

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

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JUN 17 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ELLIOTT JUDON, JR.

APPELLANT

APPELLANT CASE NO. 2015-000728

RECORD ON APPEAL

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INDEX

INDEX	i
MOTION TO DISMISS HEARING DATED MARCH 13, 2015	1
DEFENSE MOTION TO DISMISS THE CASE.....	6
TESTIMONY (IN CAMERA)	
LUKE MALLOY	
Direct examination by Ms. Gay	42
ELLIOTT JUDON, JR.	
Direct examination by Ms. Gay	46
Cross examination by Ms. Mulkey	54
Redirect examination by Ms. Gay	61
JOHN M. STOTT, JR.	
Direct examination by Ms. Mulkey	64
Cross examination by Ms. Gay	90
Redirect examination by Ms. Mulkey	104
Recross examination by Ms. Gay	106
SCOTT HILLE	
Direct examination by Ms. Mulkey	109
Cross examination by Ms. Gay	120
ELLIOTT JUDON, JR.	
Direct examination by Ms. Gay	126
Cross examination by Ms. Mulkey	131
Redirect examination by Ms. Gay	132
MOTION TO DISMISS ARGUMENT BY MS. GAY	133
MOTION TO DISMISS ARGUMENT BY MS. MULKEY.....	152
RESPONSE TO ARGUMENT BY MS. GAY	158
RULING BY THE COURT	163
MOTION TO SUPPRESS THE STATEMENT	173

TESTIMONY (IN CAMERA)

JOHN STOTT, JR.	
Direct examination by Ms. Mulkey	175
ELLIOTT JUDON, JR.	
Direct examination by Ms. Gay	190
Cross examination by Ms. Mulkey	201
Redirect examination by Ms. Gay	216
Recross examination by Ms. Mulkey	223
ARGUMENT REGARDING STATEMENT BY MS. GAY	227
ARGUMENT REGARDING STATEMENT BY MS. MULKEY	228
RULING BY THE COURT ON DEFENSE MOTION TO DISMISS	230
RULING BY THE COURT ON MOTION TO SUPPRESS STATEMENT	246
RENEWAL OF ALL MOTIONS	252
OPENING STATEMENT BY MS. MULKEY	254
OPENING STATEMENT BY MS. GAY	256
TRIAL TESTIMONY	
JOHN MICHAEL STOTT, JR.	
Direct examination by Ms. Mulkey	260
Cross examination by Ms. Gay	278
Redirect examination by Ms. Mulkey	287
Recross examination by Ms. Gay	290
MATTHEW KIRK	
Direct examination by Ms. Mulkey	295
Cross examination by Ms. Gay	303
SHANTA MIDDLETON	
Direct examination by Ms. Mulkey	308
LAWRENCE ZIVKOVICH	
Direct examination by Ms. Mulkey	314
MOTION FOR DIRECTED VERDICT	325
RULING BY THE COURT ON ALL PREVIOUS MOTIONS	326

RULING BY THE COURT ON MOTION FOR DIRECTED VERDICT	327
COLLOQUY ON DEFENDANT’S RIGHT TO TESTIFY	328
TESTIMONY	
ELLIOTT JUDON, JR.	
Direct examination by Ms. Gay	330
Cross examination by Ms. Mulkey	346
Redirect examination by Ms. Gay	365
RENEWAL OF ALL MOTIONS	370
RULING BY THE COURT	370
CHARGE CONFERENCE	371
CLOSING ON THE LAW BY MR. KIDD	372
CLOSING ARGUMENT BY MS. GAY	377
CLOSING ARGUMENT BY MR. KIDD	387
CHARGE ON THE LAW	393
RENEWAL OF ALL MOTIONS	404
RULING BY THE COURT	405
VERDICT	406
SENTENCING	407
POST TRIAL MOTIONS	413
RULING BY THE COURT	414
DEFENDANT’S EXHIBIT # 1 (E-MAIL)	416
DEFENDANT’S EXHIBIT # 2 (E-MAIL)	417
DEFENDANT’S EXHIBIT # 3 (MOTION IN OPPOSITION)	419
DEFENDANT’S EXHIBIT # 4 (RULE’S 5 AND 6 REQUEST)	429
STATE’S EXHIBIT # 4 (SLED REPORT)	430

STATE’S EXHIBIT # 6 (CAR RENTAL AGREEMENT).....	433
COURT’S EXHIBIT # 1 (EMAIL AND CASE)	434
COURT’S EXHIBIT # 2 (NOTE FROM THE JURY)	438
INDICTMENT	439
SENTENCE SHEET	441
CERTIFICATE OF COUNSEL.....	442

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO.: 2013-GS-10-07257

STATE OF SOUTH CAROLINA)
)
)

VS.)
)
)

ELLIOTT JUDON, JR.,)
)
)

DEFENDANT.)
)
)

JURY TRIAL - MOTION TO DISMISS

VOLUME 1 OF 4

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Friday, March 13, 2015, Commencing at 9:25 a.m.

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INDEX TO PROCEEDINGS

	PAGE
MOTION TO DISMISS	6
<u>WITNESSES FOR THE DEFENDANT</u>	
LUKE MALLOY	
Direct Examination by Ms. Gay	42
ELLIOTT J. JUDON	
Direct Examination by Ms. Gay	50
Cross-Examination by Ms. Mulkey	58
Redirect Examination by Ms. Gay	65
Rebuttal Direct Examination by Ms. Gay	130
Rebuttal Cross-Examination by Ms. Mulkey	135
Rebuttal Redirect Examination by Ms. Gay	136
<u>WITNESSES FOR THE STATE</u>	
JOHN M. STOTT, JR.	
Direct Examination by Ms. Mulkey	68
Cross-Examination by Ms. Gay	94
Redirect Examination by Ms. Mulkey	108
Recross-Examination by Ms. Gay	110
SCOTT HILLE	
Direct Examination by Ms. Mulkey	113
Cross-Examination by Ms. Gay	124
MIA PERRON, CVR-CM-M	-3-

INDEX TO PROCEEDINGS, continued

	PAGE
ARGUMENT BY MS. GAY	141
ARGUMENT BY MS. MULKEY	160
ARGUMENT BY MS. GAY	166
COURT'S RULING	171
CERTIFICATE OF COURT REPORTER	179

INDEX TO EXHIBITS
MOTION TO DISMISS

MARKED/ADMITTED

Defendant's Exhibit Number 1 [E-mail]	28 / 29
Defendant's Exhibit Number 2 [E-mail]	28 / 29
Defendant's Exhibit Number 3 [Motion in Opposition]	32 /
Defendant's Exhibit Number 4 [Rule 5 and 6 Request]	44 / 45
Defendant's Exhibit Number 5 [Cover Sheet]	46 / 46
Defendant's Exhibit Number 6 [Copy of Discovery] - [ID Only]	47 /

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

MOTION TO DISMISS

1
2 THE COURT: We are here on the State versus
3 Elliott Judon, Ms. Gay's motion to dismiss. Is that
4 correct, Ms. Mulkey?

5 MS. MULKEY: Yes, Your Honor.

6 THE COURT: Ms. Gay, you are prepared to go
7 forward on this motion to dismiss?

8 MS. GAY: Yes, I am.

9 I need to find Mr. Malloy. Where did he go? He
10 was --

11 [Off the record momentarily]

12 MS. GAY: Mr. Malloy is in the courtroom, Your
13 Honor.

14 THE COURT: Mr. Malloy, are you going to sit at
15 the table with Mr. Judon or are you merely observing?
16 Trying to determine what you anticipate your role to
17 be here today.

18 MR. MALLOY: Your Honor, I don't have to sit at
19 the table. I can sit back here. If you would --

20 THE COURT: We have a chair.

21 MR. MALLOY: -- prefer it, I could.

22 THE COURT: Mr. Judon, what I understand is
23 happening is Mr. Malloy used to be your attorney;
24 correct?

25 MR. JUDON: Correct.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 THE COURT: And you got along with Mr. Malloy
2 fairly well?

3 MR. JUDON: Correct.

4 THE COURT: And then you hired Ms. Gay and so
5 y'all have had some issues; is that correct?

6 MR. JUDON: Correct.

7 THE COURT: And so would you like Mr. Malloy to
8 sit at the table with you? He is not currently
9 representing you.

10 MR. JUDON: Yes, ma'am.

11 THE COURT: And you would like for him to sit
12 with you?

13 MR. JUDON: Yes.

14 THE COURT: All right.

15 MS. GAY: Well, what we are concerned about,
16 Your Honor, is that there are facts relevant to this
17 motion that Mr. Malloy will testify to for -- pursuant
18 to our motion, and so what we want -- what we
19 explained to Mr. Elliott was is that -- Mr. Judon is
20 that is he may need to answer questions about what
21 they spoke about in terms of whether or not Mr. Judon
22 talked to him about -- questions about a video and
23 some things. That's what all this is about, of
24 course. And we wanted him to be aware that in
25 answering the questions, Mr. Malloy would be breaching

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 a -- you know, expounding on an attorney-client
2 privilege communication.

3 THE COURT: Well, as I understand from the
4 e-mails, there is no in-car video; correct?

5 MS. GAY: There is no video. But there was a
6 video.

7 MS. MULKEY: The unit that they were in was
8 capable of recording, had in-car video. There were
9 some issues, department-wise, with the video. But
10 right now, the State cannot conclusively prove that it
11 was or was not working. But we concede that it was
12 never entered into evidence, the recording.

13 THE COURT: And so, then, I'm assuming that
14 there were some discussions perhaps with Mr. Malloy
15 that there was a video? Is that what you're going to
16 attempt to --

17 MS. GAY: Well, the question, Your Honor, is
18 that my client was arrested by a marked patrol car
19 with officers in it. He believes, and has information
20 and will testify today, that he was placed in front of
21 the car and basically told he was on video camera so
22 that there should have -- the camera was running. So
23 and he has --

24 This case has been presented as a consent
25 search: we stopped the defendant, we asked him to

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 consent, he gave us consent to search everything. My
2 client has been to prison before. He tells me that
3 that is not how it went, that he did not consent to
4 portions of it, that it was done without his consent.
5 He's asked me to argue my suppression motion under
6 case law in South Carolina about how consent can be
7 considered non-consensual based on circumstances,
8 which is valid law in South Carolina.

9 So when I got involved with him and we started
10 talking about it, all he talked to me about was the
11 video: why is there not an in-car video of this stop;
12 I was in front of a marked patrol car; I was told that
13 when standing in front of the car.

14 Initially -- and this is something that happened
15 at the status conference last week -- I was told there
16 was no video of this stop. And there's an e-mail that
17 says that. I told Mr. Judon that. When we did the
18 status conference last week, you asked Mr. Judon is
19 there any issue that you want to talk about and he
20 said, where is my evidence; you know, why is there not
21 an in-car video; I was standing in front of a marked
22 police car.

23 At that time, Ms. Mulkey said -- made the
24 comment, well, there was a video but it was purged in
25 the normal course of North Charleston procedure.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 Since that ten days ago, we have done -- I've
2 done nothing but just research this, figure out what I
3 needed to do to protect my client's rights, and what
4 we've determined is that the officer was traveling in
5 a car with a camera.

6 They do not have any evidence to present that
7 the camera wasn't working. I have documents which
8 I've just provided to Ms. Mulkey, which I'll provide
9 to the Court, about a subpoena that I sent to the
10 radio company who fixes these things who said that he
11 had never fixed that car, there was nothing -- it
12 never came in for maintenance.

13 Also, is Mr. Kaiser here?

14 MR. KAISER: Right here.

15 MS. GAY: Mr. Kaiser has just arrived.

16 I subpoenaed, based on some -- her response that
17 she said yesterday. I subpoenaed the maintenance
18 records for the car and the video camera and also some
19 other things, which I think she provided in her
20 response. He came pursuant to my subpoena. I don't
21 know if -- he also says he's not sure if he can get it
22 all within -- you know, right now. But I didn't have
23 the information about the acknowledgment that the car
24 had a camera in it until yesterday when she sent her
25 response.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 So what is -- what's happening is is that we
2 have a working, operable camera in a car. My client
3 believes, based on his testimony, that he was being
4 filmed that day in a stop that has been described as a
5 consent search in the police report by an officer that
6 he does not agree with.

7 So that's the material dispute that we have
8 here, the factual dispute that we have, which is part
9 of the suppression motion. And the best evidence of
10 that for the suppression motion, the facts that
11 occurred on that day, would be the in-car video. So
12 apparently, as a part of their procedure, if nobody --
13 if the officer chooses not to turn it in as evidence,
14 and nobody asks them for it for over 180 days, that
15 their videos are taped over.

16 And so the real issue here is what obligation or
17 affirmative duty did the North Charleston police
18 officer have for turning this video in as part of the
19 evidence in this case, and the follow up of the fact
20 it's not in the police report, and all the things that
21 happened afterwards.

22 I will tell Your Honor that the Rule 5 discovery
23 request from the public defender's office came in
24 within a couple of weeks of the arrest. In that Rule
25 5 discovery request, there is specific reference to

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 things that are just -- you know, things that are
2 discoverable. That's why Mr. Malloy is here. Within
3 sixty days of the arrest, in October, he was given
4 discovery by Julie Cardillo that never have anything,
5 no records whatsoever, to there being a video, an in-
6 car camera video, in this case.

7 And from there, Mr. Judon says that pursuant to
8 his defense and in his -- about his own life, this is
9 actually a case that a life without parole notice has
10 been served on him. In his defense, and pursuant to
11 his own case, he's been telling people all along
12 there's a video. You know, he told me and Mr. Malloy
13 -- I know from -- my testimony of my client mentioned,
14 you know, was there a video.

15 And so I think the problem is is that pursuant
16 to the State's response, they have burden-shifted to
17 the defendant to prove his innocence in this case, or
18 to prove the existence of the evidence that they had
19 in their power and control that they have made
20 unavailable.

21 And, you know, there's nothing we can do about
22 it now because it's been purged. The time that
23 mattered was at the time of the arrest and whether or
24 not an in-car video of a stop and a search and
25 subsequent arrest and discovery of paraphernalia and

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 evidence related to the crime are not in this case.
2 Now, that video, it did occur that day, that has not
3 been put in the evidence in this case.

4 It's not anything that my client could have done
5 anything about. It was in the sole control of the
6 North Charleston Police Department or that particular
7 officer.

8 I'm not -- one of the things that Ms. Mulkey
9 says -- I'm not attacking the solicitor's office for
10 saying that they didn't go -- I mean, I guess in due
11 diligence they should have asked are there any video
12 tapes of this case when it starts. But as it went on
13 and Ms. Mulkey ended up being in the case, they can't
14 produce one.

15 And until last Wednesday at the status
16 conference, I've been telling my client there was
17 none, there was no available video, it was not
18 possible to -- this argument didn't even exist until
19 last Wednesday, Your Honor.

20 And as I researched it and determined that, you
21 know, evidence that has been -- that was in the
22 control of the State, including the police department,
23 that is not made available or preserved for the
24 defendant to use in his case -- which in my particular
25 defendant's case, he believes that in-car video would

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 be exculpatory to him.

2 And one of the biggest things is, Your Honor,
3 in-car cameras are where we're all going. You know,
4 everybody -- they want officers to wear body cams,
5 they want officers to --

6 THE COURT: Well, I understand. But that is not
7 the law and there's -- first of all, was there a
8 video?

9 MS. MULKEY: Your Honor, the State acknowledges
10 that the car that they were in that day was, in fact,
11 equipped with a camera.

12 We received information as we were looking into
13 this that there was a department-wide issue with the
14 cameras, or the servers that they connect to and
15 download to during around this period, that required
16 being able to shut down some of the cameras. We do
17 not have any conclusive evidence that this particular
18 unit that they were in, 230, was shut down at that
19 time.

20 So there is reason to believe that it would have
21 been capable of recording, but they don't often know
22 that there is a problem until they go back and
23 determine whether it's able to be downloaded from the
24 server. There was no North Charleston policy that
25 required that it be downloaded, just that it

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 automatically activated with the activation of blue
2 lights.

3 THE COURT: Has anybody seen a video? Has there
4 ever been -- tell me how we even know that there's a
5 video.

6 The defendant says there's a video and that's --
7 did the officer see the video? Does the officer
8 remember turning it on, or having a conversation, or
9 anything of that nature?

10 MS. MULKEY: The officer -- and in preparing for
11 this trial: the camera automatically activates with
12 the blue lights so when they stopped him for the
13 equipment violation the camera, if it was working,
14 would have activated.

15 However, what they were realizing with some of
16 these problems, my understanding, is that the camera
17 would, in fact, turn on. Whether it would be
18 recording or whether that recording would then
19 subsequently download to the server, which is what
20 it's pulled off it, there's third-party involved, then
21 you wouldn't know that until after it stopped.

22 So the officers would testify that they don't
23 have any reason to believe that the camera wasn't
24 working but, for reasons that they would explain, I
25 think very valid reasons, for why they did not

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 download this stop and there weren't -- there weren't
2 any issues.

3 It took them less than ten minutes. The
4 defendant was very polite and quite compliant. So for
5 them, they didn't see a need at the time to download
6 it and proceeded to write the report. The defendant
7 was so cooperative, he continued to go back to the
8 narcotics office with them. They just did not see a
9 reason to download it at that point. And their policy
10 didn't require it -- didn't require it, so they did
11 not.

12 THE COURT: So we don't know even if there has
13 ever been a video?

14 MS. MULKEY: We do not, Your Honor.

15 MS. GAY: Well, Your Honor, I take issue with
16 that because I'm looking at the North Charleston
17 regulations, which is part of what she provided --

18 THE COURT: Ms. Gay, I don't -- my -- because
19 that's an important first step of the analysis, is
20 whether or not the video even existed. If there was
21 some reason that -- just because there is an in-car
22 video -- and you have seen hundreds of these
23 throughout your career -- in-car videos, sometimes
24 they don't turn on, sometimes they're not videoing
25 exactly what you anticipate that they would be

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 showing. So whether or not there was actually a
2 recording is important to know.

3 And so nobody has ever seen this video. Is that
4 a correct statement?

5 MS. GAY: I believe that the problem is is that
6 the stitch, the piece that would have had to do with
7 my client's arrest, was not preserved by the officer.
8 It did exist. I mean, she acknowledges that there
9 would have been -- there was a working, operable
10 camera.

11 Pursuant to the regulation, these cameras --
12 let's imagine that this had been a DUI arrest. And as
13 part of the DUI arrest, they have to have --

14 THE COURT: Well, a DUI arrest is totally
15 different --

16 MS. GAY: I understand.

17 THE COURT: -- because it is -- there is a
18 statute that says this has to be videoed. And my
19 understanding is most -- then they are preserved
20 because there is a law that requires the preservation.
21 At this point --

22 MS. GAY: The creation --

23 THE COURT: At this point, Ms. Gay, I don't
24 know -- I haven't heard anything that says there even
25 was a video.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. GAY: Well, the creation of the video is
2 exactly the same as it is in a DUI case. They are
3 created. If you look at her response, and I can show
4 you my copy, Your Honor, the blue-light activation
5 automatically turns the camera on. It stays -- it's
6 in her what she responded. It's in the regulations.
7 It stays on and it can be turned off manually if there
8 -- like it says specifically protecting an accident.

9 But it says: the video camera equipment may be
10 used to record actions for suspects during interviews,
11 field sobriety checks, custodial arrests, and any
12 other incidents in an effort to document crime scenes,
13 accident scenes, evidence, or contraband.

14 So the video was recording the arrest, the
15 contraband, the custodial arrest. It did record it.
16 The issue then becomes -- because it records every
17 arrest and every time that the blue light's on. So to
18 say that you don't know if there -- whether or not
19 there was a video, that in an operable camera there is
20 a video of every arrest.

21 And then the next, it says: officers will
22 ensure that the vehicle video cameras and wireless
23 microphones -- which is another problem. They have
24 microphones so you can hear everything that's going
25 on -- is operating during traffic stops, which is what

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 this started out as -- and other calls for service
2 where the use of video to evidence may be beneficial.
3 Officers will not erase, reuse, or alter video camera
4 tapes or digital media in any manner.

5 So what ended up -- we agree that there was an
6 operable camera. I have evidence which I can show
7 you, as soon as -- gets here because it was in my car.
8 I didn't know she was going to require me to show -- I
9 went to --

10 I found out that Sykes Radio repairs these car
11 cameras so I subpoenaed this particular car record, or
12 something related to this car, and he responded that
13 he's never fixed that car ever. So that car has never
14 had any problems, because he's the only person that
15 fixes them, Your Honor.

16 And so in the process -- I'll show you this,
17 Your Honor. This says Sykes Radio. It was faxed to
18 him. I served the subpoena on him. It says
19 specifically for car 230 and 505, because that was
20 another car that was at issue.

21 So there was a video. It did exist. We
22 can't -- we don't have the opportunity to see it and
23 to know what exactly was on it. But based on my
24 client's testimony and the officer's testimony --

25 These people have a significant difference of

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 opinion as to how this arrest went down. She
2 specifically said that they believed that it wasn't
3 necessary in this case, or wouldn't have mattered, or
4 whatever she -- the comment was, because he was so
5 nice and he was so willing.

6 And as I said, Your Honor, my client has asked
7 me to challenge his consent by the law of South
8 Carolina, that he believes that he was basically
9 forced to consent and it wasn't -- his position is is
10 that he was -- he was talking to one officer in front
11 of the car. Someone else is scrambling around in his
12 car, found stuff in his car that they did not ask him
13 to consent. They went in his car and came back with
14 it and say, oh, look what we have, we're going to
15 arrest you.

16 You know, they -- he says that they tried to
17 undo his zipper to see if he had, you know, stuff in
18 his pants and he just went, oh, okay, here, I'll give
19 you these drugs that were in my waistband. And he
20 believes that that was a forced consent, Your Honor,
21 which he has a right to challenge. So that's a
22 serious search issue in this case.

23 The best evidence of how that would have been if
24 he said and his -- my client says the officer said.
25 And the conflict would be that in-car video camera

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 taking the picture and the audiotape of what happened.
2 So for an officer to decide, well, we don't think it
3 was important because it was such an easy arrest and
4 he was so nice is not --

5 There was a video of this arrest. That video
6 was not preserved by the officer because he made some
7 kind of subjective decision that it wasn't -- it
8 didn't have evidentiary value. It has significant
9 evidentiary value to my client, who says that what
10 they put in that police report isn't the truth.

11 And as I said, I can show you this, Your Honor.
12 I have a --

13 May I approach?

14 THE COURT: What do you want to show me?

15 MS. GAY: Well, this is my subpoena asking for
16 the repair -- did you ever repair the car camera in
17 unit 230 and him responding, no, I never have.

18 THE COURT: If it becomes -- I'm trying to make
19 a determination whether or not we need to have a
20 hearing.

21 Let me hear your response.

22 MS. MULKEY: Thank you, Your Honor. May it
23 please the Court.

24 THE COURT: To take testimony. This is a
25 hearing to take testimony.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. MULKEY: Thank you, Your Honor.

2 We're not disputing that that car was not
3 repaired, although that letter taken by itself from
4 the repair company is a little bit vague. When taken
5 with the subpoena, it acknowledges the vehicle in
6 question and the time period. We have no issue with
7 that. We know that there was a video in the car.

8 The problem lies in the fact that it's a two-
9 step process. The video records. Then, my
10 understanding is the officers, when they pull up to
11 the station, there is technology that downloads it and
12 within a certain period of time they can retrieve that
13 video and download it into evidence where it will be
14 preserved.

15 After another bulk of time, it then stays on the
16 server so that like a supervisor or someone else can
17 access it. And then, after 181 days, tracking from
18 the date of arrest, the material is purged from the
19 system automatically, through no intentional
20 instruction or request by anyone, because there is
21 limited space.

22 So we're not -- we agree that there was a camera
23 in the car. But whether or not it was -- would it
24 actually record that and then successfully transmit to
25 the server, we don't have that information and because

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 it was not downloaded, we don't -- we won't have that
2 information.

3 However, the State argues that there is no --
4 and the case law stands behind us from Arizona v.
5 Youngblood that they're -- the police have no absolute
6 duty to retain and preserve every piece of evidence.
7 They found it's not a due-process violation, and that
8 the failure to preserve potentially useful evidence is
9 not a violation.

10 And, therefore, the State thinks that this case
11 can proceed with the testimony of the officers, and,
12 in fact, the defendant, if he so chooses to testify.

