based on two factors: an anonymous tip and the Appellant's demeanor during the traffic stop. Trial Tr. 27, 38.

Anonymous Tips and Reasonable Suspicion

In general, courts are reluctant to find that anonymous tips alone give officers reasonable suspicion. *Alabama v. White,* 496 US 325, 330 (1990). However, there are several exceptions to this general rule. If officers can independently verify the "innocent details" of the tip, or if the tip

accurately predicts the actions of the subject, then the tip has sufficient reliability to provide officers with reasonable suspicion. *Id.,* at 331. If a tip is specific enough in its details, and close enough in time to the criminal activity, it might have enough reliability in and of itself to provide officers with reasonable suspicion. *Navarette v California*, 172 U.S. __ (2014).

In *Navarette*, an anonymous caller reported to 911 that a silver Ford F150 pickup truck had run her off the road. The caller provided a location, make and model of the car, and license plate number. Writing for the majority, Justice Thomas concluded that, viewing the totality of the circumstances, the anonymous call had sufficient indicia of reliability to provide the officers with reasonable suspicion of criminal activity. *Id.*, at 5. The specificity of the details lent credence to the idea that the anonymous tipster was relating firsthand knowledge. *Id.* The immediacy of the call minimized the risk that the tipster was concocting a fabrication. *Id.,* at 6. In addition to the two preceding indicia of reliability, the court noted that law enforcement was able to locate the offending vehicle in relatively close proximity to the location where the tipster alleged the truck had run her off the road. *Id.* Finally, the court noted that using the 911 system added some reliability to the tip because the call can be recorded, and the 911 system can allow law enforcement to verify some information about the caller. *Id.*, at 7. Despite the impressive list of indicia of reliability, the court took care to note that it was a "close case." *Id.*, at 10.

Florida v. JL demonstrates that *Navarette* was indeed close. *Florida v. JL,* 529 US 266 (2000). In *Florida v. JL*, the Miami-Dade police department received an anonymous tip. *Id.,* at 268. The tipster claimed that a young black man wearing a plaid shirt at a bus stop was carrying a firearm. *Id.* The officers detained the juvenile based solely off of the tip. *Id.* While the court accepted that the description of JL indicated that the tipster had in fact witnessed JL, it ruled that the innocent details did not demonstrate any knowledge of JL's criminal activity. *Id.,* at 272. For that

reason, the court found that the tip alone was insufficient to provide the officers reasonable suspicion to stop and frisk JL. *Id.*

Determining whether an anonymous tip is sufficient to provide an officer with reasonable suspicion that criminal activity is afoot is a test of the totality of the circumstances. *Illinois v. Gates,* 462 US 213, 231 (1983). In order to find that a tip alone gives an officer reasonable suspicion, the state must show that the tip has sufficient indicia of reliability that one may infer that the tipster has direct knowledge of the subject of the tip and knowledge of the criminal activity. *White*, 529 US at 271. Without both, no reasonable suspicion can arise.

In determining whether there is sufficient indicia of reliability, courts look at the specificity with which the tipster has described the subject of the tip, whether the tipster can predict the subjects movements, the means of communicating the tip, and the intimacy of knowledge about the subjects activities that the tipster has. *Navarrette*, 172 US 9-11. "A bare bones tip" will not provide reasonable suspicion. *Id.*, at 11

Reasonable Suspicion and Officer's Inference

In *State v. Tindall*, the South Carolina Supreme Court confronted a similar issue to the case at bar. In *Tindall*, the defendant was stopped by a law enforcement officer for several traffic offenses. During the stop, the officer asked to see the defendant's driver's license, registration, and proof of insurance. The defendant was asked to exit his vehicle, and was seated in the officer's patrol car. After asking about the defendant's destination, the officer called in the information to dispatch. About three minutes later, the dispatcher informed the officer that there were no problems. The officer then told the defendant that he was issuing a warning ticket. Instead of ending

the questioning at that point, the officer began to ask the defendant "where he was going, the purpose for the trip, what exit he would take to get to Durham, whether he had ever been charged with any drug crimes, what type of business he was in, and various questions about his business." *Id.* at 522. Eventually, the officer asked for permission to search the vehicle, and the defendant responded with either "I don't care" or "I don't mind." *Id.* at 521. Drugs were discovered during the search.

The Supreme Court held that "officer's continued detention of the defendant exceeded the scope of the traffic stop and constituted a seizure for purposes of the Fourth Amendment." *Id.* at 522. The Court summarized the officer's observations as follows:

> 1)Tindall was driving to Durham to meet his brother; (2) Tindall was driving a rental car rented the previous day by another individual which was to be returned to Atlanta on the day of the stop; (3) Tindall did a "felony stretch" on exiting the vehicle; and (4) Tindall seemed nervous.