13 MS. GAY: Your Honor, I don't want it to be a
14 ping-pong match. And I know it's ultimately your
15 decision. But back to what's going on here. She has
16 also said that -- she's put all the value and -- not
17 even weight, but just the value of the existence of
18 evidence in the hand of an officer. Not the Court,
19 not the prosecutor. An officer gets to decide whether
20 or not something should be turned over in evidence.

21 Back to these regulations that she sent me, Your
22 Honor, it says here specifically in --

23 THE COURT: All right.

24 MS. GAY: Just this last thing I want to put on
25 the record.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 THE COURT: I don't -- we're going to -- I'm
2 going to take testimony, so we will do it after my
3 off-bonds. So just make sure all of your witnesses
4 stay. Probably forty-five minutes. All right?

5 MS. GAY: You're aware that I have to go do
6 something with Judge Young for a few minutes?

7 THE COURT: Go take care of whatever you need to
8 take care of.

9 [Whereupon, a recess is taken from 9:46 a.m. to
10 11:59 a.m.]

11 THE COURT: Ms. Mulkey --

12 MS. MULKEY: Yes, Your Honor?

13 THE COURT: -- are you ready?

14 MS. MULKEY: We are. Would you like us to call
15 witnesses first or --

16 THE COURT: I'm just making sure you are ready.

17 MS. MULKEY: Yes, Your Honor.

18 THE COURT: Ms. Gay, are you ready?

19 MS. GAY: Yes, ma'am.

20 THE COURT: And we need to get your client.

21 MS. GAY: Yes, ma'am.

22 THE COURT: Mr. Malloy, if you want to sit
23 there, that's fine. When Ms. Gay approached, I
24 misunderstood what she told me. I thought you were
25 kind of assuming a hybrid co-counsel role.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MR. MALLOY: I'm here as a witness, Your Honor.

2 THE COURT: And so if you are comfortable
3 sitting there, feel free to stay there. If not, you
4 may sit wherever you choose in the audience.

5 MR. MALLOY: Thank you, Your Honor.

6 THE COURT: Are you requesting the rule of
7 sequestration?

8 MS. GAY: Yes.

9 MS. MULKEY: The State would have no objection,
10 other than the case agent.

11 THE COURT: And if you could just tell me who is
12 here.

13 MS. MULKEY: We have Julie Cardillo, who's
14 formally with our office, with the first attorney of
15 record for the State here. We have Sargent Hille with
16 the North Charleston police department.

17 Do you want them to come in right now, or do you
18 just want the names?

19 THE COURT: Well, Ms. Cardillo is here --

20 MS. MULKEY: She is, yes.

21 THE COURT: -- so she will have to leave. All
22 right. And your Officer Hilt is --

23 MS. MULKEY: He's outside.

24 THE COURT: All right.

25 MS. MULKEY: And Officer Stott, with the North

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 Charleston Police Department and Detention Officer
2 Kirk, with the North Charleston Police Department.

3 THE COURT: So who is the case agent? Is it
4 Hille?

5 MS. MULKEY: Stott.

6 THE COURT: So he'll be in the entire time. He
7 may come in now.

8 And who do you have?

9 Mr. Judon, you may have a seat. Thank you.

10 And, Ms. Gay, who do you have?

11 MS. GAY: I am going to call Mr. Malloy. He's
12 going to testify first, so I don't know if it matters
13 if he has to be sequestered or not. I mean, I don't
14 know that she's asking for -- he just is going to be
15 sitting here listening to it, but it will be up to the
16 Court on whether or not he's sequestered.

17 THE COURT: I'm going to go ahead and sequester
18 him, as well.

19 MS. GAY: Okay. Is he in the room now?

20 THE COURT: I think he left.

21 MS. GAY: Okay. And I -- housekeeping matters,
22 Your Honor: there are two pieces of information that
23 I obtained pursuant to a valid subpoena that -- one of
24 them is from the North Charleston prosecutor, and
25 who's the attorney for North Charleston, and he

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 responded to my subpoena through an e-mail and I
2 believe this solicitor is willing to allow the
3 response from him in the e-mail to be what it is -- we
4 put it in this record -- as opposed to having him come
5 and testify to --

6 THE COURT: We'll just mark it. Is that
7 correct?

8 MS. MULKEY: I don't have a problem with it
9 being introduced into evidence with the understanding
10 that we can't substantiate in the past what they
11 literally say. So they can -- I think there's some
12 inferences that she would like to draw from those.
13 And the State doesn't have a problem with the e-mails
14 going in but we cannot -- as I advised her, I have no
15 ability to question him further on it.

16 MS. GAY: Well, I think that what it says on
17 the paper is what I want the Court to read, whether
18 actual -- I mean, she can make her own inferences.
19 I'm just telling you that this is what the response
20 was.

21 May I show you what we're talking about, Your
22 Honor?

23 THE COURT: You have no objection to these.
24 Please mark them. They will be Defendant's 1 and 2.

25 Is that correct?

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. GAY: Yes.

2 This is 1 and this is 2. Thank you.

3 [Whereupon, Defendant's Exhibit Number 1 is
4 marked by the court reporter]

5 [Whereupon, Defendant's Exhibit Number 2 is
6 marked by the court reporter]

7 MS. GAY: Should I identify them, Your Honor?

8 THE COURT: Let the --

9 MS. GAY: Okay. 1, Defendant's 1, is -- I sent
10 an e-mail from that subpoena to the North Charleston
11 attorney asking for any maintenance records for car
12 230, as our previous extension of what we've been
13 doing this morning. We've been advised that the
14 officer was driving in car 230 on the day of this
15 incident. And the response that he got is from -- the
16 person at North Charleston who handles maintenance
17 problems sent him an e-mail and indicated -- well, it
18 indicates that they had no record of there being any
19 problem with that car. And he forwarded that to me
20 and I forwarded it to her and then printed a copy for
21 the Court.

22 The second one, Your Honor, is I sent a subpoena
23 -- it's in the back, I believe -- to Sykes Radio Shop.
24 That is the radio company that fixes broken cars --
25 radios, car cameras, and has the contract with North

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 Charleston to fix the cameras when they're broken.
2 And he has responded to my subpoena indicating that he
3 has never repaired the camera in that car.

4 THE COURT: So what I understand is there has
5 been no repair on this car. Is that all this -- these
6 two e-mails --

7 MS. GAY: Right.

8 THE COURT: -- can say?

9 MS. GAY: Yes.

10 MS. MULKEY: Correct.

11 MS. GAY: Yes, ma'am. That there's been no
12 repair of any -- of the in-car camera in that car.

13 MS. MULKEY: According to those individuals.

14 THE COURT: According to those individuals.

15 Defendant's 1 and 2 into evidence without
16 objection, then..

17 [Whereupon, Defendant's Exhibit Number 1 is
18 admitted into evidence by the Court]

19 [Whereupon, Defendant's Exhibit Number 2 is
20 admitted into evidence by the Court]

21 THE COURT: And so this will prevent Mr. Sykes
22 and who else from testifying?

23 MS. GAY: Joseph Kaiser, who's the prosecutor --

24 THE COURT: And Joseph Kaiser.

25 MS. GAY: -- attorney for the City of North

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 Charleston.

2 THE COURT: Is that correct, Ms. Mulkey?

3 MS. MULKEY: Yes, Your Honor.

4 THE COURT: Thank you.

5 MS. GAY: The other thing, Your Honor, that I
6 would like to make as a part of this record -- which I
7 believe the motions that we filed and the State's
8 response motions bring us here. What I believe is --
9 I don't have the access to the most current North
10 Charleston policy and procedure manual. It's a 2012
11 manual. What is put as a response of her -- response
12 to my motion and her -- is the section having to do
13 with these in-video -- vehicle video cameras. And
14 it's the actual current 2012 section of the North
15 Charleston policy and procedure manual. And that was
16 one of the things that I asked Mr. Kaiser to bring and
17 to give me, and I didn't feel that he needed to bring
18 it because she had provided that to the Court. And I
19 would like to make that an exhibit to this hearing
20 because she's included it as her motion and it was
21 part of this hearing -- but as an exhibit. And I
22 don't have it because I didn't -- I wasn't --

23 THE COURT: Do I have a copy of the entire
24 manual? Is that what --

25 MS. GAY: The sections that are important --

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. MULKEY: Your Honor, attached to the motion
2 to dismiss was the policy -- the particular part of
3 the policy manual that dealt with the vehicle video
4 camera. And she had included it as an exhibit or
5 attachment on the motion to dismiss.

6 THE COURT: I do not have that attachment.

7 MS. MULKEY: I have -- I'm sorry. On my
8 response.

9 I have a copy for you, if you would like.

10 MS. GAY: The one she sent me on the internet
11 had it, so that's why I thought that it was an
12 exhibit. It's actually listed as an exhibit. So you
13 should have it, and I guess you don't.

14 THE COURT: I do not.

15 MS. MULKEY: May I approach, Your Honor?

16 THE COURT: You may.

17 [Whereupon, Ms. Mulkey proffers documents to the
18 Court]

19 THE COURT: Filed March 12th? Is this the one
20 we're talking about?

21 [Whereupon, Ms. Gay and Ms. Mulkey confer]

22 MS. GAY: Yes, ma'am. So the --

23 THE COURT: The March 12th?

24 MS. MULKEY: Yes, Your Honor.

25 THE COURT: I don't --

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. GAY: Many of the things that I --

2 THE COURT: Ms. Gay, please. Thank you.

3 It just didn't -- the exhibits just didn't make
4 it.

5 MS. MULKEY: I apologize.

6 THE COURT: I have the motion, I just didn't get
7 the --

8 MS. MULKEY: I apologize.

9 THE COURT: I'm going to go ahead and mark
10 Court's 1 as your motion, then, unless you intend --
11 you're going to introduce them?

12 MS. MULKEY: I'm fine with them being marked.
13 No objection from the State.

14 MS. GAY: I would like to introduce it as a --

15 THE COURT: All right. Then mark it as
16 Defendant's 3.

17 MS. GAY: We could just do the exhibit portion.
18 It doesn't matter. I'm not going to show the witness
19 her motion, but --

20 THE COURT: It's just for purposes of today's --

21 MS. GAY: Yes, ma'am.

22 [Whereupon, Defendant's Exhibit Number 3 is
23 marked by the court reporter]

24 THE COURT: Any other housekeeping matters,
25 Ms. Gay?

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. GAY: I don't believe there's anything else,
2 other than this overall issue, Your Honor, that would
3 involve, now, testimony.

4 And I guess what Ms. Mulkey is asking is are
5 we -- are we going to proceed as if, you know, it's
6 some of these like Jackson v. Denno type situations
7 where I make an objection and then they put up the
8 evidence to support the constitutionality? Or are you
9 going to do it more like a suppression where I'm
10 supposed to create -- I'm supposed to present first to
11 say the problem and then they come back around? I
12 don't think either of us has been in this situation
13 before, so we don't know the procedure of how -- who
14 should go first.

15 THE COURT: I think you have to make the -- you
16 have to demonstrate that the -- you have the burden of
17 demonstrating that the evidence was favorable, it was
18 in the possession or known to the prosecution, it was
19 suppressed, and it was material to guilt or
20 punishment.

21 Wouldn't you agree, Ms. Gay, that's what --

22 MS. GAY: Yes, ma'am. Yes. I'm --

23 THE COURT: At that point, then I think it
24 becomes your burden. So it will be more like a
25 suppression hearing. And that's how I intended to

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 conduct the hearing, unless you have another different
2 way that you think it should be handled.

3 MS. GAY: Well, Your Honor, I believe that since
4 I've asserted that there is a constitutional problem
5 similar to the Jackson v. Denno situation, you know,
6 the statement having been taken in a constructional
7 [phonetic] manner and it should therefore not be used
8 in the trial, that the State should have the initial
9 burden to show that they -- that this piece of
10 evidence was I guess not withheld or not preserved.

11 THE COURT: Ms. Mulkey, as to the timing and
12 the -- what is your position?

13 MS. MULKEY: Your Honor, the State's position is
14 that this is before the Court as a motion to -- the
15 basis for her motion to dismiss, alleged Brady
16 violations, would shift the burden to the defendant,
17 as Your Honor just went through some of those factors,
18 to show that there -- evidence was in fact available,
19 that it was either known or suppressed by the
20 prosecution. And it goes through a list of factors.

21 We believe, therefore, that the defendant has
22 the burden to follow through with this motion and the
23 State is going to respond.

24 THE COURT: All right. That's how I'm going to
25 conduct it, Ms. Gay. So tell me, just in a brief

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 introduction, the basis of your motion to dismiss and
2 what you would like for me to be focused on throughout
3 your argument and testimony.

4 MS. GAY: Yes, ma'am.

5 My motion to dismiss is based on the fact that
6 after much discussion and investigation on my part and
7 the solicitor's part, we have determined that a
8 functional, operational in-car video was in the car
9 that was used during the date that my client was
10 arrested on August 26th, 2013.

11 That functional operational camera had a certain
12 procedure that it operated in always. They do a
13 certain thing every time, and they are doing that to
14 preserve --

15 THE COURT: Ms. Mulkey, are you stipulating that
16 the camera was functional and operational at this
17 time?

18 MS. MULKEY: We are stipulating that we have no
19 records that say that the camera itself was not
20 operating correctly. We don't have -- and that's to
21 the extent of the camera. There's the subsequent
22 issue of the server.

23 THE COURT: So you agree that a camera was
24 functional and operating at that time? at the time of
25 this arrest?

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. MULKEY: We stipulate that based on the
2 information in front of us, there is -- there are no
3 records to indicate that it was -- that it was not
4 working. Yes, Your Honor.

5 THE COURT: But that doesn't indicate it was
6 working.

7 MS. MULKEY: Correct, Your Honor.

8 MS. GAY: Well --

9 THE COURT: Then you can't stipulate to that.
10 See, that's -- I think, Ms. Gay, that's -- which
11 was a challenge here to these e-mails is just because
12 there was no record that it was broken doesn't mean
13 that it was functioning.

14 MS. GAY: Your Honor, pursuant to what I know
15 after -- and we can -- maybe we need to get Tammy,
16 from North Charleston, subpoenaed up here to talk
17 about it. Because these cameras --

18 THE COURT: I'm here today.

19 MS. GAY: I know.

20 These cameras, unless they're broken, they work.
21 And that's what everything says, is unless they are
22 taken off the road as broken, they are functional.
23 And as -- if you -- you do not have it in your hand --

24 THE COURT: But is there -- has somebody said
25 this camera was broken?

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 MS. GAY: No, nobody said the camera is broken.
2 That's the point.

3 THE COURT: And how --

4 MS. GAY: -- nobody says it's broken. We have
5 to assume --

6 THE COURT: -- and what --

7 MS. GAY: -- it works.

8 THE COURT: Ms. Gay, please.

9 At what point does somebody make a determination
10 that the camera is broken?

11 MS. GAY: They make a determination that --

12 There's more information that we can share.
13 This officer was riding around in a different car
14 first and --

15 THE COURT: All right. So I think that it is
16 not appropriate at this time to make a statement that
17 the camera was functional and operational. You don't
18 have anything submitted that indicates that that is
19 correct. All you have is that it wasn't broken or
20 hadn't been in --

21 MS. GAY: Well, if it's broken -- and I think
22 Ms. Mulkey will agree with this. She's said enough on
23 this, too. When it's broken, they have a --

24 THE COURT: But she can't stipulate to that.

25 MS. GAY: This is the problem --

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 THE COURT: We don't know that it wasn't broken.
2 We don't know that it was working. That's the issue.

3 MS. GAY: I think the issue is is that if it's
4 not broken, Your Honor, we can assume that it was
5 working. And I believe that that's a viable
6 assumption.

7 THE COURT: I'm not comfortable making that
8 assumption, Ms. Gay.

9 MS. GAY: Well, I mean, the law -- the video
10 vehicle camera [phonetic], which you didn't have the
11 first time this morning, it says that when the camera
12 is in the car, that it will turn on when the blue
13 lights come on, that it will record the arrest, that
14 it is to be given up as evidence. These are things
15 that apply to when the camera works. If the camera
16 isn't broken, Your Honor, it works. It is a car that
17 is listed as a camera car.

18 THE COURT: But what is the fail-stop that says
19 the camera is working? What prevents it from -- what
20 alerts somebody to know that the camera is --

21 MS. GAY: The officers --

22 THE COURT: -- or isn't working?

23 MS. GAY: The officers know that -- okay.

24 Everything --

25 THE COURT: And is the officer going to -- are

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 you going to elicit testimony that the officer is
2 going to state this was a functional camera?

3 MS. GAY: The officer is going to state that he
4 was in a car with a malfunctioning camera, that they
5 took him out of that car and they gave him this car,
6 which is 230, because this car didn't have any
7 problem.

8 And that is part of this case. There was
9 another car with a dysfunctional camera. He was taken
10 out of that car and put into this car because this car
11 didn't have any problems.

12 THE COURT: Ms. Mulkey, are you stipulating that
13 in the car there was a functional camera?

14 MS. MULKEY: The camera -- yes.

15 We are stipulating that based on the records
16 here, we cannot say it was not operational. It is
17 true he was removed from a car. And that's part of
18 the testimony we plan to present.

19 I think the problem here is that the camera can
20 be operational and it does activate when the blue
21 lights activate. But some of the problems that they
22 were experiencing were the light would come on but it
23 actually wasn't tracking to the server. So it appears
24 that the camera itself is operational. But without
25 later downloading that, they don't know if it actually

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 recorded it.

2 So we have no problem stipulating to the fact
3 that on August 26th, when these officers went into
4 their car and activated their blue lights, they were
5 under the assumption that this camera was recording.
6 But our stipulation would stop there because whether
7 it actually recorded, we do not know.

8 THE COURT: All right.

9 MS. GAY: And the only thing I would say is then
10 this gets us to where -- it's then the officers -- the
11 North Charleston police officers' responsibility and
12 duties, based on these regulations that -- the
13 procedures that she's given to you, to be the person
14 who confirms the video, sends the video over to
15 evidence, decides what's going to happen with the
16 video. There are specific regulations that says that
17 they will send the video over as evidentiary value.

18 THE COURT: Call your first witness.

19 MS. GAY: I call Mr. Luke Malloy.

20 [Whereupon, Mr. Malloy enters the courtroom]

21 [Whereupon, Mr. Malloy is duly sworn by the
22 clerk of court as follows: do you swear or affirm
23 your testimony will be the truth, the whole truth, and
24 nothing but the truth, so help you God]

25 THE WITNESS: I do.

State vs. Elliott Judon, Jr.
Motion to Dismiss
March 13, 2015

1 THE CLERK OF COURT: Please state your full
2 name, and spell your last name for the record.

3 [Whereupon, Mr. Malloy takes the witness stand]

4 THE WITNESS: Luke Malloy. M-A-L-L-O-Y.
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Motion to Dismiss
Luke Malloy
Direct Examination by Ms. Gay

1 LUKE MALLOY,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. GAY:

6 Q. Mr. Malloy, we're here today about a matter
7 involving Elliott Judon. And at some point, you --
8 Well let me ask this first. Where are you
9 employed?

10 A. The Charleston public defenders office.

11 Q. Were you employed with the Charleston public
12 defender's office in August of 2013?

13 A. I was.

14 Q. On August 26th?

15 A. I was.

16 Q. And did you have an occasion to represent
17 Mr. Elliott Judon at that time?

18 A. I did.

19 Q. Can you check your records for us, please, and
20 determine when -- okay. What date was Elliott Judon
21 arrested?

22 A. He was arrested on the matter before us on
23 August the 27th, 2013.

24 Q. And what date did the incident occur?

25 A. I believe it would have been that same day.

Motion to Dismiss
Luke Malloy
Direct Examination by Ms. Gay

1 Q. Could you refresh your recollection for me,
2 because I think we all would agree that --

3 [Whereupon, the witness reviews documents]

4 A. I'm sorry. The incident looks like it was
5 August 26th --

6 Q. [Ms. Gay] Thank you.

7 A. -- 2013.

8 Q. On that date, were you assigned to represent
9 Mr. Judon for an arrest 8/26/2013?

10 A. I was.

11 Q. Pursuant to that assignment and that
12 representation, you did some paperwork that we commonly
13 refer to as like a representation letter and some things
14 like that. Can you tell the Court what date and what type
15 of paperwork was presented?

16 A. I signed a Rule 5 request on August 28, 2013.
17 It appears it was served on the solicitor's office on
18 August 29th, filed with the clerk of court on August the
19 30th.

20 Q. And who did you serve your Rule 5 notice to?

21 A. It would have been served -- it would have been
22 taken I believe to the front desk of the solicitor's
23 office. Not by me personally, but by one of our staff.

24 Q. And do you recall that -- who the prosecutor was
25 at the time? Was it Ms. Mulkey or was it another person?

Motion to Dismiss
Luke Malloy
Direct Examination by Ms. Gay

1 A. It was not. It was Julie Cardillo.

2 Q. And so Ms. Cardillo, it's your understanding
3 based on what you have in your file, did, in fact, receive
4 your request?

5 A. That is my understanding.

6 Q. And pursuant to that, did you receive stuff
7 back?

8 A. We did receive discovery.

9 Q. And when you say we did receive discovery, can
10 you tell the judge when and what you got?

11 A. I'm showing the discovery was sent to our office
12 on October the 23rd. Specifically, it was e-mailed to me
13 by my paralegal on October the 25th, 2013.

14 Q. And do you have a copy of discovery, of your
15 initial Rule 5 discovery request, as well as a copy of the
16 discovery that you received?

17 A. I do.

18 Q. May I see that, please?

19 [Whereupon, Ms. Gay reviews documents]

20 MS. GAY: Thank you. I'm going to -- may I mark
21 this, please?

22 [Whereupon, Defendant's Exhibit Number 4 is
23 marked by the court reporter]

24 MS. GAY: Thank you.

25 Q. [Ms. Gay] I'm going to show you what's been

Motion to Dismiss
Luke Malloy
Direct Examination by Ms. Gay

1 marked for purposes of identification Exhibit 4 and ask
2 you if you could describe this document, please.

3 A. This is the Rule 5 request that I signed
4 regarding Elliott Judon, trafficking, 2013A1010204714.

5 Q. And on the top does it have a person's name?

6 A. It does. Cardillo.

7 MS. GAY: Okay. I would like to move --

8 Q. [Ms. Gay] Is this in substantially similar
9 condition that it was the day that you did this?

10 A. It is. It's a copy.

11 MS. GAY: I'm going to show this to the
12 solicitor.

13 [Whereupon, Ms. Mulkey reviews documents]

14 MS. MULKEY: No objection.

15 MS. GAY: I would like to move this document
16 into evidence, Your Honor.

17 THE COURT: What is the number?

18 MS. GAY: 4.

19 THE COURT: Defendant's 4 into evidence without
20 objection.

21 MS. GAY: Thank you.

22 [Whereupon, Defendant's Exhibit Number 4 is
23 admitted into evidence by the Court]

24 Q. [Ms. Gay] Now, with regard to your discovery
25 material that you received: this is the front cover?

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 ELLIOTT JUDON,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. GAY:

6 Q. On the day you were arrested, which was August
7 26th, 2013, you got found with some drugs on your person;
8 isn't that true? They were -- drugs were on you?

9 A. Correct.

10 Q. And I want you to tell the Court how this arrest
11 went down. You were present. I wasn't present. None of
12 us were present. I want you to tell the judge how you
13 were arrested and what went on during that arrest. And
14 then if there is something specific I need to ask you,
15 I'll let you know. But I want you to tell the judge what
16 happened.

17 A. Well, I was -- I came from my aunt house on
18 Constitution Avenue, Constitution and Dorchester Road,
19 and --

20 Q. What time was it?

21 A. I dropped my stepson off -- I pick my stepson
22 off from school about 3:30, so this -- I went to my aunt
23 house about maybe 4:00. Stayed there about twenty
24 minutes, so it had to been maybe about 4:15, to be exact.

25 Q. And then you're at Constitution --

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 A. I'm at Constitution -- I'm at Constitution and
2 Dorchester Road. As I was approaching Dorchester Road,
3 they was -- they was pulling out behind a church at the
4 same time. They got behind me --

5 Q. Who is they?

6 A. The police officer -- marked police officer car.

7 Q. The marked police officer car. Okay. Go ahead.

8 A. They was behind me at the light. The light
9 turned green. I made a left on Dorchester Road. They
10 follow me. They was close. They was following me real,
11 real close. I went, caught the train tracks. I came to
12 the intersection of Meeting Street and Dorchester Road.
13 The light caught me again at Meeting Street and Dorchester
14 Road. I was signal to make a left on Meeting Street road.
15 Light turned green. I made the left. They still
16 following me. I was still followed maybe about three
17 miles. They hit the emergency lights. I thought that --

18 Q. Emergency lights are what?

19 A. The police -- the car -- the car patrol hit
20 the -- activated their lights. Heard a siren, so I
21 thought they was actually in pursuant of something. So
22 being that -- knowing the rules and regulations of the
23 road, I veer off to the right side of the road. When I
24 looked in my rearview mirror they was behind me, so --

25 Q. With the blue lights on?

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 A. With the blue lights on.

2 Two officers came to the car. One officer came
3 to the driver's side and one came to the passenger side.
4 When they came to the car they said, down the windows now,
5 what are you doing, these windows are too dark, down these
6 windows now. The other one on the other side said,
7 where's the paperwork to the car. I was like, you know, I
8 can't do two things at one time.

9 Being that I just renew my car rental, because I
10 had an accident, I kind of like was looking for the
11 paperwork. I give him the paperwork. He went back to the
12 vehicle. They went back. I sat in my vehicle maybe about
13 ten, fifteen minutes.

14 He came back. Officer Kirk came to the vehicle
15 and I believe that Officer Stott stayed present at his
16 vehicle, at the patrol car. At the time, Officer Kirk
17 told me to step out of the vehicle. When he told me to
18 step out the vehicle, I said, well, officer, is my license
19 suspended or anything. He replied, just step out of the
20 vehicle.

21 Once I stepped out the vehicle, he tell me to
22 spread my legs. He patted me down. At the time he patted
23 me down, he was like frisketing [phonetic] towards like my
24 zipper part, like my penis part. I was like, what's going
25 on.

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 So after that he told me, step back to the -- he
2 want me -- he telling me to go back to the vehicle where
3 the other officer was. When I was walking back toward the
4 other officer, the other officer he replied, hey, what are
5 your pants doing unzipped. So I was like, you didn't see
6 the -- you didn't see the officer just patted me down
7 playing with my zipper area?

8 So at that time, the other officer must have
9 went in the car and start searching the car. So Officer
10 Stott, he believed that he noticed some type of -- and I
11 was like, you know, I hadn't been in trouble almost in
12 about five years.

13 So after that, Officer Kirk, he like did some
14 kind of head motion or some type of signal. And then he
15 was like, you know -- and then Officer Stott, the other
16 officer, was by the car. Said, you know, I believe -- he
17 said -- he said that, we might could take you to jail for
18 residue in the car.

19 Q. Let's back up. So when you were in front of the
20 car, okay, you're originally by your car and you were
21 spread and you were patted down and that's when the guy
22 did something with your zipper?

23 A. Yes.

24 Q. Then you were told to go stand in front of the
25 police car?

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 A. Correct.

2 Q. So and then at that point your communication
3 with Officer Stott was in front of the police car?

4 A. Correct.

5 Q. And then at that time, did either of the
6 officers ask you if you would consent to searching your
7 car?

8 A. No, sir. No, ma'am.

9 Q. And it's your understanding that Officer Kirk
10 was inside the car looking for stuff --

11 A. Correct.

12 Q. -- while you were standing in front talking with
13 Officer Stott?

14 A. Correct.

15 Q. And then something went on and they -- the
16 officers said something about they could arrest you for
17 stuff they found in the car?

18 A. Correct.

19 Q. And was there any mention whatsoever about a
20 camera?

21 A. And that's when Officer Kirk pat me down again.
22 When Officer Stott said -- when Officer Stott said that we
23 might can take you to jail for the residue, and I believe
24 you got something -- something on you, officer -- the
25 other officer, Kirk, says step in front of the camera and

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 let me pat you down. He pat me down again. I was like,
2 why you patting me down again.

3 And that's when he said again he might could
4 take me to jail. And we got -- everybody kind of stopped
5 for about ten seconds. And that's when I said, well, you
6 know what, I'm just do y'all a favor. And that's how the
7 drugs got revealed.

8 Q. Okay. So you admit that you voluntarily gave
9 them a bag of drugs out of your crotch area --

10 A. Correct.

11 Q. -- after they told you that they had found stuff
12 in your car and they could arrest you?

13 A. Correct.

14 Q. And you -- but your testimony to the Court this
15 morning is is that finding the stuff in the car you did
16 not consent to?

17 A. No, ma'am. Never did consent.

18 Q. And that it was your understanding that you were
19 going to jail anyway?

20 A. Not -- no. My understanding -- I didn't believe
21 I was going to jail because he didn't -- he didn't say
22 that I was under arrest or anything, so it was to my
23 recollection that he was letting me go. So being for
24 failure for -- I said, you know, well, I'll just -- I'll
25 do y'all -- I'm going to do y'all a favor.

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 Q. Now, did you believe that you were detained? I
2 mean, did you believe you were free to leave at that point
3 in time?

4 A. I couldn't have been free to leave because my
5 driver's license wasn't in my possession or anything like
6 that. So I couldn't go.

7 Q. And at that point, weren't your pants kind of
8 hanging off a little bit, too?

9 A. Yeah. My pants were unzipped at the time.

10 Q. And it's your testimony that Officer Kirk had
11 unzipped your pants?

12 A. Correct.

13 Q. And so it's your testimony that you were not
14 free to leave?

15 A. Correct.

16 Q. And at that point, did they ever mention to you
17 that they might be able to charge you with a traffic
18 violation?

19 A. They never did mention a traffic -- one -- they
20 mention a traffic violation is when I was in the salley
21 port to Charleston County. And that's when I believe he
22 was writing the ticket.

23 But I never did receive any indication that I
24 was getting a traffic violation or anything. I didn't
25 really actually know what they pulled me over for.

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 Q. So you didn't know what they were pulling you
2 over for and they never gave you a blue ticket that said
3 that you had done something wrong in the traffic codes?

4 A. Never received a ticket.

5 Q. Or a warning?

6 A. Or a warning. Never did.

7 MS. GAY: One moment, Your Honor.

8 THE COURT: Take your time.

9 MS. GAY: I have no further questions. You can
10 answer Ms. Mulkey's questions.

11 THE COURT: Ms. Mulkey, any questions?

12 MS. MULKEY: Just a few, Your Honor. May it
13 please the Court.

14 Good morning, Mr. Judon.

15 THE WITNESS: Good morning.

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Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

CROSS-EXAMINATION

1
2 BY MS. MULKEY:

3 Q. You say you were coming from your aunt's house
4 on Constitution Avenue?

5 A. Correct.

6 Q. And it was about what time in the afternoon?

7 A. I would say about 4:00 or 4:15, somewhere around
8 that range.

9 Q. Had you had something to eat recently?

10 A. Something to eat recently? Maybe about two
11 hours ago, me and my wife went out to eat.

12 Q. Do you remember where that was at?

13 A. Fatz restaurant off of International Boulevard
14 if I'm not mistaken.

15 Q. Were you having any digestive issues as a
16 result?

17 A. A little. Yes, ma'am.

18 Q. Do you recall a conversation with the officers
19 that day about having some stomach issues?

20 A. Correct.

21 Q. That you had to use the bathroom recently?

22 A. Correct.

23 Q. And do you recall your conversation with the
24 officers in reference to your pants and that -- and your
25 bathroom visit?

Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. Correct.

2 Q. So do you acknowledge that as a result of these
3 digestive issues you were having -- in fact, when the
4 officers pulled you over, your pants were in disarray
5 because you said you were going to the bathroom?

6 A. No, ma'am.

7 My pants were zipped up. Everything was intact.

8 Q. You said they activated their blue lights, you
9 thought they were in pursuit, but eventually you pulled
10 over?

11 A. Yes.

12 After they did the lights, I immediately pulled
13 over to the right side of the road.

14 Q. And if the video was here, it would show that
15 you immediately pulled over?

16 A. Most likely.

17 It definitely show I exactly pulled right over
18 to the right side.

19 Q. Most likely? Or exactly?

20 A. Definitely. Not most likely.

21 Definitely, it'll show I pulled right off on the
22 side of the road.

23 Q. Okay. Did you understand the reason you were
24 stopped?

25 A. No, ma'am.

Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. What did you mean when you said earlier that the
2 officers said down the windows because they were too dark?

3 A. They just said, down these windows now, down
4 these windows now -- to the car.

5 He never did indicated that he pulled me over
6 for I believe the tint was too dark, anything of that
7 manner.

8 So it could have been anything. I didn't know
9 what he was pulling me over for.

10 Q. Was there a tint on the vehicle's windows?

11 A. Correct.

12 Q. And was that installed by the rental company?

13 A. Well, the -- I had installed the tint on the
14 window, so I know for a fact the tint was thirty-five
15 percent.

16 Q. Thirty-five percent? Do you know what the law
17 is on that?

18 A. The law is, matter of fact, twenty-seven
19 percent.

20 Q. Do you recall Officer Kirk using a window-tint
21 meter?

22 A. No, ma'am.

23 Q. No?

24 A. I never recall him putting the tint -- the
25 window meter on.

Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. Did you ever see a window-tint meter?

2 A. Never did saw a window tint.

3 The only way I know that -- I have a data that
4 states that he tinted -- he tested the window at eighteen
5 percent. Being that I used to tint windows in my prior
6 lifestyle, there's no eighteen percent.

7 There's no tint that states eighteen percent.
8 It's thirty-five, twenty-seven, twenty, and five. And
9 five is the darkest that you can get.

10 Q. So your testimony is that you tinted the windows
11 in --

12 A. Correct.

13 Q. -- in the rental vehicle?

14 A. Correct.

15 Q. Okay. But you believe that they were -- it was
16 a legitimate tint?

17 A. I know that it was legitimate. Thirty-five
18 percent.

19 Q. Did you go straight to the jail after this
20 incident?

21 A. No, ma'am.

22 Q. Where did you go?

23 A. When they arrested me, the other officer drove
24 off -- sped off in my car. They followed each other to
25 the precinct, and we went to the precinct after that.

Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. Did they offer you an opportunity to work for
2 narcotics that day?

3 A. Some -- one officer gave the opportunity, but
4 Officer Kirk didn't -- Kirk gave the opportunity but Stott
5 was like, no. So one was saying yeah and one was saying
6 no.

7 Kirk was more -- Kirk was more cooperative and
8 Kirk -- and I mean, Kirk was not -- Stott was not.

9 Q. I'm not sure I follow you on that.

10 But as a result of your arrest that day, you
11 were given an opportunity to work for the narcotics unit;
12 correct?

13 A. To be honest with you, ma'am, I presented it to
14 them.

15 They never did gave me the opportunity. I
16 presented -- I presented it to them. Officer Kirk agreed
17 with it but Officer Stott, he didn't -- he didn't want to
18 agree with it.

19 Q. Did you go to a substation after your arrest
20 instead of a jail?

21 A. I believe that was a precinct substation, yeah.
22 It could be, yes, ma'am.

23 MS. MULKEY: Beg the Court's indulgence.

24 Q. [Ms. Mulkey] Mr. Judon, why would you install
25 that tint on your rental vehicle?

Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. Because it was hot summertime. I was in a car
2 rental.

3 I had -- I was in a car rental about six months
4 so due to the heat index and humidity inside the car, I
5 tinted it just to -- that's why I did it.

6 Q. And you said you used to work tinting windows?

7 A. Correct.

8 Q. Could you tell me a little bit how -- about how
9 a tint helps keep you cool?

10 A. Because it helps eliminate the sun from being
11 direct on the person in the car.

12 Q. And the darker the tint is would make it cooler
13 inside?

14 A. Correct.

15 Q. But your testimony is that you were within the
16 legal limit?

17 A. Correct.

18 Q. When you went to the substation that day with
19 the officers, did you fill out any paperwork?

20 A. No, ma'am, no paperwork at all. Everything was
21 just verbal conversation.

22 Q. Did you consent to search?

23 A. Yeah, I -- I did consented. I think I had like
24 \$200 in my possession, and I did.

25 Q. And you did what?

Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. He just said, well, if you don't sign it over
2 you're going to get no bond, and if you sign it over you
3 can get a low bond. So I just signed -- yes, I just
4 signed it over.

5 Q. Even though the paperwork says that you're
6 signing it over because you want to?

7 A. Correct.

8 Q. Okay. How long did this entire incident last
9 prior to your move to the -- to go to the substation?

10 A. Prior to the arrest?

11 Q. From when they pulled you over to when you
12 guys left and went to the substation, based on your
13 cooperation?

14 A. I would say maybe thirty, thirty-five minutes,
15 somewhere in that range.

16 Q. Would it surprise you if the incident report
17 says that it was about ten minutes?

18 A. There's no way. I was sitting and waiting in my
19 car for them to come back about ten minutes so I know it
20 was more -- way more than ten minutes. The incident
21 report can -- you can basically say anything.

22 MS. MULKEY: All right. We have no further
23 questions, Your Honor.

24 THE COURT: Ms. Gay, redirect?

25 MS. GAY: Thank you.

Motion to Dismiss
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

REDIRECT EXAMINATION

BY MS. GAY:

Q. Mr. Judon, all the discussion about you possibly walking -- or talking with North Charleston happened after they placed you under arrest and then you went to a substation, not on the roadway?

A. Correct.

Q. And you said that the time that this took, you said you thought it was at least maybe thirty, thirty-five minutes. Would you agree with me that if we had a video from that car, that it would be clear how long it all took?

A. Correct.

Q. And so right now when she tells you that it was only to have taken the ten minutes, do you agree with that?

A. Not at all.

Q. So it's your testimony that you were out there on that roadway a lot longer than ten minutes?

A. Way more than ten minutes.

Q. And you said that they never gave you a ticket for the tint problem?

A. Correct.

MS. GAY: I have no further questions, Your Honor.

MIA PERRON, CVR-CM-M

-65-

Motion to Dismiss
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 THE COURT: Ms. Mulkey?

2 MS. MULKEY: Nothing further from the State,
3 Your Honor.

4 THE COURT: You may step down, Mr. Judon. Thank
5 you.

6 [Whereupon, Mr. Judon is excused and exits the
7 witness stand]

8 THE COURT: Call your next witness.

9 MS. GAY: One moment, Your Honor. Your Honor,
10 may I take a brief break and be right back?

11 THE COURT: Certainly.

12 [Off the record momentarily]

13 THE COURT: Whenever you are ready.

14 MS. GAY: Well, Your Honor, I don't have anymore
15 witnesses. I have more argument as to things related
16 to known facts and stipulated stuff and such. But I
17 don't know if you want me to -- I would prefer to wait
18 until after the witness testifies. I assume she's
19 going to put a police officer up. But I can do it at
20 whatever point you want me to.

21 THE COURT: All right. Counsel approach.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: Ms. Mulkey, I'm going to just -- if
25 you will just call the witnesses that you have. Thank

Motion to Dismiss
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 you.

2 MS. MULKEY: Thank you, Your Honor.

3 The State would like to call Officer John Stott.

4 [Whereupon, Mr. Stott comes forward]

5 THE CLERK OF COURT: Put your left hand on the
6 Bible and raise your right hand.

7 [Whereupon, Mr. Stott is duly sworn by the clerk
8 of court as follows: do you swear or affirm that your
9 testimony will be the truth, the whole truth, and
10 nothing but the truth, so help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: Be seated.

13 [Whereupon, Mr. Stott takes the witness stand]

14 THE CLERK OF COURT: If you'll please state your
15 full name, and spell your last name for the record.

16 THE WITNESS: John Michael Stott, S-T-O-T-T, Jr.

17 THE COURT: Thank you, Ms. Mulkey.

18 MS. MULKEY: Thank you, Your Honor. May it
19 please the Court.

20 In an effort to be efficient in light of all the
21 motions before the Court, we were going to go ahead
22 and get the case agent to elicit a bulk of the
23 testimony, if Your Honor is okay with that.

24 THE COURT: Thank you.

25 MS. MULKEY: Thank you, Your Honor.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

JOHN M. STOTT, JR.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Officer Stott, where are you presently employed?

A. North Charleston Police Department.

Q. And how long have you worked there?

A. Since February of 2009.

Q. Do you have any other law enforcement
experience?

A. I do.

Q. And where was that at?

A. Mount Pleasant Police Department.

Q. And how long did you work there?

A. From December of 2006 to February of 2009.

Q. Can you tell the Court a little bit about the
training and education that you have?

A. Sure.

I have a bachelors degree in finance from East
Carolina University. I graduated from the South Carolina
Criminal Justice Academy. And I've had roughly eighty
hours in criminal drug interdiction courses, as well as
annual ethics, police ethics, training.

Q. Wonderful. Thank you.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 What is your current assignment?

2 A. I'm a narcotics detective.

3 Q. And have you worked in any other units during
4 your tenure as a police officer?

5 A. I have.

6 Q. And what are those units?

7 A. The speed team, which is on special operations,
8 and the bike team, bike unit.

9 Q. And what was your assignment back in August of
10 2013?

11 A. Bike unit.

12 Q. And prior to that, had you had any specialized
13 unit experience?

14 A. Yes, ma'am.

15 Q. And what was that?

16 A. Narcotics assignment, special operations, for
17 two years.

18 Q. Did you have the occasion to become involved --
19 in the case before us today -- with the defendant on
20 August 26th of 2013?

21 A. Yes.

22 Q. Can you elaborate on that?

23 A. As far as how we made contact with him?

24 Q. Yes, sir.

25 A. A traffic stop for an equipment violation.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. And where did that traffic stop occur?

2 A. Meeting and Edgewood.

3 Q. Is that an intersection that's located in
4 Charleston County?

5 A. Yes.

6 Q. And when you performed that traffic stop, were
7 you able to identify the driver?

8 A. Yes.

9 Q. And who was that?

10 A. Elliott Judon.

11 Q. Do you see that individual in the courtroom
12 today?

13 A. I do.

14 Q. Was there anyone else in the vehicle?

15 A. No, ma'am.

16 MS. MULKEY: Your Honor, I would like to let the
17 record reflect that the detective has identified the
18 defendant.

19 THE COURT: It will.

20 MS. MULKEY: Thank you, Your Honor.

21 Q. [Ms. Mulkey] Officer Stott, now, you mentioned
22 earlier that you were in a specialized unit -- can you --
23 on the date of this traffic stop. Can you describe what
24 made that unit specialized?

25 A. Sure.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 It requires some special training. It requires
2 an interview process. There's a selection process for
3 that. And typically the requirements are good
4 communication skills, no negative reports as far as the
5 personnel file goes. They need to be proactive and can
6 make good cases. You know, they document their cases
7 well. No disciplinary records or anything like that.

8 Q. And is that after you completed your
9 probationary period as an officer?

10 A. Yes.

11 Q. And as a specialized unit, what kind of
12 responsibilities are you tasked with?

13 A. You get special assignments, a lot of times
14 based on crime trends or -- crime trends or statistics
15 where crime may occur.

16 Q. So your assignments change?

17 A. Yes.

18 Q. And who determines what you do or what your
19 assignment is?

20 A. I think that's a corroboration between the crime
21 analysis and the command staff.

22 Q. So you don't pick where you go each day?

23 A. Not typically, no.

24 Q. You're assigned to an area --

25 A. Yes.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. -- or how does --

2 A. Usually --

3 Q. -- that work?

4 A. Usually an area. I mean, it could be a
5 neighborhood or a series of blocks or something.

6 Q. So on August 26, 2013, where -- what was your
7 assignment?

8 A. We were assigned to the Dorchester Whalen
9 neighborhood.

10 Q. And was that in response to something?

11 A. It was.

12 Q. Can you tell the Court what that was?

13 A. Yes.

14 On the early morning of August 24th -- so
15 roughly forty-eight hours before -- there was a shooting
16 into a dwelling.

17 Q. And earlier you mentioned this is a proactive
18 patrol. Can you explain what you mean by proactive
19 patrol?

20 A. Yes.

21 We're there to be visible after a major crime,
22 you know, to help ease the community, the community is
23 aware of the shooting. Make sure that we're seen and
24 approachable where if there's information that can -- if
25 we can gather information about this major crime, you

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 know, we're readily accessible and visible.

2 Q. And where were you at just prior to this traffic
3 stop?

4 A. Behind the church at Constitution and
5 Dorchester.

6 Q. Is there any significance to your location
7 there?

8 A. There's -- that's an entry point into this
9 neighborhood.

10 Q. And what time was it, approximately, when this
11 all began?

12 A. 4:15.

13 Q. And was -- where is the location of where you
14 were at, parked there at that church, in relation to this
15 earlier incident? The shooting.

16 A. Directly across the street.

17 Q. And is that where you were at when you observed
18 the defendant's vehicle?

19 A. Yes.

20 Q. Approximately how far away were you when you
21 observed the defendant's vehicle?

22 A. Probably like seventy-five feet.

23 Q. Did you have a clear and unobstructed view of
24 this vehicle?

25 A. Yes.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. Could you see the defendant in the vehicle?

2 A. No.

3 Q. Why -- did you see anybody in the vehicle?

4 A. No.

5 Q. Why did you ultimately decide to initiate a
6 traffic stop on the defendant's vehicle?

7 A. The window tint was extremely dark.

8 Q. Are there any requirements on an exterior
9 vehicle relating to window tint?

10 A. Validation decals have to be installed on any
11 window that's got after-market film.

12 Q. Could you see any of these decals on the
13 defendant's vehicle?

14 A. No, ma'am.

15 Q. So is it illegal to have any tint on your
16 windows?

17 A. No, it's not illegal to have any tint.

18 Q. So in order to enforce the violation, do you
19 just eyeball it? Or how does that work?

20 A. Well, my experience is, you know, if it's
21 extremely dark, it's very obvious. And if you've got any
22 experience with it you can pick up on that relatively
23 quick. But we have a tool that's a meter that goes around
24 the glass and measures the light transmission percentage.

25 Q. And is it required to be included, you know, in

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 your report what the actual violation is?

2 A. Yes.

3 Q. And so was there anything else you noticed about
4 the defendant's vehicle?

5 A. I believed it to be a rental car.

6 Q. And what led you to believe that it was a rental
7 vehicle?

8 A. Several factors. It was a new model. It was
9 cleaned. It was well maintained. There was no personal
10 items on it, no plate border, no indication of a -- no
11 dealership decal, no stickers, or anything that indicated
12 that it was somebody's personal vehicle.

13 Q. And what about the window tinting as a rental
14 vehicle? Did that go into your equation or your thoughts?

15 A. Yes.

16 Q. And how so?

17 A. That's unusual when it's -- it can go hand in
18 hand with criminal activity.

19 Q. Did the vehicle have a South Carolina tag?

20 A. It did.

21 Q. And so based on this what you believed to be a
22 traffic -- or excuse me -- an equipment violation, did you
23 activate your blue lights to initiate a stop?

24 A. Officer Kirk did.

25 Q. And did the defendant stop immediately?

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 A. Not immediately, no.

2 There was an opportunity to turn off of the main
3 road, and we went past that and then pulled over to the
4 right.

5 Q. When you -- when he finally does stop, can you
6 take us through what happened next?

7 A. Sure.

8 I approached the passenger side of the vehicle
9 and made contact with the occupant. I had him roll the
10 windows down so I could see into the vehicle and explain
11 the violation. Explained the violation. Asked for
12 license, registration, and proof of insurance.

13 Q. Was there anything that you noticed immediately
14 upon approaching the vehicle?

15 A. Yeah, I did. I noticed that his pants were --
16 his zipper was down and his belt was open and undone.

17 Q. Did that strike you as odd?

18 A. It did.

19 Q. Did you initially address that with him?

20 A. No.

21 Q. What was his demeanor like when you asked him
22 for his information?

23 A. I would call it overly cooperative.

24 Q. Not rude?

25 A. No.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. Not hostile?

2 A. No.

3 Q. So what did you -- what did you have the
4 defendant do at that point?

5 A. After he provided his information, I indicated
6 -- well, my partner was -- metered the window and
7 confirmed that the window tint was unlawful. And I
8 indicated to him that -- my partner -- that I wanted him
9 to exit the vehicle and since he was on that --

10 My partner was on that side of the car, I made
11 that known to my partner just for a safety precaution.
12 And once he was aware that I was going to ask the driver
13 to exit the vehicle, I asked the driver to exit the
14 vehicle and he did.