See id. at 523. Nevertheless, the Supreme Court concluded that "these facts did not provide the officer with a 'reasonable suspicion' that a serious crime was afoot. The Court also ruled that the fact that the defendant "'consented' to the search of the vehicle does not alter our conclusion as the consent was the product of the unlawful detention." *Id.* The Court, therefore, ruled the stop illegal and suppressed the evidence discovered during the search. *See id.*

Discussion

In the present case, Appellant was stopped for two traffic violations: failure to use a turn signal, and improper lane change. The entire traffic stop lasted roughly fourteen minutes. Although the audio on the recording was not on when Sgt. Webb made initial contact with Appellant, he appears to simply ask Appellant for his license and registration at that first interaction.

Once Sgt. Webb turned the audio recording on, it becomes immediately apparent that he intends to turn this traffic stop into a criminal investigation. As soon as he exits his patrol car, Sgt. Webb asked the unidentified officer standing next to him to locate the K-9 unit. Sgt. Webb then asked Appellant to step out of the vehicle so that Sgt. Webb can point out the defect in Appellant's tail light for which Sgt. Webb wrote the warning ticket. City's Exh. 1 at 5:41. While engaging the Appellant in conversation at the rear of his vehicle appears to be innocuous and in line with the purpose of a simple traffic stop, Sgt. Webb's testimony at trial revealed otherwise.

"We are doing drug work. That is what we are there for," was how Sgt. Webb began his testimony about the actual stop. Tr. Trans., at 36. Further, "I asked him to step out of the vehicle. Part of the process and the reason for doing that is it takes them a little bit out of their comfort zone," *Id.*

At this point in the traffic stop, Sgt. Webb had already called for the K-9 unit. He had not, however, started checking for Mr. Heyward's warrants. As Sgt. Webb stopped Appellant for a traffic infraction, he is only allowed to do three things: "request a driver's license and vehicle registration, run a computer check, and issue a citation." *Tindall*, 388

S.C. at 521. Sgt. Webb had accomplished only one of those three purposes of a traffic stop, and by his own admission was already engaging in a criminal investigation. Tr. Trans., at 36.

Whether Appellant was illegally detained would be a close question if the K-9 unit had showed up right when Sgt. Webb was escorting Appellant to the rear of his vehicle to discuss the broken tail light. However, the K-9 unit would not appear for another nine minutes. City's Exh. 1 at 13:40. During the intervening time, Sgt. Webb asked Appellant whether Appellant had any illegal narcotics in his possession. That question alone, absent any reasonable suspicion, is sufficient to transform the stop from an ordinary traffic stop into a criminal investigation. *Tindall,* 388 S.C. at 521.

Instead of diligently working to execute the purpose of that traffic stop, Sgt. Webb returned to his patrol car and engaged in extended conversation with Sgt. Williams about when Sgt. Webb could expect the K-9 to arrive. City's Exh. 1 at 9:10-12:00. Crucially, Sgt. Webb is not heard to radio in Appellant's name, presumably for a warrant check, until thirteen minutes into the traffic stop. City's Exh. 1 at 14:00.

Sgt. Webb engaged in clear and prolonged dilatory tactics in order to give Sgt. Williams time to arrive with Zorro. Absent reasonable suspicion, those tactics transform an ordinary traffic stop into an illegal seizure. *Rodriguez*, 575 U.S. at 2. Sgt. Webb had a duty to execute the purposes of a traffic stop as diligently as reasonably possible. *Id.*, at 8. However, Sgt. Webb measurably delayed the execution of his duties in several ways. First, he spent time asking Appellant whether he possessed any illegal narcotics. Not only did that question extend the traffic stop, it is *illegal* absent reasonable suspicion. *Tindall*, 388 S.C. at 521; City's Exh 1 at 8:40. Second, Webb did not complete writing

the citation before engaging in an illegal questioning of Appellant. Trial Tr. 38; States Exh. 1 at 9:09. Third, he stopped writing the warning citation to Appellant to return to his patrol car and have a conversation with Sgt. Williams regarding Sgt. Williams' estimated time of arrival. City's Exh. 1 at 9:37. Finally, Sgt. Webb did not being Appellant's warrant check until thirteen minutes into the traffic stop. City's Exh. 1 at 14:00.

Sgt. Webb had Appellant's information in his patrol car at two minutes into the traffic stop. City's Exh. 1 at 3:36. Sgt. Webb elected not to utilize that time to check for warrants or registration. Instead he decided to begin his criminal investigation. In so doing, he unavoidably prolonged Appellant's detention, and transformed an ordinary traffic stop into an extended seizure. Absent reasonable suspicion, therefore, Sgt. Webb illegally seized Appellant.