15 Q. Where was the defendant at when your partner
16 used the window-tint meter?

17 A. In the driver's seat.

18 Q. Did he ever object to it?

19 A. No.

20 Q. Did he ever ask any questions about it?

21 A. I don't think so.

22 Q. So you said then you had him step out of the
23 vehicle?

24 A. Yes.

25 Q. And did you notice anything different at that

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 point?

2 A. I did, because I positioned myself in the rear
3 of his vehicle so I could see him exit the vehicle and I
4 had a clear view of him exiting the vehicle and walking
5 back towards me. And he was, in a way, trying to pull his
6 shirt down to what I believe to cover up what was showing.
7 You know, the open zipper and the belt being undone.

8 Q. And was he handcuffed or arrested at this point?

9 A. No.

10 Q. Was his demeanor still the same?

11 A. Other than trying to conceal that -- with body
12 language, it seemed as though he was trying to conceal or
13 keep us from viewing that his pants were undone.

14 Q. So the defendant was still cooperative --

15 A. Yes.

16 Q. -- at this point?

17 A. Yes.

18 Q. And so then what did you do?

19 A. I addressed the issue briefly about his pants
20 being undone and asked him some very general questions.

21 Q. Do you recall any of his responses?

22 A. Evasive about -- specifically about where he was
23 coming from and where he was going to.

24 Q. And as to his pants being undone, did he have --
25 provide a reason?

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 A. He said that he had used the bathroom. And the
2 only response I made was, you know -- in the car, you
3 know, kind of light-heartedly, you know, did you use the
4 restroom in the car. And that was kind of the end of that
5 conversation. I left that alone for the time being.

6 Q. Did you find that his responses to your question
7 was logical?

8 A. Yes. Yes, ma'am.

9 Q. And then what did you do?

10 A. I asked him for consent to search the vehicle.

11 Q. And did the defendant respond?

12 A. He did.

13 Q. And can you please tell the Court what his
14 response was?

15 A. He said I could search the vehicle. And he
16 added his person.

17 Q. Was the defendant handcuffed at this point?

18 A. No.

19 Q. Did he appear to be confused when you asked him
20 for consent?

21 A. No.

22 Q. Did he ask any questions or ask you to explain
23 what consent was?

24 A. No.

25 Q. Did he ever say that he did not understand what

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 you were asking him?

2 A. No.

3 Q. Did he appear to be under the influence or
4 impaired in any way?

5 A. No.

6 Q. Did he appear to be intimidated or scared of
7 you?

8 A. No.

9 Q. Where were you, specifically, when you asked him
10 for consent?

11 A. We were in between the two cars, at the rear of
12 his car.

13 Q. Did you have your duty weapon out?

14 A. No.

15 Q. Did you have any of your weapons out?

16 A. No.

17 Q. Did Officer Kirk have any weapons out?

18 A. No.

19 Q. Did you threaten the defendant in any manner
20 such that he would feel obligated to give consent?

21 A. No.

22 Q. And after the defendant gave consent, what did
23 he do?

24 A. What did the defendant do? He stayed there with
25 Officer Kirk while I searched the vehicle.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. And did he ever tell you to stop searching the
2 vehicle while you were in the vehicle?

3 A. No.

4 Q. To the best of your knowledge, was the
5 defendant's consent to search his vehicle freely and
6 voluntarily given?

7 A. Yes.

8 Q. So based on the defendant giving you consent,
9 then what did you do?

10 A. I searched the vehicle.

11 Q. And where was Officer Kirk during this time?

12 A. Standing with the defendant.

13 Q. Can you explain to the Court kind of the roles
14 for you and Officer Kirk during this traffic stop?

15 A. Yes.

16 I assumed the role of contact, meaning I made
17 contact with the driver and did most of the conversing
18 with him.

19 Officer Kirk was a backup, a safety, a cover, so
20 to speak, for -- in order to keep an eye on the suspect
21 while I searched.

22 Q. So you searched the defendant's vehicle. Did
23 you locate any items in the vehicle?

24 A. I did.

25 Q. Can you please tell us what you found?

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 A. A digital scale with a white powder substance on
2 it, that I field-tested and it was presumptive for cocaine
3 content; crumbs, as I would call them, little pieces of
4 what appeared to be crack cocaine; a utility knife that
5 had cocaine residue on it.

6 Q. And where were these items located in the
7 vehicle?

8 A. The scale and the majority of the crumbs were --
9 or the larger pieces of the crumbs were in the center
10 console but they -- it was also scattered throughout the
11 coin tray and the driver's seat. And the utility knife
12 was not in the center console. It was in like a coin tray
13 near the gear shifter.

14 Q. Was there anything about the location of those
15 that was of significance to you?

16 A. Yes.

17 Q. And what was that?

18 A. Going back to the pants being open, is that what
19 you mean, and the relation --

20 Q. The location of the items in the vehicle, was
21 that --

22 A. Well, just --

23 Q. -- of significance to you?

24 A. -- being in proximity together, you know, just
25 indicated drug sales.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. And what were they in proximity to? Each other?
2 Is that what you're saying?

3 A. Right.

4 Q. And were they close to the driver? The
5 defendant?

6 A. Yes.

7 Q. In your training and experience with narcotics
8 -- you've been in the specialized unit, you've been
9 through two departments at this point, and worked a
10 variety of cases -- why would someone who had contraband
11 on them consent to a search of their car?

12 MS. GAY: Your Honor, I would object. That
13 calls for speculation. I mean, I know he's -- he
14 doesn't know why people do that.

15 THE COURT: I'm going to allow him to answer.

16 THE WITNESS: Okay.

17 A. I believe in this case he may have felt that
18 taking the attention off of his person and putting it on
19 the car was going to give him some sort of advantage in
20 this situation.

21 Q. [Ms. Mulkey] And thank you, Officer Stott.

22 You said you and Officer Kirk were riding in the
23 same vehicle that day?

24 A. Yes.

25 Q. And was that car equipped with an in-car video?

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 A. Yes.

2 Q. If it was working properly, would it have
3 activated when you turned on your blue lights?

4 A. Yes.

5 Q. And where in the car is that actually located?

6 A. The camera itself, or the recording?

7 Q. The camera.

8 A. The camera itself? Mounted on the windshield,
9 inside the windshield.

10 Q. And if it's working properly, does it record
11 until you turn it off?

12 A. Yes..

13 Q. So if there had been a properly-working video,
14 could it have recorded this?

15 A. Yes.

16 Q. Do you typically watch these videos afterwards?

17 A. I do.

18 Q. Do you recall watching this video?

19 A. I do not..

20 Q. Are you required to enter that video into
21 evidence?

22 A. No.

23 Q. Is that by law? Are you required by law --

24 A. No.

25 Q. -- to enter it into evidence?

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Does your departmental policy require you enter
2 it into --

3 A. No.

4 Q. -- into evidence?

5 So what might affect whether or not you might
6 decide to enter a traffic-stop video into evidence?

7 A. I'm sorry. What, now?

8 Q. What factors may affect why you would decide to
9 enter something into evidence versus why you wouldn't?

10 A. With this kind of charge, I mean, if it -- if
11 there was something that was of evidentiary value that
12 wasn't already going to be submitted into evidence, maybe
13 you would do that.

14 Q. Was the defendant cooperative throughout this
15 traffic stop?

16 A. Yes.

17 Q. Were there any physical struggles?

18 A. No.

19 Q. Was there any argument between you and the
20 defendant?

21 A. No.

22 Q. And about how long would you say the interaction
23 lasted from when you pulled him over to when you
24 subsequently left?

25 A. Roughly ten minutes.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. Now, did you personally request that that video
2 be deleted?

3 A. No.

4 Q. Did you personally delete it?

5 A. No.

6 Q. If the defendant hadn't given you consent that
7 day, would he have been free to leave?

8 A. No.

9 Q. And why not?

10 A. Well, I was aware that a drug dog was working
11 and after these indications that I had, I would have
12 requested a K-9 to respond.

13 Q. And what would that K-9 have done?

14 A. It would have alerted on the vehicle for the
15 drugs that were inside.

16 Q. Have you ever personally witnessed a K-9 alert
17 on a vehicle with just residue inside?

18 A. I have.

19 Q. At this point you said you had been out there
20 about how long?

21 A. The time of the stop?

22 Q. Just the time -- when you asked him for consent,
23 it had been about how long?

24 A. Oh. I would say under three minutes.

25 Q. And -- I'm sorry. Go ahead.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 A. That's all.

2 Q. And did you say there was a K-9 working that
3 day?

4 A. Yes.

5 Q. Did you know if they were available or somewhat
6 close by?

7 A. I wasn't aware of their location.

8 Q. But if the K-9 is on duty, is the typical
9 response time reasonable?

10 A. Yes.

11 Q. All right. I would like to talk just a little
12 bit about some of the items in the vehicle: the scale you
13 mentioned, the utility knife, and residue; correct?

14 A. Yes.

15 Q. Are those items themselves of any significance
16 to you?

17 A. They are.

18 Q. And what is that?

19 A. Well, scales are commonly used to weigh illegal
20 drugs so they can be sold. The knife, in and of itself,
21 is just a utility knife but the fact that it had residue
22 on it led me to believe that it had been used to cut
23 what's referred to as a cookie of crack cocaine. Once
24 it's cooked, it settles and hardens at the bottom of
25 usually a glass dish like a Pyrex jar and when that is

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 removed, in order to break it up into smaller pieces for
2 sale, a lot of times a sharp object like a utility knife
3 would be used to do that.

4 Q. And did you field-test these -- this residue?

5 A. I did.

6 Q. And what were the results?

7 A. Presumptive.

8 Q. So after -- presumptive for what?

9 A. Cocaine contents.

10 Q. And so as a result of that, then what happened?

11 A. He was placed under arrest.

12 Q. And did you read him his Miranda rights?

13 A. I did.

14 Q. How do you do that?

15 A. I have a card I keep in my pocket.

16 Q. And then what happened?

17 A. He understood his rights and wished to speak and
18 answer my questions.

19 Q. Did you confront him about essentially
20 concealing more drugs?

21 A. I did.

22 Q. And why is it that you thought drugs were on
23 him?

24 A. The pants being undone was an indicator. The
25 way that the residue and the little pieces of crack that

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 were in the car, especially in the driver's area, led me
2 to believe that something was done in haste.

3 Q. Would he have had enough time in the delay you
4 testified to earlier in stopping --

5 A. I think so.

6 Q. -- to put those items into his pants?

7 A. Yes.

8 Q. Did you confront him about a potential strip
9 search at the jail as a result of his charges?

10 A. Yes.

11 Q. And why would the jail strip-search somebody for
12 a jail charge?

13 A. Well, it's their policy.

14 And they don't want drugs or anything getting
15 into their facility that could be harmful.

16 Q. When you were having this discussion with the
17 defendant, can you tell me a little bit about his
18 demeanor?

19 A. At this point he was -- he was sweating very
20 heavily.

21 Q. And it's August in Charleston. Was that
22 physical response significant to you?

23 A. It seemed like he was sweating more than usual,
24 and he -- his nervousness seemed to be elevating.

25 Q. So in response to your questioning about

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 potentially concealing drugs, and a strip search, did the
2 defendant respond?

3 A. He did.

4 Q. And what was -- what did he do?

5 A. He made an admission that he had something
6 concealed in the front of his pants and he gestured. His
7 hands -- he was under arrest, so his hands were behind his
8 back. But he gestured down and -- towards his crotch.

9 Q. And so then what did you do?

10 A. I put a latex glove on and retrieved it.

11 Q. And did that substance appear to be similar to
12 the substance you found in the vehicle?

13 A. Yes.

14 Q. And were you able to determine what that
15 substance was?

16 A. Yes.

17 Q. What was it?

18 A. Crack cocaine.

19 Q. When you put on the glove, was that in front of
20 the --

21 A. Yes.

22 Q. -- that defendant?

23 A. Yes. I was standing --

24 Q. Did he ever move --

25 A. -- to his left.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. Excuse me?

2 A. I was standing to his left.

3 Q. Did he ever move back, or move away, or tell you
4 to stop?

5 A. No, ma'am.

6 Q. So you find the substance on the defendant.
7 Then what happened?

8 A. Well, I waited and confirmed that, you know --

9 Q. And how much did it weigh?

10 A. It was 11.5 grams, which is a trafficking
11 weight. So the charge was amended from possession of
12 cocaine -- or possession of cocaine base to trafficking
13 cocaine base.

14 Q. And did you take the defendant immediately to
15 jail?

16 A. No.

17 Q. Can you elaborate on that?

18 A. Sure.

19 I drove the rental vehicle back to the
20 substation. And Officer Kirk transported the suspect to
21 the substation, and I interviewed him in the substation.

22 Q. And why were those actions taken?

23 A. More or less based on his cooperation.

24 And we needed a place, other than the roadside,
25 to discuss his -- whether or not he wanted to cooperate

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 with narcotics detectives.

2 Q. Is that a -- did you ask him on scene if he
3 wanted to cooperate?

4 A. I believe we asked him if he was interested in
5 that and he indicated he was.

6 Q. So based on his cooperation or his reaction is
7 why you took the following actions of going to the
8 substation?

9 A. Yes, ma'am.

10 Q. What would be the need to drive the vehicle to
11 the substation?

12 A. I was -- I confirmed that it was a rental
13 vehicle and just as a courtesy, I contacted the rental
14 company just to avoid them from having to pay the tow
15 because they're going to terminate the lease anyway if a
16 driver is arrested. So I contacted the rental company and
17 they said they wished for it to -- for them to come get it
18 rather it be -- rather than it be towed.

19 Q. Did the defendant end up -- the defendant end up
20 cooperating that day?

21 A. To a certain extent. But we didn't go do a drug
22 buy or anything.

23 Q. And is this customary for how these type of
24 narcotics operations come about?

25 A. Sure. Yes.

Motion to Dismiss
John M. Stott, Jr.
Direct Examination by Ms. Mulkey

1 Q. So at this point, did you transport the
2 defendant to the detention center?

3 A. After the interview, yes, and after the
4 paperwork was complete for booking.

5 MS. MULKEY: And beg the Court's indulgence.

6 THE COURT: Take your time.

7 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

8 MS. MULKEY: We have nothing further. Thank
9 you, Your Honor.

10 THE COURT: Ms. Gay?

11 MS. GAY: Thank you, Your Honor.

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Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

CROSS-EXAMINATION

BY MS. GAY:

Q. You're the lead officer in this case. Did you write the actual police report?

A. Yes, ma'am.

Q. And you've reviewed the police report pursuant to this case today?

A. Yes, ma'am.

Q. And you're -- we're agreeing that nowhere in this police report is there any indication or information that there was either a camera in the car or a video had, in fact, been taken?

A. That's correct.

Q. And I believe that this report was finished -- this report was done on 8/26/2013. And it would have been -- in your normal course of business, you would have done this in the same day or --

A. Yes, ma'am.

Q. -- a day or so after?

A. The same day.

Q. On the same day, which would have been August 26, 2013, you filled out the report. And where it says like how reported and things like that, the little sections, there's nothing on here that says that there was an in-car camera working in your car?

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 A. Yes, ma'am.

2 Q. Not there?

3 A. It's not in the report.

4 Q. And at no point did you ever do a supplemental
5 report where you may have said, oh, yeah, by the way, I
6 remember that my camera was working that day and that
7 there would have been a camera, a video, of this stop?
8 That's not done, either?

9 A. There's no supplemental report.

10 Q. I know that you're not a lawyer, and I don't
11 expect you to know the law as well as we are supposed to
12 know it, but in the course of your training and in being a
13 police officer in this area, are you aware that a person
14 that consents to a search can still challenge the consent
15 in a suppression hearing? Are you aware of that? You may
16 or may not be aware of it. Are you?

17 A. Yes, ma'am.

18 Q. So pursuant to what's taught you in your field,
19 you are aware that even though somebody consents, that
20 there can still be a constitutional challenge and the
21 stuff that was found pursuant to the consent could still
22 potentially be excluded in a trial?

23 A. Yes, ma'am.

24 Q. Now, on the day -- on your testimony -- I was a
25 little confused and I just want to get clear.

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 When you came up -- the last part of your
2 testimony talks about how you found things in his car like
3 scales and a knife and things like that, and then you came
4 up to him and had conversations about, hey, you know, do
5 you have anything else on you. You found the scales and
6 all that stuff first before you told Mr. Judon, I have
7 this stuff, do you have anything else on you; is that
8 correct?

9 A. I placed him under arrest.

10 Q. And I think you said that you talked about
11 how -- or your position was that you want to find out if
12 anybody has anything else on them because the jail doesn't
13 want contraband in the jail?

14 A. That was mentioned, yes.

15 Q. Right.

16 And I think that Mr. Judon's testimony -- and
17 you were here in the room when he was testifying -- was
18 that he did, in fact, give you or alert, tell you the
19 area, where you could go and find some drugs that were on
20 his person after the scales and the utility knife and
21 things like that were found; right?

22 A. What's your question?

23 Q. It was -- he admitted that he gave you the stuff
24 after you told him that you had the scales and the utility
25 knife, and all that stuff, and that you were placing him

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 under arrest?

2 A. Right.

3 Q. And so you know, from listening to his testimony
4 and being part of this hearing, that he had an issue with
5 the fact that the police report and your testimony is that
6 he consented to the search of the car? I'm not asking you
7 to agree or disagree. But you know that he had issue to
8 that as pursuant to what we're doing today?

9 A. Yes, ma'am.

10 Q. And if we had the audio and/or the video of the
11 camera that was taken that night or that day, we would be
12 watching like a picture, a movie, of what happened that
13 day and that would be important to what's going on with us
14 today --

15 A. Are you asking me --

16 Q. -- wouldn't you agree with me?

17 A. -- if there was a video, would we --

18 Q. No. That's --

19 A. -- be watching it?

20 Q. I'm asking you -- yes, if there was a video, we
21 would be watching it to, you know, to have -- to shed
22 light --

23 A. Sure.

24 Q. -- on what we're having issues with today.

25 A. Yes, ma'am. I understand.

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 Q. Okay. And so you've admitted that you know
2 that people have a right to contest searches that have to
3 do with consent, and you've admitted that the video that
4 we -- that was taken in that car would be helpful to solve
5 the issues, the dispute, about you and Mr. Judon having
6 completely different views of what happened that day?
7 That's the truth, the video -- the picture would be
8 helpful; right?

9 A. Sure. If there was --

10 Q. And if there was --

11 A. -- a video.

12 Q. And if there was an audio, it would be helpful
13 also?

14 A. Sure.

15 Q. And so based on your police training, based on
16 everything that you know, all the two years of experience,
17 the multiple agencies that you worked for, your testimony
18 today is that that audio or picture would be helpful to
19 describing what -- you know, to this case.

20 MS. GAY: I would like to see the -- this, the
21 motion. I think it's the one -- this one. Thank you.

22 Q. [Ms. Gay] I'm going to show you some things out
23 of Defendant's Exhibit 3.

24 MS. GAY: This is your motion.

25 And, Your Honor, I'm focusing on the exhibits,

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 but this is the motion. It's easier if I walk over
2 here and show it to him. Is that okay, Your Honor?

3 THE COURT: That's fine.

4 MS. GAY: All right. Thank you.

5 Q. [Ms. Gay] I'm going to show you what's been
6 included in this motion response from the solicitor and
7 ask you if you've seen these before. This is called the
8 North Charleston Police Department policy and procedure
9 manual. Okay. Believe me, this is a printout of it,
10 because she got it and it's from her motion, not mine.

11 A. I believe you.

12 Q. Okay. You believe me.

13 And this says that the effective date was August
14 1, 2012; correct?

15 A. Yes.

16 Q. And our day that we have in question is actually
17 August 26, 2013. So this would have been the policies and
18 procedure in effect on the day -- this is actually the
19 most recent -- in effect on the day of this arrest.

20 A. Okay.

21 Q. And this is policy number 0-10, which it says --
22 we'll look at it. It says: to establish policies and
23 procedures governing patrol operations.

24 Okay. On the day in question, you were in a
25 marked patrol car?

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 A. Yes.

2 Q. Now, I'm going to take you to a section of this
3 policy and procedure. Now, let's do it this way. When
4 you became a police officer at North Charleston, you were
5 told to read these things?

6 A. Yes.

7 Q. And there may have been a test or there may --
8 some form of training for you to be aware of these
9 policies and procedures?

10 A. Yes, ma'am.

11 Q. When you got down here to the section that is
12 marked, I believe it's N -- I've got to make sure.

13 [Whereupon, Ms. Gay reviews documents]

14 Q. [Ms. Gay] Vehicle video camera. All right?
15 This is the section that's marked N, and then it has 1 and
16 then a and b and c.

17 MS. GAY: Your Honor, I don't want to have him
18 read it but I would like for the Court to take note,
19 after he looks at a few of these, that this whole
20 section is what I would like for the Court to look at
21 in detail when making -- when deciding this.

22 THE COURT: All right.

23 Q. [Ms. Gay] Okay. There's a few that I would
24 like to bring your attention to. It says b. You can read
25 it or I can read it. It says: prior to each shift,

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 officers assigned to a vehicle equipped with an MVR, which
2 is a motor vehicle camera recorder, will inspect the
3 equipment. Officers will provide written notification via
4 memorandum to their immediate supervisor or any -- of any
5 defect in the operation of the equipment. The immediate
6 supervisor will forward the memorandum to the properties
7 services section. Repairs to equipment will be made by
8 authorized technicians and documented in maintenance
9 records.

10 On the day of August 26, 2013, had you done any
11 of that? Had you notified your supervisor that there was
12 any problem with the camera?

13 I will tell you that we've all subpoenaed it and
14 there doesn't appear to be records.

15 But do you recall, pursuant to this regulation
16 that you're required to do, telling your supervisor that
17 there was any problem with this camera?

18 A. No.

19 Q. And then the next one we're going to go to is
20 this one, which is c. officers will ensure that they are
21 properly logged into digital MRI systems prior to
22 beginning their tour of duty. Should an officer be unable
23 to log into the system they will notify their immediate
24 supervisor, who will contact an MVR system administrator
25 if available.

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 Okay. This is this one about the system and the
2 business about whether it's the camera or the system. And
3 I realize North Charleston had some problems.

4 On the day of August 26, 2013, did you notify
5 your supervisor that there was any problem with you
6 logging into this system, pursuant to this regulation?

7 A. No, ma'am.

8 Q. And then this next one says: motor vehicle
9 recording equipment will automatically activate when the
10 vehicle's emergency warning devices are in operation.
11 Digital equipment will automatically activate and remain
12 on. When the vehicle's speed exceeds eighty miles per
13 hour, the equipment may be manually deactivated during
14 non-enforcement activities, such as when protecting
15 accident scenes from vehicular traffic.

16 That one. If we believe that this regulation is
17 accurate and you had a working camera, your camera would
18 have come on when the blue lights came on; correct?
19 That's what they do?

20 A. The car we were in, yes. Yes.

21 Q. And then this is just something interesting.
22 Video camera equipment may be used to record the actions
23 of suspects during interviews, field sobriety checks,
24 custodial arrests, and any other incidents, in an effort
25 to document crime scenes, accident scenes, evidence, and

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 contraband.

2 A. Yes.

3 Q. So on this day when you stopped Elliott Judon,
4 there was a custodial arrest, there was contraband because
5 there was drugs and there was scales and things like that,
6 and that this was obviously a crime scene because there
7 was stuff found in his car; correct?

8 A. Yes.

9 Q. And so it says: video camera equipment may be
10 used to record it. Officers will ensure that the vehicle
11 video camera and the wireless microphone is operating
12 during traffic stops and other calls for service where the
13 use of audio-video equipment may be beneficial.

14 This was definitely -- started out as a traffic
15 stop?

16 A. Yes.

17 Q. Officers will properly position their cameras to
18 record the event and will not deactivate the recorder
19 until the law enforcement action is completed; correct?

20 A. Yes, it says that.

21 Q. Officers will not erase, reuse, or alter video-
22 camera tapes or digital media in any manner.

23 That's specifically to y'all. You're not
24 supposed to touch the thing and mess with it.

25 Officers are responsible to ensure that they are

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 equipped with an adequate supply of video tapes. That one
2 is boring. Let's go to the next one.

3 Vehicles -- it says: vehicle videotapes
4 containing information -- this is interesting -- that may
5 be of value for case prosecution will be secured by the
6 officer as evidence.