At trial, the state put up two reasons for their investigation and detention of Appellant: the anonymous tip and Appellants demeanor during the traffic stop. Trial Tr. at 27, 38, 65. The testimony concerning the content of the anonymous tip was somewhat ambiguous. Officer Arnold testified that Appellant matched the description of the tip. *Id.*, at 27. However, Sgt. Williams testified that the tip was that "a black male was selling narcotics from an actual apartment there," *Id.,* at 65. In order for an anonymous tip to be sufficient it must meet stringent criteria. *Navarette*, 172 U.S. at 10. A tip that is overbroad or does not provide sufficient indicia of reliability will not pass muster. In, *Florida v JL*, the tipster described the subject in some detail, told the police where the subject would be, and correctly identified that the subject would be carrying a firearm.

Florida v. JL, 529 U.S. at 268. The court ruled that the tip did not provide the officer with reasonable suspicion to detain the subject. *Id.,* at 272.

In the present case, the only description of the subject of the tip is that he was a black male. Trial Tr. at 65. The only description of his location was the apartment complex. *Id.* The only description of the illegal activity was that he was dealing drugs. *Id.* In contrast to *Florida v JL*, where the description of the criminal activity actually matched what the officers found, Appellant was only charged with simple possession of marijuana, not distribution or trafficking as the tip alleged. Trial Tr. at 19.

Therefore, the tip alone is not sufficient to provide reasonable suspicion that Appellant was engaged in criminal activity. The anonymous tip is less reliable by every measure than that of *Florida v JL.* 529 U.S. at 268

In addition to the tip, Sgt. Webb testified that Appellants demeanor during the traffic stop contributed to the reasonable suspicion that Appellant was engaged in unlawful behavior. Trial Tr., at 37. Sgt. Webb testified that Appellant exhibited "agreeable" behavior, in their interactions prior to Webb's illegal questioning. *Id.*

Agreeable behavior is simply not sufficient to arouse reasonable suspicion of criminal activity. Simply agreeing with an officer while he discusses the reasons of the traffic stop does not rise to the level of: "specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion," *Terry*, 392 U.S. at 21.

Even when combined with the anonymous tip, there is no reasonable suspicion. Nothing in Sgt. Webb's interactions with Appellant provided any indication that the tip

was reliable. Nothing in the tip indicated that an agreeable man was the one selling drugs. *Navarro* sets an extraordinarily high bar for a tip by itself to be grounds for reasonable suspicion. *Navarro,* 172 U.S. at 10. Even then, the court called the matter "close," *Id.* In *Tindall*, the state provided the court a laundry list of observations that raised the officer's suspicion. *Tindall,* 388 S.C. at 523. Even then, the court found that there was no reasonable suspicion. There was no reasonable suspicion in this case.

Sgt. Webb testified that Appellants demeanor changed after Webb asked Appellant whether Webb could search Appellant's car. Trial Tr. at 38. According to Webb, Appellant's "body language changed and changed a lot," *Id.* When asked how Appellant's body language changed, Sgt. Webb testified that Appellant sat on the trunk obscuring Webb's view of Appellant's license plate. When he asked Appellant to move his leg so that Sgt. Webb could see the license, Appellant stood up and started "walking around," *Id.* That testimony, however, is not supported by Sgt. Webb's own dash cam video. While Appellant does move from sitting on the trunk to sitting on the bumper, he does not get up and walk around as Sgt. Webb testified. Rather, he remained on the bumper for several minutes engaging an unidentified officer in conversation. He then stood up to lean against the car while continuing his conversation with the unidentified officer. He is then guided away from the car by the unidentified officer about a minute later. City's Exh. 1 at 9:09-13:31.

There are two issues with this element of Webb's suspicion. First, they occur after Webb's illegal questioning. Webb asked whether Appellant was in possession of any contraband at 8:40 of the tape. *Id.,* at 8:40. The change in demeanor cited by Webb began at 9:09 of the tape. *Id.,* at 9:09. Second, Sgt. Webb's testimony is contradicted by

the state's own evidence. The video shows that Appellant did not get up and walk around. The entire time Webb was in his patrol car, Appellant was engaged in conversation with another officer. *Id.*, at 9:09-13:31. Webb's testimony was based on, at best, an inaccurate recollection of events, and therefore cannot support any finding of reasonable suspicion. *Id.*

As Sgt. Webb did not diligently pursue the objectives of a traffic stop, and engaged in clear and purposeful dilatory tactics, Appellant was detained far beyond the time allowed for that traffic infraction. *Rodriguez,* 575 U.S. at 2. Therefore, the search and seizure was legal under the Fourth Amendment *only* if it was accompanied by reasonable suspicion that Appellant was engaged in criminal activity. *Id.* As there was no reasonable suspicion that Appellant was engaged in criminal activity, the search and seizure which resulted in the charge of simple possession of marijuana was illegal under the Fourth Amendment. The trial judge erred in denying the defense's motion to suppress the evidence.