7 So if it may be valuable -- not is or isn't, but
8 may -- for case prosecution, will be secured by the
9 officer as evidence and placed in the North Charleston
10 Police Department property room in accordance with the
11 policy 08, property in evidence. The officer will then
12 request another tape.

13 Okay. So that right there, we've read that.
14 That's section I. And it says that it may be of value but
15 it will be put into evidence. Okay?

16 And then this last one says: it says, digital
17 media files containing information that may be of value
18 for the case will be tagged appropriately and transferred.

19 But this is the most interesting one. This
20 is L. Officers will document an incident, arrest, and
21 related reports, when the MVR recording devices were made
22 during the incident in question. Officers will indicate
23 if the video was recorded with an analog or digital.

24 Now, that right there, you see that one? That
25 says -- that mandated you to document in the incident or

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 arrest report that the motor vehicle recording device was
2 on and put -- that was to be put into evidence. Would you
3 agree with me that that's what that says?

4 A. Yes, ma'am.

5 Q. So we agree that in this case, despite the fact
6 that there was a camera that was -- that came on when the
7 blue lights came on that recorded stuff, that you
8 testified in your testimony that you did not look at
9 afterwards, that you did not intentionally delete, but
10 it's the recorded stuff about a custodial arrest,
11 contraband, accident -- I mean, evidence, crime scene, had
12 to do -- may be of value to the case, was not then put
13 into evidence pursuant to this rule right here? That did
14 not happen?

15 A. That's assuming there was a video.

16 Q. Okay. I'm assuming there was a working camera.

17 A. Right. I --

18 Q. You already testified that you didn't check
19 afterwards.

20 A. Right.

21 Q. So if there's a working camera and this stuff
22 works, these regulations say that those cameras come on
23 with the blue lights and they record until the end of the
24 incident. That's what this says; correct?

25 A. Yes, ma'am.

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 Q. And you didn't check it and you didn't turn it
2 into evidence, so we don't know now what it said or
3 whether or not it was -- may or may not have been exactly
4 what my client said, or exactly what you said, because it
5 doesn't exist because you didn't turn it in; correct?

6 A. The only thing I disagree with on that is that
7 that's assuming that the video camera was working.

8 Q. There is no indication anywhere in this file
9 that video camera was not working. I have the maintenance
10 logs, I have Sykes Radio who says that they did not repair
11 it during that period of time. She has conceded in the
12 beginning of this that it was a working camera. Okay. So
13 with that said --

14 MS. MULKEY: Objection, Your Honor.

15 THE COURT: Ms. Gay, please stop testifying.

16 Thank you.

17 MS. GAY: I don't believe I have any further
18 questions, Your Honor.

19 THE COURT: Ms. Mulkey?

20 MS. MULKEY: Just a few, Your Honor.

21 THE COURT: How many witnesses do you have after
22 this?

23 MS. MULKEY: I was going to address the Court
24 briefly and if Your Honor felt the need for an
25 additional witness to testify as to the system, then

Motion to Dismiss
John M. Stott, Jr.
Cross-Examination by Ms. Gay

1 we have one ready.

2 THE COURT: I've just -- we've been going a long
3 time. I was going to take just a very short lunch
4 break, just to let everybody kind of have a few
5 moments. I'll finish with this witness. Thank you.

6 MS. MULKEY: Thank you.
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Motion to Dismiss
John M. Stott, Jr.
Redirect Examination by Ms. Mulkey

REDIRECT EXAMINATION

BY MS. MULKEY:

Q. Officer Stott, as far as you know, your vehicle -- your in-car video, or the in-car video for the vehicle that you were in, was operating just fine that day?

A. Sure.

Q. And you didn't do anything to deactivate it? to interfere with it?

A. No.

Q. And it activated automatically when your blue lights came on?

A. In theory. I mean, it would.

Q. And the decision, ultimately, of whether to put what it recorded into evidence is up to you, the officer?

A. Yes. It's just discretionary.

Q. And do you agree that that's what the policy says?

A. Yes.

Q. You make that decision based on the facts of each stop?

A. Yes.

Q. And the facts of this stop did not lead you to believe that that video needed to be placed into evidence?

A. Correct.

MS. MULKEY: The State has no further questions,

Motion to Dismiss
John M. Stott, Jr.
Redirect Examination by Ms. Mulkey

1 Your Honor.

2 THE COURT: Ms. Gay?

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Motion to Dismiss
John M. Stott, Jr.
Recross-Examination by Ms. Gay

RECROSS-EXAMINATION

BY MS. GAY:

Q. You testified that this was discretionary. These regulations that we just went over, that doesn't say discretionary of a police officer, it says will. Would you like to see that again?

A. No, ma'am.

Q. It does say will be turned over? It does -- yes?

A. Yes, ma'am.

Q. It doesn't say the officer gets to decide if they think it's important or not. It doesn't say that, does it?

A. It says will.

Q. Will.

A. But says that it may.

Q. No. It says that it may be of value or not, but it still will be turned over. Would you like to look at that again?

A. Okay. Yes, ma'am, I agree with you.

MS. GAY: Thank you, Your Honor. I believe that's it.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

[Whereupon, Mr. Stott is excused and exits the

Motion to Dismiss
John M. Stott, Jr.
Recross-Examination by Ms. Gay

1 witness stand]

2 THE COURT: So you had an argument, Ms. Mulkey?

3 MS. MULKEY: Well, all I was going to say, Your
4 Honor, is that we are prepared to bring in someone
5 from North Charleston who can testify as to what
6 happened when the officers pull up to the server and
7 then --

8 THE COURT: I would like to hear maybe -- but I
9 would like to, just for some explanation. So let's go
10 ahead and take thirty minutes. So 2:15.

11 MS. GAY: And, Your Honor, I would like to speak
12 to this witness because there are some specific
13 questions that I would like to ask him, that I'm aware
14 of. If I could have permission to talk to -- will you
15 let me talk to him a second?

16 THE COURT: Which witness?

17 MS. GAY: The witness that she says is coming in
18 to say what would happen if.

19 THE COURT: All right, But remember the rule of
20 sequestration has been invoked, so that actually
21 causes some --

22 And then will that be the last witness?

23 Please -- just please hold him for just a
24 second. Thank you.

25 MS. MULKEY: I believe it is, Your Honor.

Motion to Dismiss
John M. Stott, Jr.
Recross-Examination by Ms. Gay

1 THE COURT: Do you have any -- will you have any
2 other witnesses?

3 MS. GAY: No, Your Honor.

4 THE COURT: Thank you. All right. 2:15.

5 [Whereupon, a recess is taken from 1:34 p.m. to
6 2:18 p.m.]

7 THE COURT: Call your next witness.

8 MS. MULKEY: The State calls Sargent Hille.

9 [Whereupon, Mr. Hille comes forward]

10 THE CLERK OF COURT: Place your left hand on --
11 raise your right hand.

12 [Whereupon, Mr. Hille is duly sworn by the clerk
13 of court as follows: do you swear or affirm your
14 testimony will be the truth, the whole truth, and
15 nothing but the truth, so help you God]

16 THE WITNESS: I do.

17 THE CLERK OF COURT: Be seated.

18 THE WITNESS: Thank you.

19 [Whereupon, Mr. Hille takes the witness stand]

20 THE CLERK OF COURT: If you'll state your full
21 name, and spell your last name for the record.

22 THE WITNESS: My full name is Scott Hille, and
23 my last name is spelled H-I-L-L-E.

24 THE COURT: Ms. Mulkey.

25 MS. MULKEY: Thank you.

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 SCOTT HILLE,
2 after being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MULKEY:

6 Q. Mr. Hille, where are you presently employed?

7 A. I currently work for the North Charleston Police
8 Department.

9 Q. And how long have you worked there?

10 A. I've worked there since 2000.

11 Q. And what is your current rank?

12 A. I'm a sargent.

13 Q. And what about your current assignment?

14 A. My current assignment is technology coordinator.

15 Q. And can you tell us how long you've worked in
16 that capacity?

17 A. I've worked as the coordinator since July of
18 2012.

19 Q. And what does that job entail?

20 A. It entails the coordination of vehicle
21 purchases, equipment selection, communications, to include
22 any mobile video equipment, radios, and mobile datatrons.

23 Q. And does North Charleston Police Department have
24 vehicles equipped with in-car videos?

25 A. They do.

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 Q. Are all of them?

2 A. No, ma'am.

3 Q. What about in August 2013? Approximately how
4 many had in-car videos?

5 A. Off the top of my head, I would say between 150
6 and 170.

7 Q. Which is about -- out of how many?

8 A. A fleet of more than 400.

9 Q. So less than half?

10 A. [Indicates affirmatively]

11 Q. How does the in-car video system work?

12 A. The in-car video system has several different
13 methods of activating, but it's a continuous loop digital
14 recording which captures pre-event about twenty seconds
15 and then runs until it is -- it's stopped.

16 Q. And who maintains that system?

17 A. I oversee it. And any problems that aren't from
18 installation or damage is maintained by the manufacturer,
19 which is L-3 Communications.

20 Q. So can you explain to the Court how the video is
21 transmitted from that in-car camera to a system and kind
22 of explain that process?

23 A. I can.

24 Briefly, what happens is after the video is
25 captured, it's stored on a compact flash card within the

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 DVR or the digital video recorder. When a unit arrives at
2 a Wi-Fi location, a private Wi-Fi location at City Hall,
3 it downloads via that private Wi-Fi system and is stored
4 internally at City Hall.

5 Q. And does that video remain on the system
6 indefinitely?

7 A. No, ma'am.

8 Q. Can you explain the time line of a video on that
9 system?

10 A. I can.

11 From the date of ingest, which is when it's
12 downloaded, we have it visible for the officers to review
13 and supervisors to review for ninety days and then it
14 becomes invisible but stored on the system for an
15 additional ninety days. After ninety days, the system
16 tells us to purge videos, and they're purged and they're
17 destroyed. So there is no record after 180 days.

18 Q. And why is that time line necessary?

19 A. We create a lot of videos. We're one of the
20 larger departments in the area and it would be nearly
21 impossible to fund the storage indefinitely for every
22 video.

23 So the ninety days, the first ninety days that
24 the officers can look at the video, they can review it,
25 request a copy be burned, and then submit it to evidence

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 for a case if there's pertinent items on there that they
2 feel necessary.

3 Q. Is that -- you mentioned something about
4 funding. So the amount of space on the server isn't
5 something that you directly control?

6 A. We project and we plan and we budget for. But
7 it's not a Cloud-based system. I explain it to our
8 executives that we own our own Cloud. So we host the
9 storage for that in-house.

10 Q. So at the end of that 180 days, without the
11 request of anybody, because of those limits in storage the
12 tape deletes itself?

13 A. Correct.

14 Q. Or the video.

15 Are you the only agency that uses this system?

16 A. No, ma'am. It's used throughout the country.

17 Q. And are you, what, one of the smallest or the
18 largest agencies? Where are you at in comparison with the
19 other companies or agencies that use this system?

20 A. Currently, I believe we are the largest in the
21 southeast region.

22 Q. Does that have any effect on the system or its
23 efficiency?

24 A. It complicates things from my end, just in the
25 integration and the maintenance of several systems. It's

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 been a very good system for us. They usually travel well
2 past their projected life, and we keep them in service
3 until they fail.

4 Q. The in-car cameras?

5 A. Yes, ma'am.

6 Q. So what kind of issues arise as a result of what
7 you described as kind of a lot of information going
8 through this circle [phonetic]? What kind of issues have
9 arisen?

10 A. Not quite sure I understand the question.

11 Q. You testified that you're one of the largest
12 agencies that uses this software or system. And I may be
13 getting some of the terminology, the technical
14 terminology, incorrect or -- and with as much as you have
15 to put on there, does that ever create issues on the
16 system?

17 A. As any electronic system ages, it does -- you
18 know, there are problems that arise, and replacing and
19 making sure that the data is protected becomes a problem.
20 The system's life is about five years so after every five
21 years, we have to look at either adding more space,
22 adjusting space, and then renewing the actual server that
23 it's on, and that can get complicated.

24 Day-to-day operations that are complicated: you
25 can have -- anything that's exposed to the weather is

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 going to break. Antennas, faulty wiring, just regular
2 wear and tear, becomes issues over time.

3 The DVRs are stored in two places. One is in
4 the trunk and one is in the center console, depending upon
5 the model of the vehicle. Anything that's exposed to the
6 center console has normal wear and tear with drinks and
7 food, so there are problems that arise with that.

8 Q. And how do you find out about these issues?

9 A. The officers are supposed to notify their
10 supervisors of an issue or come to me directly during the
11 day and we try and troubleshoot the problems and then,
12 when possible, correct them without opening or violating
13 any warranties. And then anything that can't be solved
14 initially is removed and then we usually send things off
15 to L-3 and they're repaired under the maintenance
16 agreement that we maintain with them.

17 Q. And so when you learn of these issues, what is
18 the protocol like in the interim or how you manage?

19 A. The system is very particular on how it
20 communicates, so we don't have replacements or temporary
21 ones that we apply in a vehicle on the interim. It's just
22 it's too complicated to maintain on the back-end, if you
23 will. So it becomes a nightmare for me to try and keep
24 everybody's video straight, so to speak, if that makes
25 sense. So we don't do that. We send them off, they go

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 without the video, and we go from there.

2 Q. Has North Charleston experienced any issues with
3 this system?

4 A. Issues as in failures or?

5 Q. Failures or problems because of the amount of
6 information going on there.

7 A. I believe in the three-and-a-half -- I believe
8 three-and-a-half years I've been there we've lost thirteen
9 videos, out of sixty to 70,000 that are normally stored on
10 the system at any given time, and that was from a hard
11 drive -- or a double hard drive failure.

12 And as it -- as the hard drives become close to
13 the end of life, they began to fail. And when two or more
14 of them fail at a time, that's when we experience problems
15 with that. So we really do pretty good with that.

16 Normal day-to-day stuff, like I said, the
17 failures inside the cars can be pretty regular, depending
18 upon, you know, the amount of abuse that they're subjected
19 to inside the vehicle.

20 Q. So is it possible for an officer to be in the
21 car, to think the camera's recording either because
22 there's a light that comes on or an their blue lights are
23 on, but regardless of how, they believe the camera to be
24 recording only to find out later that it did not?

25 A. Yes.

MIA PERRON, CVR-CM-M

-119-

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 Q. Is there any way, Sargent Hille, to conclusively
2 determine that an in-car video was or was not working if
3 it was not downloaded to the server?

4 A. Can you rephrase the question?

5 Q. If an in-car video was activated --

6 A. Correct.

7 Q. -- but it was not subsequently entered into
8 evidence, is there any way to determine if, in fact, there
9 was a video created?

10 A. Before the 180 days or after? Before, yes --

11 Q. After the 180 days.

12 A. After the 180 days, there is not.

13 Q. Did the -- are you familiar with the North
14 Charleston policy --

15 MS. MULKEY: Can I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 Q. [Ms. Mulkey] I would like to show you what is
19 Defense Exhibit Number 3. And just can you tell me what
20 this is?

21 A. This is policy number 0 -- or 0-10.

22 Q. And looking under the policy as it applies
23 specifically to the in-car video, could I direct your
24 attention to subsection j? Can you just review that for
25 me?

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 A. I can.

2 [Whereupon, the witness reviews documents]

3 Q. [Ms. Mulkey] Did you have an opportunity to
4 review it?

5 A. Uh-huh.

6 Q. Do you understand it?

7 A. Yes.

8 Q. Sargent Hille, is it your belief, after
9 reviewing that, that the discretion of whether to download
10 an in-car video to the server is left up to the discretion
11 of the officer?

12 A. The download is automatic. The review relies
13 upon the officer, and whether or not they submit it to
14 evidence as part of the case relies upon the officer.

15 Q. And that discretion is left up to the officer?

16 A. Correct.

17 MS. MULKEY: May I have the Court's indulgence?

18 THE COURT: Yes, ma'am.

19 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

20 MS. MULKEY: I have no further questions.

21 Please answer any the defense may have.

22 THE COURT: Ms. Gay?

23 MS. GAY: Just --

24 THE COURT: Hold on one second.

25 MS. MULKEY: I'm sorry. Thank you, Your Honor.

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 Q. [Ms. Mulkey] Sargent Hille, who do you send --
2 when you experience a problem with that camera system, who
3 do you send it to?

4 A. We mail the systems, the component or the
5 system, back to L-3 in New Jersey.

6 Q. And do you use any other local companies to
7 service the actual system?

8 A. When I took over in July of 2012, I recognized
9 that there was a problem with one of the local vendors who
10 was installing and maintaining those systems. And I
11 stopped using them and started dealing directly with L-3
12 and using their customer service and their technical
13 expertise, which we were paying for in our maintenance
14 agreement. And it helped me understand more of what was
15 going on, improve, and now we deal directly with them.

16 Q. Do you happen to know the name of that former
17 company?

18 A. It was Mobile Communications of Charleston.

19 MS. MULKEY: Beg the Court's indulgence one more
20 moment, Your Honor.

21 May I approach the witness, Your Honor?

22 THE COURT: You may.

23 Q. [Ms. Mulkey] Sargent Hille, I would like to
24 show you what's been entered into evidence as Defense
25 Exhibit Number 2. If you wouldn't mind reviewing that.

Motion to Dismiss
Scott Hille
Direct Examination by Ms. Mulkey

1 [Whereupon, the witness reviews documents]

2 Q. [Ms. Mulkey] Are you familiar with this
3 company?

4 A. Yes.

5 Q. Do they conduct work on the cameras?

6 A. They had in the past.

7 Q. Do they conduct any type of work on the actual
8 L-3 system?

9 A. In-house, no.

10 They did at some point, depending upon the years
11 and the availability, do some work on the vehicles and
12 their electronic components, lights, sirens, and the
13 camera systems.

14 MS. MULKEY: Thank you. We have nothing
15 further.

16 THE COURT: Ms. Gay?

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Motion to Dismiss
Scott Hille
Cross-Examination by Ms. Gay

CROSS-EXAMINATION

BY MS. GAY:

Q. Kind of going to right where you left off there.

So Sykes has, in the past, worked on North
Charleston automobiles and camera systems?

A. Correct.

Q. And you said since you've been on -- working in
the area, you also send them off to the manufacturer?

A. Correct.

Q. And as part of this case, we're dealing with
unit 230 on August 26, 2013. Do you have any evidence or
information to bring to this Court about the camera being
dysfunctional or inoperable on August 26, 2013, in unit
230?

A. I don't have anything to present to you.

Q. Okay. Now, specifically with what you said,
because I think this is very important. You said that the
downloading in -- so if a camera is working?

A. Correct.

Q. If the camera is working, it is sending to the
downloading? That's called working?

A. If the camera is recording, it's recording to a
digital media.

Q. Okay. So that's my question.

So if it's working to record on the scene, it is

Motion to Dismiss
Scott Hille
Cross-Examination by Ms. Gay

1 sending information to a downloading -- a media down-
2 loader?

3 A. When the officer drives the vehicle within the
4 umbrella of that private Wi-Fi, it begins to automatically
5 download that video.

6 Q. When the blue light comes on, it's supposed to
7 come on. Isn't that the window of opportunity there?

8 A. Well, we're talking two different things, and I
9 don't want you to get confused --

10 Q. No. I understand --

11 A. -- I may not be explaining --

12 THE COURT: Please don't interrupt each other.

13 Thank you.

14 You may finish.

15 THE WITNESS: Thank you.

16 A. There's a recording that occurs when the camera
17 is activated, and it's stored within the vehicle, on a
18 compact flash drive inside the recorder. When the
19 recording stops, you can go and record additional videos.
20 But at some point, we have to remove that because of the
21 storage limitations.

22 When the officer drives within the umbrella of
23 City Hall and parks his vehicle and he enters that
24 umbrella of the Wi-Fi, the system recognizes that Wi-Fi
25 system and it automatically downloads that video from that

Motion to Dismiss
Scott Hille
Cross-Examination by Ms. Gay

1 compact flash card, through the Wi-Fi, and then stores it
2 on a larger server system.

3 Q. [Ms. Gay] So if a car has a video camera that's
4 working, when it gets near the umbrella, Wi-Fi umbrella of
5 North Charleston City Hall, the thing that was recorded
6 that was put on the flash card is going to automatically
7 go to this server in North Charleston municipal court
8 building, or in the sky, or wherever it is?

9 A. The events that are recorded, the video footages
10 themselves, are transferred automatically and they are
11 stored within City Hall.

12 Q. So if they're stored within -- if there's a
13 working camera inside the car, it's stored within City
14 Hall. Then you said that the policy would be for an
15 officer to review to decide if it had evidentiary value --

16 Do you agree with me on that?

17 A. [No response]

18 Q. -- and then if he wanted to have it printed or
19 made a copy?

20 A. Correct. Printed would mean copied, then.

21 Q. Okay. So if the officer -- normal procedure is
22 the officer decides something has evidentiary value and he
23 makes the request to view -- or your group of people to
24 make a copy of that video and then it becomes a tangible
25 object in the -- and is considered evidence in the case?

Motion to Dismiss
Scott Hille
Cross-Examination by Ms. Gay

1 A. Most of that is correct.

2 The officer -- it's up to the officer to
3 actually create the video. They would log into the
4 system, they would review it, and then actually physically
5 request that it be burned. And it's all done
6 automatically. They would retrieve it and submit it to
7 evidence.

8 Q. So the burned CD or DVD --

9 A. DVD.

10 Q. -- then becomes a tangible object that is
11 something that somebody can put in their computer and
12 read?

13 A. Correct.

14 Q. And so as you've described what your job is, and
15 how this works, the policy of North Charleston is if
16 nobody asks for it to be burned within 90 days or within
17 180 days, the system automatically deletes it and it
18 purges it so that there's more room on the system?

19 A. Correct.

20 Q. And that the only person or only way that it
21 could be burned or requested off this mainframe is for the
22 officer to request it?

23 A. The officer or one of the supervisors within
24 that officer's chain of command.

25 Q. So let's -- let me say it this way. The officer

Motion to Dismiss
Scott Hille
Cross-Examination by Ms. Gay

1 who's got the car, who's got the camera taking the
2 picture, is the person -- or his supervisor -- that would
3 ask for it to be burned to be made into a tangible object
4 that could be used and submitted into evidence?

5 A. Correct.

6 MS. GAY: I don't believe I have any further
7 questions, Your Honor.

8 THE COURT: Ms. Mulkey?

9 MS. MULKEY: We have no further questions, Your
10 Honor.

11 THE COURT: You may step down. I believe you
12 are free to go.

13 THE WITNESS: Thank you, Your Honor.

14 [Whereupon, Mr. Hille is excused and exits the
15 witness stand]

16 THE COURT: Any additional witnesses?

17 MS. MULKEY: Your Honor, we have another
18 officer, if you feel you need supplemental testimony
19 on the system.

20 THE COURT: I've heard enough.

21 Do I need anymore, Ms. Gay?

22 MS. GAY: No, ma'am.

23 THE COURT: Are you pretty clear on how the
24 system works?

25 MS. GAY: Yes, ma'am.

Motion to Dismiss
Scott Hille
Cross-Examination by Ms. Gay

1 THE COURT: So with that, are you --

2 MS. MULKEY: Yes. The State would defer to the
3 defense to --

4 THE COURT: Any additional witnesses?

5 MS. GAY: No, Your Honor.

6 THE COURT: Did you want to call your -- you had
7 mentioned something about perhaps calling or recalling
8 your client. Did you want to do that?

9 MS. GAY: Let me talk to him a minute.

10 THE COURT: Take your time.

11 [Whereupon, Ms. Gay and Mr. Judon confer]

12 MS. GAY: Your Honor, I would re-call Mr. Judon.

13 THE COURT: Mr. Judon, I remind you that you are
14 still under oath.

15 [Whereupon, Mr. Judon comes forward]

16 [Whereupon, Mr. Judon re-takes the witness
17 stand]

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Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 ELLIOTT JUDON, JR.,
2 Having Been Previously Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. GAY:

6 Q. Mr. Judon, we've been here today and you've
7 testified at this hearing and we -- Officer Stott
8 testified in this hearing, also. And this is Officer
9 Stott, who's sitting in here with the solicitors.

10 Can you tell us what this officer did during the
11 course of the arrest? Because I think you might have been
12 confused, so I want you to say -- now that you see him,
13 now that you know what his name is, what did he do? What
14 do you remember?