2. THE COURT ERRED IN FAILING TO SUPPRESS THE RESULTS OF THE DRUG ANALYSIS BECAUSE THE CITY FAILED TO PROPERLY ESTABLISH CHAIN OF CUSTODY

Rule 6(b) of the Rules of Criminal Procedure lays out the requirements for establishing a chain of custody for physical evidence. Specifically, it states that:

> For the purpose of establishing a chain of physical custody or control of evidence entered under Part A of this Rule, a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statement says the substance was delivered in substantially the same condition as when received.

The South Carolina Supreme Court has "has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *State v. Hatcher*, 392 S.C. 86, 91 (2011). Practicable is defined as "capable of being accomplished; feasible; possible." BRYAN A. GARNER, GARNER'S MODERN AMERICAN USAGE 648 (3rd ed. 2009). "Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis." *Hatcher*. 392 S.C. at 91. While "[t]estimony from each custodian of fungible evidence . . . is not a prerequisite to establishing a chain of custody sufficient for admissibility," a court's willingness to fill in those gaps is justified only when "the evidence establishes the identity of those who have handled the evidence and *reasonably demonstrates the manner of handling of [the material tested]*." *Id.* (emphasis added). "Proof of chain of custody need not negate all possibility of tampering *so long as the chain of possession is complete*." *Id.* at 92. (emphasis added). In practice, the Supreme Court has "found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the substance was

not established at least as far as practicable." *Id.* In addition to the identities of the persons handling the evidence, "[e]vidence is still required as to *how the item was obtained and how it was handled* to ensure that it is, in fact, what it is purported to be." *Id.* at 95 (emphasis added).

In the present case, the Defense made a motion to suppress evidence and testimony related to the material collected during the stop believed to be marijuana. Trial Tr. at 50–51. The basis for that motion was that City failed to produce adequate testimony regarding the chain of custody. *Id.* at 51. More specifically, the "Drug Analysis Request/Chain of Custody Form" reflected that the material in question had been checked out of the Drug Analysis Laboratory's evidence locker by Donna Martin on May 28, 2011, but not received by G.D. Potash until June 8, 2011. *Id.* Ms. Martin was, however, not present to testify on the day of trial. *Id.* at 52. There was, consequently, no sworn testimony or evidence from Ms. Martin regarding the delay between her removal of the material from the evidence locker and its delivery to G.D. Potash. Neither was there sworn testimony regarding where and how evidence was stored, handled, or otherwise preserved during that period. Instead, the only information about Donna Martin's handling of the evidence were statements by City Attorney Jess Mangum regarding drug laboratory procedures argued outside the presence of the jury. Ms. Mangum stated that:

> From the evidence locker, the evidence room personnel, which in this case includes Donna Martin, takes it and logs it into evidence. And so from [May 28] which is when she actually received it from the evidence locker until [June 11] which is when Officer Potash tested it, it was stored in the evidence room. And that's what this chain of custody indicates.

Trial Tr. at 52. Mr. Comish stated that ". . . I submit that Ms. Martin should be here to testify to that." *Id.* In response, Ms. Mangum stated that "She is here. She is in the evidence room." *Id.*

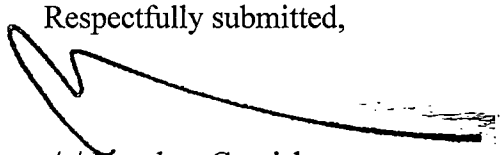
By failing to elicit testimony about Donna Martin's handling of the evidence during the period described, the City failed to establish a complete chain of evidence as far as practicable. In terms of practicability, the City could have easily produced Ms. Martin as a witness. She was, at the time of trial, working at the Columbia Police Department's Drug Laboratory—a building adjacent to the Columbia Municipal Court. It was, therefore, feasible for the City to arrange for Ms. Martin to testify in advance. Alternatively, upon hearing Mr. Comish's objection, the City could have contacted Ms. Martin and asked her to testify.

Without her testimony, however, there is an eleven-day period for which the manner of handling the material is unknown. This leaves to conjecture what was done with the material prior to being tested. Neither was there testimony elicited that reasonably demonstrates the manner of handling of the material tested. Without such testimony, the City failed to provide a complete chain of custody as required by *Hatcher*. Consequently, the trial court erred in failing to suppress testimony regarding the material collected during the stop.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court, and remand for retrial pursuant to this order.

Respectfully submitted,



June 24, 2016

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