15 A. Well, he look a little different. He grewed --
16 he did have facial hair, so it might of kind of confused
17 me. But he was the one actually did the searching and
18 everything.

19 Q. So did he ever ask you to consent to search your
20 car?

21 A. No, ma'am.

22 Q. Now, the other officer that you were talking to,
23 I think his name was Kirk?

24 A. Kirk.

25 Q. Did he ever ask you for consent to search your

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 car?

2 A. No, ma'am. Never mentioned it.

3 Q. So where were y'all standing when this was
4 happening when they were talking to you?

5 A. One was standing --

6 Q. Who's one? This one or the other one?

7 A. Right there. The one right there.

8 Q. Stott.

9 A. Stott.

10 Stott was standing -- the one that actually
11 patted me down, and the one stayed back to the patrol
12 car.

13 Q. He stayed back by the --

14 A. Yeah.

15 Once they -- once they get my license -- once --

16 Q. I'm getting confused. Did Stott stay next to
17 your car or did he go over by the --

18 A. Stott was standing next to my car, and the other
19 one stayed back to the patrol car.

20 Q. And where were you standing when you were
21 talking to who you were talking to?

22 A. In front of the police car.

23 Q. And so is that him? Mr. Stott?

24 A. Yes, ma'am.

25 Q. How about Mr. Kirk? Was he there, too, in front

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 of the police car?

2 A. Yes, ma'am.

3 Q. So, again, for -- tell us who told you that
4 there was a camera in the car.

5 A. Officer Stott.

6 Q. And when he told you that there was a camera in
7 the car, that's your understanding of why you were put
8 there?

9 A. He say step in front of the camera. That's
10 the -- he said, step in front of the camera.

11 Q. And after they found the stuff in your car, the
12 scale and the knife and the things like that --

13 A. Stott. After Stott.

14 Q. After Stott --

15 A. He was who -- yes.

16 Q. He came over and showed it to you?

17 A. No, ma'am.

18 Q. Did he just tell you about it?

19 A. Yes, ma'am.

20 Q. And when he told you about it, did -- tell the
21 Court why you then decided to tell them that you had drugs
22 on your body. What was your understanding of why?

23 A. My understanding -- I was never under arrest, so
24 I just believed, you know, since they did me a favor, I
25 would just give it to them.

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 Q. But now you know that wasn't a favor and that
2 you've been arrested?

3 A. Correct.

4 Q. And his testimony was that after he found it, he
5 was going to be arresting you, then you said, yeah, and
6 looked down.

7 Did you consent to a search of your person?

8 A. No, ma'am.

9 Q. Did they ever ask you to consent to a search of
10 your --

11 A. Never --

12 Q. -- person?

13 A. Never did.

14 MS. GAY: One moment, Your Honor.

15 Q. [Ms. Gay] So Mr. Judon, today in this hearing,
16 you've got a certain version of reality and the police
17 officer has a certain version of reality. Are those
18 versions of reality the same?

19 A. About the same.

20 I been in this predicament one time before and
21 after the videotape was revealed, it definitely revealed
22 that the officer was -- all of it definitely wrong.

23 Q. Right.

24 So your position is you're telling the truth and
25 your position is he's not telling the truth?

Motion to Dismiss
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 A. Correct.

2 MS. GAY: I have no further questions, Your
3 Honor.

4 THE COURT: Ms. Mulkey, anything further?

5 MS. MULKEY: Just a few, Your Honor.

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Motion to Dismiss
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

CROSS-EXAMINATION

BY MS. MULKEY:

Q. Mr. Judon, you said that you were never under arrest?

A. Never under arrest.

Q. So you just decided to give them these drugs because you said you wanted to give them to them?

A. Correct.

MS. MULKEY: Thank you, Your Honor.

THE COURT: All right. Thank you.

MS. GAY: Your Honor, I would like to make one more -- because consent and all these things can still be argued.

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Motion to Dismiss
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

REDIRECT EXAMINATION

BY MS. GAY:

Q. Did you believe you were free to leave?

A. I definitely not free to leave because my driver's license was retained by the officer. So therefore I couldn't drive off without my driver's license and my rental car documentation.

Q. So you believed that you were -- that the officers were holding you there until this whole thing worked out? That you were not free to leave?

A. Correct.

MS. GAY: No further questions, Your Honor.

THE COURT: Ms. Mulkey?

MS. MULKEY: No, Your Honor. Nothing further.

THE COURT: Thank you. You may step down,
Mr. Judon.

[Whereupon, Mr. Judon is excused and exits the witness stand]

THE COURT: Any additional rebuttal witnesses?

MS. GAY: No.

I think that's -- but I've got plenty of case law to talk about.

THE COURT: Do you need a few moments to gather your thoughts?

MS. MULKEY: The State is prepared, Your Honor.

Motion to Dismiss
Argument by Ms. Gay

ARGUMENT

1
2 MS. GAY: Your Honor, initially this case
3 started out for me, as I said, a week or so ago
4 because I was confronted with a situation where a case
5 that was going to be pretty straightforward all of a
6 sudden turned into, you know, some kind of
7 constitutional issue. And in so doing, I was told
8 that there was going to be -- that the video
9 possibility was there.

10 And so I went to look at the Constitution of the
11 United States of America, which we know, Your Honor,
12 is that due process. And that due process has been
13 followed up with much case law in this area about, you
14 know, what is considered due process under our
15 Constitution and it determined that, yes, in fact, you
16 know, he's supposed to have fairness, overall
17 fairness, due process.

18 So then I was advised to look at the --
19 specifically at the State Constitution, because our
20 State Constitution actually broadens some of those
21 protections even more. And in our State Constitution
22 we have some areas, section 10, which talks about
23 probable cause, things of that nature. And section 14
24 specifically. And in section 14, it is perceived that
25 this section sort of has to go to do also with

Motion to Dismiss
Argument by Ms. Gay

1 effective assistance of counsel, that, you know,
2 I'm supposed to be given everything, everything -- or
3 Mr. Malloy, who represented him -- everything that
4 could be potentially exculpatory and/or favorable to
5 my client to prepare a defense for him and to prepare
6 his case.

7 And then in that section, it specifically says
8 that: the right to trial by jury shall be preserved;
9 any person charged with an offense shall enjoy the
10 right to a speedy and public trial and an impartial
11 jury; to be fully informed of the nature and cause of
12 the accusation; to be confronted with the witnesses
13 against him; to have compulsory process for obtaining
14 witnesses in his favor; and to be fully heard in his
15 defense by himself or by his counsel or both.

16 So what -- moving forward to what I believe the
17 problem is, Your Honor, I believe that my client and
18 the police officer have a diametrically opposed view
19 of what happened in this search or this arrest and
20 that I believe that the ability -- the tangible
21 object, which the DVD of this camera video would be,
22 could and would be used during my suppression hearing,
23 as reviewing and such, as impeachment of the officer's
24 testimony.

25 If we believe both of these people, and they're

Motion to Dismiss
Argument by Ms. Gay

1 both, you know, telling the truth, there's absolutely
2 no way that they're the same situation. So whether
3 the video was impeachable to my client or whether the
4 video was impeachable -- the DVD was impeachable to
5 the officer, the value of the DVD, which is the
6 recording of the in-car camera, is for impeachment
7 purposes.

8 And so I then looked at all the law. And the
9 main case, of course, in the Supreme Court is United
10 States v. Youngblood. And in Youngblood it says that,
11 you know, the remedy would be dismissal if it was in
12 bad faith, and bad faith is -- has to do with
13 materiality and exculpability and imminent or obvious
14 way of usefulness in the trial.

15 And so then from there, Your Honor, our Supreme
16 Court picks up on that line of law in State v.
17 Jackson. And in State v. Jackson, our Supreme Court
18 adopted those types of inquiries about materiality and
19 the two-prong test. And so I went through all that,
20 found some other cases, which I have in my motion to
21 talk about those things, and including Gibbons,
22 [phonetic] Your Honor, which talks about overall
23 fairness and things.

24 And then I started really thinking about what we
25 were doing here today, and what we're doing here

Motion to Dismiss
Argument by Ms. Gay

1 today, Your Honor, is we're trying to determine
2 whether the -- whatever would have been in that video
3 was exculpatory or not. And so I went and researched
4 based on that: you know, how and why is it
5 exculpatory. We know it doesn't exist. We know that
6 the reason that it doesn't exist is because the
7 officer chose in his discretion, as he said, not to
8 put it into -- not to burn it to be putting it onto a
9 tangible object, DVD, to be evidence in this case.
10 That's testified to.

11 Well, when I started looking at all this -- and
12 the reason I had Mr. Malloy testify -- is that if you
13 look at the date of -- what Ms. Mulkey is saying is
14 important here. Within the first 90 days, something
15 has to be either requested within the first 180 days
16 or it's purged.

17 Mr. Malloy represented him in days of his
18 arrest. He sent in a timely Rule 5 discovery request
19 for -- during the -- that indicated -- and we've
20 looked at it. And I will tell you that based on this
21 case, the public defender's office has now rewritten
22 their Rule 5 discovery request.

23 But -- where is that?

24 [Whereupon, Ms. Gay reviews documents]

25 MS. GAY: Here it is.

Motion to Dismiss
Argument by Ms. Gay

1 And we looked at it real carefully to see if
2 there was any loopholes whatsoever that a DVD of an
3 in-car video of a traffic stop could somehow not be
4 deemed, you know, discoverable. And, you know, it
5 says things like may be available to the defense,
6 documents, tangible objects, reports of examinations,
7 tests, witness statements.

8 Okay. The audio on an in-car video is a
9 statement. It's a statement of my client. It's a
10 statement of the defendant. If we were having -- if
11 there was this video, if we had it and we had some
12 statement that they said, you know, he said, about all
13 this, they would be trying to bring that in as a
14 Jackson v. Denno statement.

15 And that's, you know, a statement of him for
16 purposes of his confrontation of the witnesses; for
17 him to also know that they made a statement of him.
18 And the fact that you can burn it into a tangible
19 object is a thing that you can then use as evidence in
20 this case that preserves the video tape.

21 So I looked at this and I said, well, under this
22 Rule 5, as of 8/29/13 the State was under a continual
23 obligation to provide anything that was a statement,
24 oral -- audible -- you know, an audio statement, a
25 picture, pictures that could have been taken from the

Motion to Dismiss
Argument by Ms. Gay

1 video -- I saw it yesterday at a prelim court, still
2 pictures taken from a surveillance video in a drug
3 case. They took pictures from it. And so that would
4 have been a picture.

5 So I've determined, Your Honor, in my reading of
6 this, that the existence of a video -- of the DVD
7 burned from an in-car camera does, in fact, fall under
8 this Rule 5. So then I decided that, okay -- and as
9 we know, Julie Gardner then presented discovery to him
10 in October in 2013, which it does not have any
11 reference whatsoever -- the officer testified -- he
12 made absolutely no reference in his police report
13 that he had -- you know, that there was, in fact, a
14 video -- an in-car camera that was used in the arrest
15 or that there would have been any possibility. That
16 was within sixty days of the time frame that we're
17 supposed to ask to have it burned.

18 So if he had even mentioned on his police
19 report, you know, presence of camera in my car -- you
20 know, other police officers have said that that's what
21 they're supposed to do right now, presence of camera
22 in car. So then even the defense attorney could have
23 read it and went, wow, there's supposed to be a video
24 of this.

25 This man's been talking about it since the

Motion to Dismiss
Argument by Ms. Gay

1 beginning. He's been talking -- I mean, trust me. I
2 know because when we came into this suppression
3 hearing and this status conference, that's all he
4 wanted to talk about, all he's ever talked to me
5 about. And I'm his second lawyer.

6 So, Your Honor, so then I -- so then I started
7 thinking about it even further and I said, well, you
8 know -- because I was looking at what Rule 5 said.
9 And it says specifically: relevant written or
10 recorded statements made by the defendant, copies of
11 possession, custody or control for prosecution. That
12 is also imputed to the North Charleston Police
13 Department: the existence of which is known or by the
14 exercise of due diligence.

15 See, this is the thing. The solicitor wants to
16 say, well, we didn't know about it so how could we
17 have destroyed it or how could we be responsible for
18 it. Rule 5 specifically says due diligence may become
19 known to the attorney for the prosecution. Now, are
20 they supposed to ask every officer, now that we know
21 in North Charleston it's completely discretionary
22 whether or not they put these things in evidence or
23 not? Did you have a video within ninety days so they
24 can preserve as evidence to have a fair trial and then
25 have due process for a client who's charged in this

Motion to Dismiss
Argument by Ms. Gay

1 county? I don't know. But it specifically says that
2 they have due diligence to find out what is the
3 possible evidence that could be culpable to him.

4 So then I decided that what is exculpatory. And
5 I looked at Brady, and Brady says that -- it says:
6 due process requires prosecutors to avoid an unfair
7 trial by making available, upon request, evidence
8 favorable to an accused where the evidence is material
9 either to guilt or to punishment.

10 Okay. Well, that seemed a little narrow for
11 me. And Brady has been expanded out. But the one
12 thing that mattered the most was this -- there's two
13 issues: what is material, and whether or not the
14 officer should have known it was material. So I guess
15 I'm arguing the part about materiality at this point.

16 So then I said, well, it's not necessarily
17 favorable to guilt -- goes to guilt or punishment,
18 because he admits to giving them the drugs. But what
19 it does go to is impeachment. It goes to impeachment
20 of the officer and the officer's version of facts
21 after my client sits up there twice, Your Honor, under
22 the oath -- under oath and says that it didn't go down
23 the way this officer said.

24 And so then we pulled the case of United States
25 v. Bradley during the lunch break. And it was -- the

Motion to Dismiss
Argument by Ms. Gay

1 Court of Appeals treated impeachment evidence as
2 Constitutionally different from exculpatory evidence.
3 According to that Court: failure to disclose
4 impeachment evidence is even more egregious than
5 failure to disclose exculpatory evidence because it
6 threatens the defendant's right to confront adverse
7 witnesses. Relying on Davis v. Alaska, the Court of
8 Appeals held that the government's failure to disclose
9 requested impeachment evidence that the defense could
10 use to conduct an effective cross-examination of
11 important prosecutorial witnesses constitutes
12 Constitutional error, of the first magnitude,
13 requiring automatic reversal.

14 So that's what's really going on here, Your
15 Honor. We have an officer who as -- when we went
16 through the relations -- he believes in his mind that
17 he has discretion, that he has the ability to decide
18 if some video is important. He also agreed with me
19 that -- and was aware that under the law that even
20 people who consent to searches at the time of the
21 arrest can still, you know, confront that and say that
22 they don't believe that that consent was
23 Constitutional, and make a motion to dismiss. He
24 admitted that he knew that. You know, I was
25 surprised. He admitted that he knew that.

Motion to Dismiss
Argument by Ms. Gay

1 And what's of interest, Your Honor, is that the
2 second -- I believe materiality is met. This is a --
3 the possibility of a picture, of a movie, of what
4 happened between two, three people on August 26, 2013,
5 for purposes of what we're here for today, Your Honor,
6 is totally and completely the audio, the possible
7 pictures from it, the picture -- movie itself.

8 These -- this is material. There is no way
9 possible that an officer or the solicitor's office can
10 say that an in-car video is not material. In DUI
11 cases, an in-car video is required. And it's
12 different, but it is required by statute to be present
13 for them to even prosecute the case. So, I mean, we
14 are different because it's a drug case.

15 But this case started out as a stop. It started
16 off as some kind of, you know, tint-problem traffic
17 stop. This wasn't a raid in somebody's house. This
18 is a situation where a marked patrol car is making a
19 traffic stop. So it is certainly material.

20 And as far as the second prong, Your Honor --
21 which I don't articulate quite as easily. But what
22 that one is, Your Honor, is it says immediately
23 apparent to the defendant or -- I mean, to the police
24 officer, that it had the weight for purposes of the --
25 of a fair trial. In other words, it puts the onus on

Motion to Dismiss
Argument by Ms. Gay

1 some -- to some extent, on the officer to know that
2 it's important. But -- and we're talking an in-car
3 video here.

4 And so I went through these things with him
5 specifically and I asked him, did you get trained in
6 the police department to know how to do these things.
7 And he said yes. And I said, well, are you familiar
8 with these regulations. And he said yes. And we went
9 through every single one of them, Your Honor. And it
10 does not say anywhere in here that it's his discretion
11 to decide whether or not there's a video.

12 And I read her response. And I've been dealing
13 with this for now two days. And it says, oh, the
14 officer may put it in evidence. No, it does not. It
15 says video -- vehicle video tapes containing
16 information, information, that may be of value for
17 case prosecution will be secured by the officer as
18 evidence and placed in the North Charleston Police
19 Department.

20 So the may is on may being whether or not it's
21 important or not. It's not a may -- it's not a
22 whether or not thing. This is maybe --

23 Do you have a copy of this, Your Honor?

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

25 MS. GAY: This is the regulations.

Motion to Dismiss
Argument by Ms. Gay

1 THE COURT: It's part of the record.

2 MS. GAY: It is part of the record, yes.

3 And so she has said repeatedly in her response
4 to my motion that the officer has -- she didn't use
5 the discretion word because I think to -- in fairness,
6 Your Honor, if we all are here to have our -- the
7 officers on the street to decide what's important to
8 be evidence in cases, then the rest of us are sort of
9 unnecessary because they're going to make the decision
10 what they think's important and that's not the truth.

11 What the truth is is that there's a bunch of
12 lawyers and a court system and a judge who decides
13 what's important and what's evidence. Officers are
14 supposed to bring things to the solicitor, everything
15 to the solicitor, everything favorable to the
16 defendant, everything that's possibly impeachable,
17 everything that has any ability to be relating to the
18 case at all. Then the attorneys, the solicitor, the
19 defense attorneys and the judges are supposed to
20 decide the weight and value of that evidence.

21 So what I'm saying again, Your Honor, is that in
22 her response she says that the policy of North
23 Charleston is that the officer may decide to figure
24 out a way to get it burned. That's the procedure.
25 We'll just say that if the officer believes that it

Motion to Dismiss
Argument by Ms. Gay

1 has any value to his case, he's supposed to ask to
2 have it burned. That's what officer -- that's what
3 Sargent Hille said.

4 But this is the problem. I agree with all of
5 that. I agree with everything that everyone has said
6 in this courtroom, except that that officer does not
7 have discretion to decide whether or not an in-car
8 video tape that may have relevant information, factual
9 base -- factual stuff to this case, should have been
10 not saved that day. He doesn't.

11 He doesn't have that discretion. He has
12 discretion to decide what he wants to do on the
13 street. He has discretion to decide how he wants to
14 handle my client after arresting him, but he does not
15 have discretion to decide whether a movie taken from a
16 camera that worked, in his car, should not be burned
17 because, as he testified, it just didn't seem that
18 important to me in this case.

19 Now, this case may have started out as a consent
20 case, Your Honor, but it's now a life without parole
21 case where a man is looking at the rest of his life in
22 jail, and he has decided to contest that search and he
23 has filed a motion to suppress. And right now, that's
24 the most important issue in this case, is whether or
25 not there's any possibility that you could decide

Motion to Dismiss
Argument by Ms. Gay

1 whether or not to suppress that evidence. And that's
2 the crucial issue in that case. And that is not some
3 thing that he gets to decide on that day: well, I
4 just don't think this is important so I'm not going to
5 have this one burned.

6 And, Your Honor, as I said, there are several --
7 it says: digital media files containing information
8 that may be of value for case. It doesn't say that it
9 has to be of value. It doesn't say it has to be
10 exculpatory. It doesn't say it has to be impeachable.
11 It doesn't say it has to be anything. It doesn't say
12 will be of value. It says may be of value. And then
13 it says: for case prosecution, will be tagged
14 appropriately and then transferred for digital video
15 disk, DVD; officers will document -- and this is
16 specifically -- officers will document an incident,
17 arrest, in related reports when the M -- or the VR
18 recording were made during the incident in question.

19 There is nothing in the police report that
20 indicates to anyone that this camera was functional in
21 his car and was making the recording. Whether the
22 recrding didn't come out or didn't -- you know,
23 whether it was blurry, or the value was bad, or any of
24 that stuff, that has to do with the weight of the
25 evidence, not the existence of it. This says officers

Motion to Dismiss
Argument by Ms. Gay

1 will document in incident reports and arrest-related
2 reports that the MRV recording procedures were in
3 place. And that was not done, and he specifically
4 told me that he didn't do that.

5 And his testimony, Your Honor, was that he
6 decided -- he never even looked at it afterwards. He
7 never even looked to see if there was -- if it was
8 malfunctioning or if there was some kind of problem
9 with it. The thing was working. It was sending
10 the -- it sent its little pictures to the North
11 Charleston server, and he never even looked at it to
12 see what it was and if it may have been anything that
13 was useful in this case.

14 It's a traffic stop. It's a search on the side
15 of the road. Everything about that video was crucial
16 and essential to this case. Everything about that
17 video had to do with impeachment. It is the best
18 evidence of what was happening at the time.

19 And so there's -- the two prongs of Youngblood
20 has definitely been met, Your Honor. And there are
21 some other cases that I mentioned in my motion, Your
22 Honor, that have to do with just general fairness and
23 the fact that, you know, under the Constitution, under
24 the State Court Constitution, under the case law,
25 under the federal case law, under the South Carolina

Motion to Dismiss
Argument by Ms. Gay

1 cases of State v. Jackson, under, you know, Gipson
2 [phonetic].

3 There are a few other cases, Your Honor. One of
4 them is Fraleigh [phonetic]. Not Fraleigh. What is
5 it called? I have so many in here. I'm so sorry.
6 Whitley is the last part of it, Your Honor. And
7 there's this really great comment -- I would like to
8 try to find it. Hold on.

9 [Whereupon, Ms. Gay reviews documents]

10 MS. GAY: As I said, I've tried putting all this
11 together in about ten days, and it's just been
12 overwhelming.

13 It's about fairness and things like that, Your
14 Honor, if I can find it. One more second. Let me
15 just breathe.

16 [Whereupon, Ms. Gay reviews documents]

17 MS. GAY: Here it is --

18 Your Honor, this is Kyles -- sorry -- Kyles v.
19 Whitley, Your Honor. And it says that: defendant
20 need not establish that the attorney's deficient
21 performance more likely than not altered the outcome
22 in order to establish prejudice.

23 This is a PCR case.

24 It says: the question is not whether the
25 defendant would more likely than not have received a

Motion to Dismiss
Argument by Ms. Gay

1 different verdict with the evidence but whether in its
2 absence he received a fair trial, understanding that a
3 fair trial resulting in the verdict would otherwise be
4 of competence.

5 And that's the issue here. That's where due
6 process and fairness comes in, Your Honor, is that --
7 the question becomes is this -- we're here -- this was
8 a PCR case. We're here trying to fix a wrong on the
9 front end because if this -- if I had not known -- if
10 I had not heard what she said very carefully at the
11 status conference last week, at some point maybe this
12 might have come up that there's -- that this camera
13 would have been recording at the time. But that was
14 the first time I had ever heard that. After e-mails
15 where I asked specifically, you know, what was going
16 on.

17 I'm not saying that it's Lauren Mulkey's
18 problem. Lauren Mulkey I think was trying to fix --
19 trying to find out as much as she could. My problem
20 is that the North Charleston Police Department and the
21 officer in question did not do what they were supposed
22 to, Your Honor. And it's evident that he didn't do
23 what he was supposed to, because he -- we went through
24 those regulations. And he did not do any of them.

25 And so it's -- she came into the case late.

Motion to Dismiss
Argument by Ms. Gay

1 Julie Gardner got what she got from the North
2 Charleston Police Department. Everybody is doing
3 their -- Luke Mulkey -- Luke Malloy, everybody is
4 doing their job. And it wasn't until she said that
5 last week -- that she said specifically last week, oh,
6 there was a video but it was purged in the normal
7 course of North Charleston procedure, or something
8 like that, that my client looked at me and said, I
9 told you so; I told you so.

10 And he had been asking me, and I had been
11 emailing, and he's been talking to Mr. Malloy about it
12 all along, asking where is the video, where -- you
13 know, his right to confront the witnesses against him,
14 his right to have all the evidence available in his
15 case that he could use in his defense. All of that.
16 He had been asking since the very beginning, where is
17 the video; they told me I was on camera; they put me
18 in front of the car because I was on camera.

19 And so, Your Honor, in just -- and just in the
20 concept of all of the specifics of when, you know, for
21 bad faith, and the two prongs of the bad faith test, I
22 believe we've met both of those prongs.

23 And, in general, Your Honor, it's just not fair
24 that this officer did not put that video into
25 evidence. And you can say -- she can say, well, it

Motion to Dismiss
Argument by Ms. Gay

1 could have been malfunctioning. And we don't know if
2 it's true. But it could have not been malfunctioning
3 and we do know it's true if it wasn't malfunctioning.

4 There was a video that was being sent to that
5 server. Because that's what Sargent Hille said, is
6 that's the process, that's what happens, and they've
7 lost, what, thirteen or fourteen videos of 7,000 or
8 something. And this particular car was given to him
9 and it had a working camera. And the way the cameras
10 work is they save it and then it's sent into their
11 server and then the only people who can pull it out is
12 the officer, the arresting officer.

13 And this arresting officer testified he never
14 even looked at it and he never considered it evidence
15 in this case, for whatever reason of his own that is
16 not good enough for this court process, Your Honor.
17 Thank you.

18 THE COURT: Ms. Mulkey?

19 MS. MULKEY: Thank you, Your Honor. May it
20 please the Court.

21 Would you prefer I stand here or come to the
22 podium?

23 THE COURT: Wherever you are more comfortable.

24 - - -

25 - - -

Motion to Dismiss
Argument by Ms. Mulkey

ARGUMENT

MS. MULKEY: The State would like to begin with the argument in response to this motion that officers should not be allowed to decide in every case what is evidence. And the reality, as this Court probably knows, is that they actually do do this. We aren't there. The assistant solicitors, the prosecutors, the defense attorneys, Your Honor.

Nobody is a better person to determine what that evidence is at the time of the incident than the officer. That's why they receive the training and the certification that they do and why they take an oath to serve and protect our community. Our society trusts law enforcement to make this determination. And it's part of what goes into making them the people that protect our community.

That being said, Your Honor, their -- a violation of any policy, if that was even believed, from what I've heard, is not grounds for a dismissal. The case law is where you find support for dismissal, arguably. And we don't disagree with the defense that the case -- we don't disagree with the holding in Jackson. However, the holding in Jackson by our State Supreme Court was specifically under, and they quoted, peculiar facts.

Motion to Dismiss
Argument by Ms. Mulkey

1 And for Your Honor's brief reminder, that case
2 was a DUI case. The video the prosecutor watched with
3 the defense attorney. After watching that video,
4 because they watched that video they dismissed the
5 case. Subsequently, the prosecutor decided to indict
6 the case -- re-indict the case, and in the interim
7 they had lost the Breathalyzer results. And based on
8 those peculiar facts, the Court in Jackson decided
9 that that was, in fact, a violation that was
10 inappropriate and that was not fair. We don't have
11 that here.

12 The State does not disagree with the fact that
13 all of the evidence we do have points to the car that
14 Officer Stott and Officer Kirk were in that day did,
15 in fact, have a working camera. But we do not have
16 any concrete proof or evidence that the tape ever
17 could have existed. As Your Honor heard testimony,
18 once that recording is made in the car, it then has to
19 be transmitted to the server. We don't have that
20 information. And the maintenance records that we
21 received, albeit somewhat vague, Sargent Hille also
22 testified that that company doesn't maintain the
23 server. They do primarily the audio and the radio
24 records.

25 So any failure to preserve, in hindsight here we

Motion to Dismiss
Argument by Ms. Mulkey

1 are a year and a half later possibly, you know, Monday
2 morning quarter-backing any of these issues. Any
3 failure of a police to preserve evidence is a non-
4 issue because they had no duty by policy, they had no
5 duty by law. And the case of Youngblood and the
6 California v. Trametta [phonetic] case go to that, as
7 well.

8 In Youngblood, the police did not preserve
9 evidence that could have potentially contained DNA.
10 Arguably, that's even more specific than a video,
11 something that the defense decided it could
12 specifically exonerate their client. What's important
13 to note is the Court said unless the defendant -- and
14 putting this burden on the defendant -- unless the
15 defendant can show bad faith on the part of the
16 police, the fairest preserved potentially useful
17 evidence is not a violation of due process.

18 Moreover, Your Honor, the Court refused in that
19 case to impose an absolute duty upon the police to
20 preserve everything of any conceivable evidentiary
21 significance.

22 And kind of to piggyback on that, in the
23 California v. Trametta case, it was a DUI sample. And
24 the Court kind of hung its hat on the fact that
25 there's only a duty to preserve evidence if, prior to

Motion to Dismiss
Argument by Ms. Mulkey

1 its destruction, there is some exculpatory nature that
2 is established.

3 The defense cannot show the exculpatory nature
4 of evidence that we do not know ever, in fact,
5 existed. Without proving its existence, the argument
6 as with materiality or its exculpatory nature is kind
7 of lost. Again, that goes back to these records that
8 Sargent Hille advised the information provided by
9 Ms. Gay, that company does not work on the L-3 system,
10 per se.

11 Because it's unknown if it existed, it obviously
12 was not suppressed by the State. But the State also
13 has no duty to go on a fishing expedition. I think
14 that's State v. VonDollen [phonetic], where the State
15 has a duty to turn over what can help the defendant
16 that they received, or if they plan to use it in their
17 case-in-chief. We heard testimony from the
18 defendant's former attorney, who did not allege that
19 there were any discovery issues or Brady violations.
20 And, in fact, while he was his lawyer, the defendant
21 was on two plea dockets and at one point was working
22 or attempting to work for narcotics. It's the State's
23 position that none of those -- that would have
24 occurred if, in fact, there was an ongoing Brady
25 violation.

Motion to Dismiss
Argument by Ms. Mulkey

1 And there's also any -- any bad-faith issues
2 that have been raised, the State submits that there
3 was no bad faith on behalf of the police, nor is there
4 bad faith on behalf of the solicitor's office. The
5 defendant was provided everything that the State was
6 provided. The defendant, through his counsel, has
7 access to investigators. There's no requirement that
8 the State make a complete and full accounting of every
9 police evidentiary investigation and procedure. And
10 without that --

11 The officers did their job that day. They were
12 tasked with working in an area to be visible and to
13 enforce criminal and traffic violations. They saw the
14 defendant's vehicle. They made a stop. And as a
15 result of that very short stop where -- you heard
16 testimony -- the defendant was cooperative. There
17 weren't any issues. And you even heard testimony from
18 the defendant where he said that he was never under
19 arrest, he just pretty much gave it to them as a
20 favor.

21 There's obviously some inconsistencies with the
22 defendant's testimony about not having his pants
23 unzipped, but yet then admitting to a conversation
24 with them about bathroom and digestive issues. Well,
25 why would that issue come up if his pants were

Motion to Dismiss
Argument by Ms. Mulkey

1 unzipped? I don't think that's something that
2 officers walk up to a car and just start discussing
3 digestive issues with defendants.

4 The defendant is also no newcomer to the law.
5 He's had twenty-three arrests in the past sixteen
6 years. He knows what consent is. He knows the
7 system.

8 The test for giving consent, Your Honor, is not
9 whether you were free to leave, it's whether you are
10 free to refuse consent. And the State submits that
11 the defendant, at thirty-seven years old, know issues
12 or awareness of any competency issues.

13 Testimony was elicited that he was not
14 handcuffed. In fact, the defendant even said that
15 himself. He was never under arrest. They're on the
16 side of the road. The defendant knew what was going
17 on and the defendant cooperated. And the police, as a
18 result of that cooperation, no struggles, no argument,
19 went about their business and did not download the
20 tape that day which, in fact, is not a violation of
21 law or policy.

22 And as such, the State requests that --
23 respectfully requests that you deny the defendant's
24 motion.

25 THE COURT: Any response, Ms. Gay?

Motion to Dismiss
Argument by Ms. Gay

ARGUMENT

1
2 MS. GAY: Well, initially, Your Honor, nobody
3 that gives consent that then is challenging the
4 consent was under arrest by the time they -- at the
5 time they were giving consent, because they consent
6 and then things are found and then they're under
7 arrest. So the fact that he says that he wasn't under
8 arrest at the time is irrelevant to whether or not he
9 can challenge the consent, just because logically you
10 have to -- that's just logic, Your Honor.

11 With regard to the situation, Your Honor, I do
12 believe we've met the prongs of Youngblood. I do
13 believe we -- I understand that in State v. Jackson it
14 was a specific peculiar set of facts. But I will say
15 that State v. Jackson has been used in case law on
16 ahead of -- you know, in other cases to set up the two
17 prongs of Youngblood in South Carolina and it doesn't
18 -- they don't pick apart that it's the only occasion
19 in life where because there was this video, that the
20 solicitor had -- was going to indict him afterwards.
21 That's not what it's known for. It's known to set up
22 and to be our State Supreme Court accepting
23 Youngblood.

24 And so in Youngblood it says that there's two
25 prongs, Your Honor, and I believe we've met them.

Motion to Dismiss
Argument by Ms. Gay

1 It's material. We know it's material. And it was
2 evident to the officer, the value or the materiality
3 of it. And that -- that's, I think, what we really
4 are talking about, Your Honor. A video of a stop is
5 material. I mean, if they're going to say it's not,
6 then that makes no sense.

7 So the video of the stop is what we want. It's
8 what everybody in America right now is wanting, is you
9 have a picture or a movie of things that happen and
10 it's so much easier to decide, you know, what occurred
11 for purposes of impeachability or who's telling the
12 truth or not.

13 And the second prong, Your Honor, is the
14 officer. As a trained officer in North Charleston,
15 he's aware of the value of videos because he's -- you
16 know, he's arresting people all the time. Of course
17 he's aware of that. I didn't ask him specifically,
18 are you aware of how important a video could be. But,
19 I mean, it's evident how important a video could be.
20 And that was one of the things in State v. Jackson --
21 and I know it was a specific case. But it's actually
22 a quote that says: in the case at bar, the videotape
23 was clearly material. Because it was a videotape, not
24 so much because of why they destroyed it or what
25 happened, but it was a videotape. And so it is --

Motion to Dismiss
Argument by Ms. Gay

1 though it's a unique set of facts, it's the same
2 thing: a videotape that's not been made available to
3 the defendant. And that's really what it's about.

4 I'm not suggesting that the officer
5 intentionally destroyed it after six months. I'm --
6 what I'm suggesting, Your Honor, is that they did not
7 preserve it to be evidence in this case.

8 And she said things like, you know, Monday
9 morning quarterback ready for a trial. At any point
10 in time, all the way until -- I just did a PCR here
11 with Judge Young fifteen years later about somebody's
12 conviction. Every bit of evidence that has anything
13 to do with the case is always important, always
14 important, whether it's the last thing you discover
15 before you walk into the trial or whether it's
16 something you may discover, you know, after the fact
17 in a PCR matter.

18 The evidence -- the best last clear chance, if
19 you want to call it, for this situation to have been
20 handled properly was with the officer who testified
21 that he never even watched the video, never even
22 considered putting the video in evidence. And it did
23 exist. And it was -- it could be -- it is extremely
24 important to my client's case. And it's exculpatory
25 because it goes to the search issues and everything

Motion to Dismiss
Argument by Ms. Gay

1 else.

2 If you were to rule in my favor on the search
3 issue, there would not be a trial. So that is the
4 ultimate question here, is that how does this become
5 exculpable. It is the weight of what -- of the
6 central issue of what we're talking about about
7 whether this case moves forward or not. So it is
8 exculpatory.

9 It may just have to do with impeachment, but it
10 is the thing -- the audio would have even been
11 impeachable. It didn't even have to be the picture,
12 just what -- something related to -- that was
13 contemporary -- contemporaneously recorded at the time
14 of the stop between the parties involved, Your Honor.
15 That's what the value of this is.

16 And it is -- if we had it right now, we would
17 not be having this hearing. We would be having a
18 suppression hearing and we would be watching for you
19 to make a decision about what the truth was. And I
20 believe that it's the central piece of evidence in
21 this case. And I -- it's not here, and it's not here
22 because of nothing my client did.

23 My client doesn't have a duty to say, by the
24 way, can you please give me that video. The State has
25 the duty to produce it. And in this case it was asked

Motion to Dismiss
Argument by Ms. Gay

1 for within thirty days of his arrest. Information was
2 given to him within sixty days of the arrest. And it
3 should have been a part of this case.

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Motion to Dismiss
Court's Ruling

COURT'S RULING

1
2 THE COURT: In South Carolina, an individual
3 asserting a Brady violation must demonstrate that the
4 evidence was favorable to the accused, was in the
5 possession of or known by the prosecution, was
6 suppressed by the State, and that it was material to
7 the accused's guilt or innocence or could be used for
8 impeachment purposes.

9 Generally, as I think Ms. Gay discussed, there
10 are three categories of Brady violations: cases
11 involving non-disclosed evidence or perjured testimony
12 about which the prosecutor knew or should have known;
13 cases in which the defendant specifically requested
14 the non-disclosed evidence; and cases in which the
15 defendant made no request or only a general request
16 for Brady material.

17 Evidence considered favorable to the defendant
18 includes both exculpatory and impeachment evidence and
19 extends to evidence that is not in the actual
20 possession of the prosecutor's file, including -- but
21 to evidence known by others acting on the government's
22 behalf, including the police.

23 Ms. Mulkey has indicated that the video
24 recording was immediately known, was not indicated in
25 the report.

Motion to Dismiss
Court's Ruling

1 Evidence is material only if there is a
2 reasonable probability that, had the evidence been
3 disclosed to the defense, the result of the proceeding
4 would have been or will have been different. While
5 Brady imposes a duty on the State to disclose material
6 evidence favorable to the defendant, the State does
7 have the additional duty to preserve evidence that is
8 favorable to the defendant.

9 The State does not possess an absolute duty to
10 preserve potentially useful evidence and the Supreme
11 Court in our state has held that a defendant must
12 demonstrate either that the State destroyed evidence
13 in bad faith or that the State destroyed evidence that
14 possessed an exculpatory value that isn't apparent
15 before the evidence was destroyed and that the
16 defendant cannot obtain evidence of comparable value
17 by other means. If it possess exculpatory value that
18 isn't apparent because its destruction, its disposal
19 constitutes a denial of due process.

20 In this case the defense counsel has failed to
21 establish a due process violation resulting from the
22 intentional destruction or the failure to preserve
23 relevant evidence. The record failed to establish
24 initially that the evidence requested by the defendant
25 even existed and failed to further establish bad faith

Motion to Dismiss
Court's Ruling

1 on the State's behalf.

2 The State has indicated to the Court, during the
3 pretrial motions that we have had today, that the
4 State does not know whether a video has ever existed.
5 The State has not seen the alleged video from the
6 incident and was unaware of its existence or non
7 existence and its contents. Thus, that supports the
8 finding that the State did not destroy any evidence in
9 bad faith.

10 Further, the testimony today failed to establish
11 the exculpatory value of this evidence. The defendant
12 has not established exactly what evidence was or
13 should have been apparent to the officer prior to the
14 -- and I call it destruction. I'm not even sure that
15 it's even technically a destruction of the evidence,
16 because of the way that the procedure is used.

17 The defendant alleges that the consent to search
18 the vehicle was given under such circumstances as to
19 constitute a lack of consent and indicated that he
20 turned over the -- but he indicated that he turned
21 over the drugs because the officers had done him a
22 favor. The defendant testified that he was told to
23 stand in front of the camera only after the search of
24 his car had been performed. He did not indicate that
25 the officer told him it was recording, he just

Motion to Dismiss
Court's Ruling

1 indicated that he was told to stand in front of the
2 camera.

3 To establish a due process violation, the
4 defendant must demonstrate that the State destroyed
5 the evidence in bad faith or that the evidence
6 possessed some exculpatory value apparent before the
7 evidence was destroyed, and that the defendant cannot
8 obtain the evidence by other means.

9 There was no testimony provided by the officer
10 that he knew what was -- that the material contained
11 on the alleged video contained material evidence that
12 was useful for impeachment or exculpatory since the
13 defendant was, in his own words, overly cooperative
14 during the stop.

15 Based upon my reading of the cases that Ms. Gay
16 has cited and she -- my question, my concern, again,
17 of course, was whether or not the statements could be
18 used for impeachment purposes, not just exculpatory
19 but favorable to the defendant. The case law is
20 abundantly clear Ms. Gay -- the defendant would have
21 an opportunity, even though the videotape does not
22 exist, to cross-examine the officer on any bias or
23 improper motive.

24 I hereby deny the defendant's motion to dismiss
25 based upon the defendant's allegations that the State

Motion to Dismiss
Court's Ruling

1 violated the defendant's due process rights under both
2 the United States Constitution and the South Carolina
3 Constitution and in violation of Brady.

4 Note your exception to my ruling, Ms. Gay.

5 MS. GAY: Your Honor, I would ask for this
6 appeal to be interlocutory. I think it's -- you know,
7 he's scheduled for a life without parole case next
8 week and this is -- obviously, you've just ruled all
9 this. I'm not sure -- I don't think we actually said
10 anything about the suppression hearing, which I kind
11 of see where that's at, and that's fine.

12 Bt this is a very, very significant issue, Your
13 Honor, that this is a life without parole case, again,
14 for the fifteenth time, and I just would like to ask
15 permission to be able to appeal it, send it up, and
16 see what happens before he picks his jury.

17 THE COURT: Ms. Mulkey?

18 MS. MULKEY: The State would object. We feel
19 that the case law is on our side and we would object
20 to that. And it's preserved post-conviction.

21 THE COURT: Ms. Gay, do you have any case law or
22 anything that would support that it's an automatic
23 appeal and the proceeding would be stayed on a denial
24 of a motion to dismiss?

25 MS. GAY: I've not looked that one up yet, but

STATE OF SOUTH CAROLINA
VS.
ELLIOTT JUDON, JR.,
DEFENDANT.

VOLUME 3 OF 4

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Tuesday, March 17, 2015, Commencing at 9:56 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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INDEX TO PROCEEDINGS

	PAGE
MOTION TO SUPPRESS	253
JOHN MICHAEL STOTT, JR.	
Direct Examination by Ms. Mulkey	254
ELLIOTT JUDON, JR.	
Direct Examination by Ms. Gay	270
Cross-Examination by Ms. Mulkey	281
Redirect Examination by Ms. Gay	296
Recross-Examination by Ms. Mulkey	303
ARGUMENTS	307
COURT'S RULING	326
MOTIONS IN LIMINE	336
PLEA	340
VOIR DIRE OF JUROR NUMBER 97	348
OPENING STATEMENT BY MS. MULKEY	363
OPENING STATEMENT BY MS. GAY	365
<u>WITNESSES FOR THE STATE</u>	
JOHN MICHAEL STOTT, JR.	
Direct Examination by Ms. Mulkey	369
Cross-Examination by Ms. Gay	387
Redirect Examination by Ms. Mulkey	396
Recross-Examination by Ms. Gay	399

INDEX TO PROCEEDINGS, continued

	PAGE
MATTHEW KIRK	
Direct Examination by Ms. Mulkey	404
Cross-Examination by Ms. Gay	412
SHANTA MIDDLETON	
Direct Examination by Ms. Mulkey	417
LAWRENCE ZIVKOVICH	
Direct Examination by Ms. Mulkey	423
MOTION FOR A DIRECTED VERDICT BY MS. GAY	433
<u>WITNESSES FOR THE DEFENDANT</u>	
ELLIOTT JUDON, JR.	
Direct Examination by Ms. Gay	439
Cross-Examination by Ms. Mulkey	455
Redirect Examination by Ms. Gay	474
RENEWED MOTIONS BY MS. GAY	479
CHARGE CONFERENCE	480
CERTIFICATE OF COURT REPORTER	482

INDEX TO EXHIBITS

[Exhibits pre-marked by counsel unless otherwise noted in transcript]

MARKED/ADMITTED

State's Exhibit Number 1 [Scale]	/ 378
State's Exhibit Number 2 [Knife]	/ 378
State's Exhibit Number 3 [Two Cell Phones]	/ 385
State's Exhibit Number 4 [SLED Report]	/ 428
State's Exhibit Number 5 [Drugs]	/ 432
State's Exhibit Number 6 [Car Rental Agreement]	468 / 468

State vs. Elliott Judon, Jr.
Motion to Suppress
March 17, 2015

MOTION TO SUPPRESS

THE COURT: State ready to proceed?

MS. MULKEY: Yes, Your Honor.

THE COURT: Defendant ready to proceed?

MS. GAY: Yes, ma'am.

THE COURT: We'll start with the motion to suppress, the most obvious, unless there is another order y'all wish to go in.

Ms. Gay?

MS. GAY: No.

I think -- well, there's a motion to suppress and a motion regarding the statement. I don't -- I think we all should do them at the same time because --

THE COURT: And I don't have -- do I have a copy of your motion to suppress the statement?

MS. GAY: There was -- these are all -- did not go together, if I remember. I mentioned the Jackson v. Denno portion of it and then -- and the testimony is still the same. I thought maybe we could take the testimony and then argue about it both at the same time.

THE COURT: Are you prepared to do that, as well?

MS. MULKEY: Your Honor, I believe the testimony

State vs. Elliott Judon, Jr.
Motion to Suppress
March 17, 2015

1 was given on Friday on the record. However, we do
2 have Officer Stott here to go through some of those
3 same things.

4 THE COURT: These may be a bit redundant. I
5 think we just need to hit the highlights. All right?

6 MS. GAY: Yes, ma'am.

7 THE COURT: Ms. Mulkey, who do you have here to
8 testify?

9 MS. MULKEY: Officer John Stott, from the North
10 Charleston Police Department.

11 [Whereupon, Mr. Stott comes forward]

12 [Whereupon, Mr. Stott is duly sworn by the clerk
13 of court as follows: do you swear or affirm that your
14 testimony be the truth, the whole truth, and nothing
15 but the truth, so help you God]

16 THE WITNESS: I do.

17 THE CLERK OF COURT: Be seated.

18 [Whereupon, Mr. Stott takes the witness stand]

19 THE CLERK OF COURT: Please state your full
20 name, and spell your last name for the record.

21 THE WITNESS: John Michael Stott, S-T-O-T-T, Jr.

22 THE COURT: Ms. Mulkey.

23 MS. MULKEY: Thank you, Your Honor. May it
24 please the Court.

25

- - -

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

JOHN STOTT, JR.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Officer Stott, where are you currently employed?

A. North Charleston Police Department.

Q. And how long have you worked there?

A. Since February of 2009.

Q. And what was your assignment back in August of
2013?

A. I was on the bike team.

Q. Did you have the occasion to become involved in
this case with the defendant on August 26, 2013?

A. Yes.

Q. And can you tell us a little bit about that?

A. He was operating a vehicle with window tint,
stopped for that violation and subsequently arrested for a
drug offense.

Q. And when you stopped the defendant, you said it
was for?

A. Window tint.

Q. And were you able to confirm that that was, in
fact, a violation?

A. Yes.

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 Q. And can you tell me what happened after you
2 approached the defendant's vehicle?

3 A. I noticed that his pants were undone, his zipper
4 was down, and his belt was undone.

5 Q. Did you have a conversation with the defendant?

6 A. I did.

7 Q. Could you please tell the Court what that was?

8 A. I asked him for his license, registration, and
9 proof of insurance, and explained the stop and the reason
10 for the stop. And Officer Kirk measured the window tint.
11 We asked him to exit the vehicle and I asked him for
12 consent to search the vehicle and he gave me consent to
13 search the vehicle and his person at that time.

14 Q. Thank you.

15 Now, going back just a second. When you
16 activated your blue lights, did the defendant stop
17 immediately?

18 A. Not immediately, no.

19 Q. And do you have prior experience in narcotics?

20 A. I do.

21 Q. And was there anything significant about the
22 stop at this point, when you approached the defendant,
23 that was raising your suspicion?

24 A. The fact that it was a rental -- I believed it
25 to be a rental vehicle and it had window tint on it.

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 Q. And did you confirm that it was a rental
2 vehicle?

3 A. I did.

4 Q. And how so?

5 A. He had a rental agreement in the glove box.

6 Q. And when the defendant exited the vehicle, can
7 you please describe his demeanor?

8 A. It was -- it seemed like he was trying to
9 conceal or cover up his -- the pants being open with his
10 shirt by kind of pulling it down and maybe keeping us from
11 being able to see him do that as he exited.

12 Q. Was he under arrest at that point?

13 A. No.

14 Q. Was he handcuffed?

15 A. No.

16 Q. And where were you physically at?

17 A. When he exited?

18 Q. Yes, sir.

19 A. I had moved from the passenger side of the
20 vehicle to the left rear bumper.

21 Q. And where were you? Were you in a parking lot
22 or --

23 A. On the side of the --

24 Q. -- the street?

25 A. On the side of Meeting Street. The right

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 shoulder.

2 Q. And at that point did you confront him again
3 about his pants?

4 A. I did.

5 Q. And what happened?

6 A. He said he had used -- he had to use -- he had
7 used the bathroom. And I asked him if that was -- if he
8 had done that in his car and he said no -- well, he said
9 no, and I left that alone.

10 Q. And you mentioned that you asked the defendant
11 for consent to search his vehicle?

12 A. Yes.

13 Q. Approximately how long after you made the
14 initial stop did you make that request?

15 A. Not long. A couple of minutes.

16 Q. Did the defendant appear to be confused when you
17 asked him for consent?

18 A. No.

19 Q. Did he ask any questions or ask you to explain
20 what consent meant?

21 A. No.

22 Q. Did he ever say he did not understand what you
23 were asking?

24 A. No.

25 Q. Did he appear to be under the influence or

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 impaired in any way?

2 A. No.

3 Q. Did he appear to be scared or intimidated?

4 A. No.

5 Q. Did you have your duty weapon out?

6 A. No.

7 Q. Did Officer Kirk have his weapon out?

8 A. No.

9 Q. Did you threaten the defendant such that he
10 would have felt obligated to consent?

11 A. No.

12 Q. Did you hear Officer Kirk threaten the defendant
13 in such a way that he would have felt obligated to give
14 consent?

15 A. No.

16 Q. And after the defendant gave consent, what did
17 you do?

18 A. I searched the vehicle.

19 Q. Did the defendant ever tell you to stop
20 searching the vehicle?

21 A. No.

22 Q. To the best of your knowledge, was the
23 defendant's consent freely and voluntarily given?

24 A. Yes.

25 Q. After you located -- or after you searched the

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 vehicle, did you locate anything?

2 A. I did.

3 Q. And what did you locate?

4 A. A digital scale with presumptive cocaine residue
5 on it; a utility knife with presumptive cocaine residue on
6 it; and scattered pieces of crack cocaine in the console
7 and driver-seat area and in and around the gear-shifter.

8 Q. Was there anything specific about the location
9 of those items, their proximity to one another, that was
10 of any significance on your part?

11 A. Just being that they're commonly associated with
12 drug sales.

13 Q. And at that point, what happened?

14 A. I returned to the rear of his vehicle and placed
15 him under arrest.

16 Q. For?

17 A. Possession of cocaine base.

18 Q. And then what happened?

19 A. He was handcuffed. And I confronted him again
20 about his pants and asked him if he had anything illegal
21 on his person.

22 Q. Did you read the defendant his Miranda rights?

23 A. I did.

24 Q. How did you do that, Officer Stott?

25 A. I keep a card in my pocket. I read from the

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 card.

2 Q. And after reading those, what did the defendant
3 do next?

4 A. He said he understood his rights and wished to
5 speak to me.

6 Q. And take us through what happened after that.

7 A. That's when I asked him about -- or I told him
8 he was under arrest and that we were going to be going to
9 the county jail and that they require a strip search on
10 any drug arrest. And he -- at first he wasn't -- he kind
11 of denied that anything was there but eventually he
12 admitted that there was something in the front of his
13 pants, and I put on a glove and retrieved that.

14 Q. Were you present in this courtroom on Friday
15 when the defendant made a statement about those drugs?

16 A. Yes.

17 Q. And after the arrest of the defendant and that
18 subsequent search, where did you take the defendant?

19 A. Officer Kirk transported him, but we met back at
20 the substation at Rivers and Cosgrove.

21 Q. And why did you go there?

22 A. To speak to him further about possibly working
23 with narcotics detectives to help him out.

24 Q. And why specifically in this situation was the
25 decision to go there as opposed to the jail?

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 A. Because of his cooperation level.

2 Q. Did the defendant indicate that he wanted to
3 cooperate on scene?

4 A. He did.

5 Q. And how long, total, would you say this stop
6 took from the actual time that you got out with the
7 defendant to when you left the scene to go to the
8 substation?

9 A. Not long. I would say ten to fifteen minutes.

10 Q. And prior to going into the vehicle with his
11 consent, had you returned his driver's license or rental
12 agreement to him?

13 A. No.

14 MS. MULKEY: The Court's indulgence, Your Honor.

15 THE COURT: Take your time.

16 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

17 Q. [Ms. Mulkey] Officer Stott, if you could just
18 tell the Court again the defendant's demeanor throughout
19 the stop and any changes that you observed physically or
20 otherwise.

21 A. First, he was very cooperative. I would say
22 overly cooperative. It seemed to me like he wanted to do
23 whatever was necessary to -- for the stop to go smooth and
24 him be about his way.

25 His demeanor definitely changed when he was

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 asked to exit the vehicle and that's when he kind of made
2 these movements or this concealing stance, you know, to
3 hopefully keep us from noticing that his pants were
4 undone.

5 And I would say during -- after he granted
6 consent to search the vehicle, I still paid attention to
7 him some just to see his behavior. That's something we're
8 taught. And he didn't seem overly concerned with what I
9 was doing, which made me -- or led me to believe that he
10 was more concerned with what was -- what he had hidden in
11 his pants.

12 And the other change I noticed was when he was
13 placed under arrest and confronted with what was in his
14 pants, he was sweating profusely and just his eyes were
15 darting, that sort of thing.

16 Q. Now, it was August in Charleston.

17 A. Yes.

18 Q. And so did you find the amount of sweat to be
19 excessive?

20 A. Well, that and the fact that he wasn't sweating
21 up until that point.

22 Q. You mentioned that you were taught these things.
23 Can you please tell the Court what kind of training you
24 had that led you to get to these suspicions you had that
25 day?

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 A. I've been to roughly eighty hours of drug
2 interdiction training, which teaches indicators. You know
3 that -- you know one indicator can't determine that
4 someone is guilty of anything or up to anything, but a
5 group of indicators can help you understand, you know,
6 what's going on or just kind of help you determine whether
7 or not somebody's being honest. Or if they, you know,
8 have something to hide, there's certain things people do.

9 And also, with the rental car being -- having
10 window tint on it, that's an indicator in and of itself.

11 Q. Your training and experience, your traffic
12 stops, and your intervention school, do rental companies
13 provide those tints on vehicles?

14 A. No.

15 Major rental companies do not put any window
16 tint on their vehicles.

17 Q. And you mentioned that his change in demeanor
18 when he exited the vehicle was of significance to you. Is
19 there a reason why you asked him specifically for consent
20 to search the vehicle at that point as opposed to his
21 person?

22 A. I did. I wanted to gauge his response and see
23 if that put him in a sense of relief that I was taking the
24 attention off of him and what was obvious to me.

25 Q. And is that something that you've learned

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 through your training?

2 A. Yes.

3 Q. And what was his response to that?

4 A. Response to me searching the vehicle?

5 A. What was the -- excuse me -- his change in
6 demeanor, or was there one, after you asked for the
7 consent to search the vehicle?

8 A. While I was searching the vehicle, he seemed
9 uninterested in what I was doing.

10 Q. And was that a change from just previously,
11 prior to you asking for consent?

12 A. Yes.

13 Q. And was that, again, a change to when you placed
14 him under arrest?

15 A. I'm sorry?

16 Q. Did his demeanor change again when you placed
17 him under arrest?

18 A. It did at the point where I started asking about
19 the drugs in his pants or anything illegal in his pants.

20 Q. Thank you.

21 MS. MULKEY: The Court's indulgence.

22 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

23 Q. [Ms. Mulkey] Officer Stott, what did the
24 defendant specifically say when you asked for consent to
25 search his vehicle?

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 A. He said, you can search the vehicle and you can
2 search my person.

3 Q. And you chose to search the vehicle?

4 A. Yes.

5 Q. And after you arrested the defendant for the
6 possession based on what you found in the vehicle please
7 tell me as specifically as you can what the conversation
8 was when you confronted him about what you believed was in
9 his pants.

10 A. To the best of my memory, I told him that I
11 believed that there were drugs in his pants. I told him
12 that he was under arrest and at the county jail he would
13 be strip-searched.

14 And, again, he -- at first it seemed as though
15 he was -- he denied that, initially, and it wasn't long
16 after that that he -- I don't remember his exact words,
17 but he -- I do remember him nod -- you know, nodding down.
18 His hands were behind his back and I remember him nodding
19 down, kind of giving me an indication that it was in the
20 front of -- that it was in the front of his pants, as
21 opposed to the rear.

22 Q. And at that point, what did you do?

23 A. I put a latex glove on and retrieved it from
24 inside his underwear.

25 Q. And did he at any time move back? Did he at any

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 time tell you to stop?

2 A. No.

3 Q. And if you don't mind, without being explicit,
4 how far did you have to go into his boxers to get this?

5 A. Not far.

6 Maybe -- I believe it was sitting at the bottom
7 of his boxers, loose. So underneath his genitalia but
8 still -- but being caught by his boxers in between the two
9 legs.

10 MS. MULKEY: Court's indulgence.

11 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

12 MS. MULKEY: We have no further questions, Your
13 Honor.

14 THE COURT: Ms. Gay?

15 MS. GAY: Yes. One moment, Your Honor.

16 [Whereupon, Ms. Gay reviews documents]

17 MS. GAY: I have no further -- I have no
18 questions for this witness.

19 THE COURT: You may step down. Thank you.

20 [Whereupon, Mr. Stott is excused and exits the
21 witness stand]

22 THE COURT: Do you have any additional
23 witnesses?

24 MS. GAY: I do. Does she?

25 THE COURT: You have no additional witnesses?

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 MS. MULKEY: No, Your Honor.

2 THE COURT: All right.

3 MS. GAY: I would like to call Elliott Judon.

4 THE COURT: Mr. Judon.

5 [Whereupon, Mr. Judon comes forward]

6 THE CLERK OF COURT: Put your left hand on the
7 Bible and raise your right hand.

8 [Whereupon, Mr. Judon is duly sworn by the clerk
9 of court as follows: do you swear or affirm that your
10 testimony will be the truth, the whole truth, and
11 nothing but the truth, so help you God]

12 THE WITNESS: I do.

13 THE CLERK OF COURT: Be seated.

14 [Whereupon, Mr. Judon takes the witness stand]

15 MS. GAY: Mr. Judon --

16 THE CLERK OF COURT: Wait a minute.

17 THE COURT: Hold on. We've got to follow the
18 process.

19 THE CLERK OF COURT: If you'll speak into the
20 mike.

21 State your full name, please, and spell your
22 last name for the record.

23 THE WITNESS: Judon. J-U-D-O-N.

24 MS. GAY: Mr. Judon, you are here today for your
25 trial.

Motion to Suppress
John Stott
Direct Examination by Ms. Mulkey

1 And we were in court on Friday and you testified
2 then. And, as well, we started again this morning.

3 And this incident that we are talking about
4 happened on August 26, 2013, and on that day I would like
5 to ask you some specific questions about the stop.

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Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

ELLIOTT JUDON, JR.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. GAY:

Q. When you saw the blue light, how long did it
take you to pull over?

A. I immediately pulled over. But I was only going
-- the speed limit is thirty-five miles an hour, so maybe
about a fifteen-yard mark, maybe, at the most.

Q. And I understand that this stop happened around
the Snyder's Party Rental place --

A. Right -- exactly --

Q. -- on upper Meeting --

A. -- exactly across the street.

MS. GAY: We can't talk at the same time. That
I know.

Q. [Ms. Gay] So Snyder's Party Rental on upper
Meeting Street?

A. Definitely correct.

Q. And you said -- I believe you testified on
Friday that they had followed you all the way from
somewhere around Leeds and Dorchester?

A. Constitution and Dorchester.

Q. And then they -- how many miles would you say

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 that was?

2 A. From Constitution to Dorchester Road -- I mean,
3 from Constitution to Meeting Street road is approximately
4 a mile and a half.

5 Q. And then when they stopped you, which officer
6 came? Was this [indicates] officer the officer that came
7 to your driver window or the passenger window?

8 A. [No response]

9 Q. Do you remember?

10 A. I can -- yeah, because one of them's taller and
11 one of them's -- one of them's kind of like short. So if
12 I can have their picture basically in front of me, I can
13 definitely tell you. But the one with the blond hair,
14 taller guy -- he the one came to the window.

15 Q. Is he the same one that talked to you in front
16 of the police car?

17 A. Yeah, he's the one that talked to me in front of
18 the police car.

19 Q. So when they asked you to come out of the police
20 car, is it this officer who asked you to come out of the
21 police car?

22 A. Well, when they -- well, both of them went back
23 to their car, I guess to do something with my license.
24 One stayed back. The taller one stayed back. That's the
25 one that came to the driver's side, he stayed back. And

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 he -- the officer, the officer right there [indicates],
2 came to the driver's side.

3 Q. So when they asked you to step back in front of
4 the car, the patrol car, back to the -- back part of your
5 car, how many officers were you talking to?

6 A. I was only talking to one officer.

7 Q. Was it this officer?

8 A. Yes, ma'am.

9 Q. So when you were talking to the officer, do you
10 remember that officer ever saying to you can I search your
11 car or person, will you give me consent, anything like
12 that?

13 A. Never did.

14 Q. Do you ever recall telling either of these two
15 officers that they had permission to search the car that
16 you were driving that day?

17 A. Never did.

18 Q. Now, pursuant to the facts, you're standing in
19 front of the patrol car in between your car and their car
20 and another officer is going over to the car you were
21 driving and going inside of the car?

22 A. Correct.

23 Q. Do you have any idea who that officer was? Was
24 it this [indicates] officer or the other officer?

25 A. It was not the one with the blond hair, so it

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 had to been that officer right there [indicates].

2 Q. So this officer was the one who, without asking
3 you, went into your car that you were driving and pulled
4 out some stuff out of that car?

5 A. Correct.

6 Q. Without your consent?

7 A. Correct.

8 Q. And when he brought it back to you he's
9 testified that then there was discussion and you were
10 handcuffed?

11 A. Correct.

12 Q. Pursuant to that process, do you -- before he
13 put the handcuffs on you, did you ever remember hearing
14 him say the what we call Miranda warnings, the things
15 about remaining silent, having lawyers --

16 A. No, ma'am.

17 Q. -- being used against you?

18 A. No, ma'am.

19 Q. Did any of those -- did either of those two
20 officers give you Miranda warnings, or anything like what
21 that would sound like, before they handcuffed you?

22 A. No, ma'am.

23 Q. After they handcuffed you, did they give you any
24 Miranda warnings?

25 A. No, ma'am.

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 Q. So the stuff that happened after you were
2 handcuffed, it was -- you were not free to leave; right?

3 A. No, ma'am.

4 Q. And you're handcuffed?

5 A. Yes, ma'am.

6 Q. And at that point they tell you -- this officer
7 has now testified today that he told you that you were
8 under arrest and that there was going to be this strip-
9 search at the jail. Do you remember that conversation?

10 A. Yes, ma'am.

11 Q. Do you remember him asking you specific
12 questions about what we found in the car and what -- you
13 know, what might be on you, after you were handcuffed?

14 A. To be honest, he gave the other officer a head
15 novation [phonetic], so I thought they was talking in some
16 type of microphone because the other officer's the one
17 told me about the stuff --

18 Q. So you --

19 A. -- that was in the car.

20 Q. Just to put on the record again today: you
21 believed that you were like in front of the police car to
22 be on camera?

23 A. Yeah. That's when he told me to step in front
24 of the camera.

25 Q. And they told you that: step in front of the

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 camera?

2 A. Correct.

3 Q. And -- okay. So whichever one it is, this one
4 [indicates] or Officer Kirk, do you remember being asked
5 questions about the stuff that -- the incriminating
6 scales, knife, all that stuff they found in the car, do
7 you remember them asking you questions about it?

8 A. I remember the other one asking me questions
9 and --

10 Q. Do you remember answering those questions?

11 A. Correct.

12 Q. After you were handcuffed?

13 A. Correct.

14 Q. And do you remember that they said to you -- you
15 said this officer, one of them, talked about how when you
16 went to the jail you would be strip-searched so if you had
17 anything on you, you know, and then asking you
18 specifically about whether or not you were having drugs on
19 you?

20 A. Correct.

21 Q. Do you remember that?

22 A. Correct.

23 Q. Is that a yes?

24 A. Yes.

25 Q. And pursuant to their question, did you then

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 make gestures or say words that indicated that you had
2 drugs in your pants?

3 A. I told them -- they searched me about two times.
4 So the first time I said, well, I told you I don't have
5 anything on me. And then they asked me again and --
6 everybody got silent. Everybody got silent and it was
7 just like a moment of silent at the time, and that's when
8 I admitted it.

9 Q. You admitted verbally that you had drugs in your
10 pants?

11 A. I said I've got something on me. Yeah.

12 Q. So you made a statement that said that you had
13 something on you --

14 A. Correct.

15 Q. -- after you were handcuffed?

16 A. Correct.

17 Q. And they had never given you Miranda?

18 A. Correct. Never.

19 Q. And this part about sweating and some things
20 like that, can you explain to the judge why you were
21 having some personal discomfort at that time that might
22 have made you sweat or feel -- look like your pants were
23 undone, things like that?

24 A. I never was sweating at all.

25 Q. And you had testified on Friday that you don't

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 believe that you took your own pants -- that you unzipped
2 your pants, that -- it's your testimony that your pants
3 were zipped when the stop started?

4 A. My pants was zipped. When he searched me, my --
5 when he searched me, my pants was zipped. And the other
6 one said, hey, he said -- he said, hey, like, oh, what's
7 going on, your pants unzipped. And I said, what are you
8 talking about, man; you could see that the officer patting
9 me down played with the zipper part. And that's when he
10 started asking me questions where I work at and stuff like
11 that.

12 Q. So it's your testimony that their -- that one of
13 these officers actually did something to your pants to
14 open it up?

15 A. Correct.

16 Q. And when they came up to you -- after they found
17 the stuff in the car and they were talking about it, did
18 they ask you can I search your person, can I -- you know,
19 can we search your person, like take your pants down, look
20 in your pants?

21 A. No.

22 But when he came back to the car, when he asked
23 me to step out, that's the first thing I asked him was,
24 hey, why I'm stepping out the car for. Because I thought
25 my license may be suspended. So I said, is my license

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 suspended or something, sir, why I'm stepping out of the
2 car. They were like, no. It make it sound like he didn't
3 want to -- he wanted to tell me and then again he was
4 like, just step out of the car, like he didn't want to --
5 he wanted to. So he said just to --

6 Q. I asked you a specific question. Did you
7 consent to them searching your person either at the time
8 you got out of the car or after you were handcuffed?

9 A. No, ma'am. Never consent.

10 Q. And then what -- you just brought something to
11 my attention. When you first -- did you ever get given a
12 ticket or a warning for any type of tint violation?

13 A. When we got to the precinct, he asked the other
14 officer that, you know, what should we do about -- should
15 we -- he was -- the officer right there didn't wanted to
16 give me a ticket but the other officer said, yeah, give me
17 the ticket.

18 Q. Did you get a ticket?

19 A. But I never did receive -- I remember him
20 writing a ticket in the precinct before I went into the
21 jail, but he never did issue me the ticket.

22 Q. You never saw it? They never --

23 A. I never saw it.

24 Q. -- handed it --

25 A. He might have been writing it. I knowed he was

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 writing something down.

2 Q. So in your -- you know, as you were doing this,
3 from the time that it started to the time it ended, you
4 testified on Friday that it was a pretty long period of
5 time for you. How long do you think all this took?

6 A. The whole process, the stop, arrest and
7 everything? Or just -- I mean, what do you mean by --

8 Q. Yes. The stop and all the way until when they
9 put you in the police car.

10 A. I would roughly have to say about -- we was out
11 there at least twenty-five, thirty minutes.

12 Q. And from the minute that it started and they
13 took you out of the car, how did you feel about how this
14 was going? Did you think this was your basic traffic stop
15 or did you think there was something more going on?

16 A. Well, I thought it was a basic -- just a regular
17 old basic traffic stop.

18 Q. Initially?

19 A. Initially.

20 Q. How about when they all took you in front of the
21 police car and started asking you all those questions?

22 A. Then I started to wonder like, you know, what
23 was going on.

24 Q. And what was going on is like did you think that
25 they were maybe after you for drugs?

Motion to Suppress
Elliott Judon, Jr.
Direct Examination by Ms. Gay

1 A. Correct.

2 Q. So you think that it was a stop really just to
3 see if you had drugs?

4 A. Correct.

5 MS. GAY: I have no further questions, Your
6 Honor.

7 THE COURT: Ms. Mulkey.

8 MS. MULKEY: Thank you, Your Honor.

9 Good morning, Mr. Judon.

10 THE WITNESS: Good morning.

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Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

CROSS-EXAMINATION

BY MS. MULKEY:

Q. Last week you testified in this court; correct?

A. Correct.

Q. And were you under oath at that time, sir?

A. Correct.

Q. And did you testify that on that day you were not under arrest?

A. No, ma'am. Not to my recollection.

Q. Do you recall testifying that you were not under arrest and you gave the officers the drugs as a favor?

A. Correct.

Not as a favor. Because when I was handcuffed, he was like -- I said, well, I'm just -- I'm going to give you all of it.

Q. I apologize. I'm a little confused.

Last week it's my understanding you testified under the record that you were not under arrest, but today your testimony is that you were placed under arrest?

A. Because when -- I was handcuffed, but then again it seemed like they still was trying to make, you know, like a decision or whatever. So I believed I was going to the jail so that's why I said, here, I'm going to give it --

Q. So were you under arrest or were you not,

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Mr. Judon?

2 A. If I had been handcuffed, I guessed I was under
3 arrest.

4 Q. You guessed, or --

5 A. I was handcuffed, so I was under arrest.

6 Q. So today your testimony is that you were under
7 arrest?

8 A. Correct.

9 Q. Which is different from Friday?

10 A. I believe I said I was under arrest Friday.

11 Q. Now, you've had contact with law enforcement
12 over the years; is that correct, Mr. Judon?

13 A. Correct.

14 Q. And have you ever been asked out of a vehicle
15 during a traffic stop?

16 A. No, ma'am.

17 Q. Never?

18 A. Not when I had my -- when I had my license --
19 before I had my license, I was asked out of the car. But
20 when I received my license, I was never asked out of the
21 car, and I was pulled over numerous of times.

22 Q. So let me just make sure I understand. You've
23 been pulled over numerous times?

24 A. Correct.

25 Q. About how many would you say?

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. One for -- two for speeding and two for tint
2 violations -- not tint violations. Two for seatbelt
3 violation and one for a tint violation.

4 Q. And can you explain to me or clarify what you
5 mean by when you had a license you didn't have to get out
6 of the car, versus when you didn't?

7 A. I believe because when they said I don't -- when
8 I didn't have the license, they automatically told me to
9 step out of the car for a inventory search or something
10 like that.

11 Q. And you just mentioned you believe the officers
12 that day were after drugs. Can you explain that?

13 A. Because when I was coming up -- I just came from
14 our house on Constitution. When I was -- they was like
15 hiding behind the church. So on my way coming up to
16 Dorchester and -- Dorchester Road, he was coming at the
17 same time. So he was behind me at the light. The red
18 light caught me. And, you know, up in the Dorchester area
19 is a very high-crime drug area.

20 So the light caught me. When I made my left, I
21 mean, they was so close behind me, if I even tapped my
22 brakes they would have hit me. So they followed me all
23 the way to Meeting Street and Dorchester, which is a half
24 a mile from to Meeting Street and Dorchester. They still
25 behind -- they were still behind me.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 And I made the left on Meeting Street road. I
2 mean, they're still following me so close. So I was
3 saying in my mind, why they following me so close.

4 So when they activated the blue lights, they hit
5 the siren like they was in the pursuit, they chasing
6 somebody. So that what made me pull over to the side of
7 the road. And when I look in my mirror I say, oh, they
8 behind me.

9 So I figured that, you know, a car with tint or
10 whatever, they assumed something was going on over there.

11 Q. And you said they were hiding behind a church?

12 A. They were like parked behind a church, yeah,
13 like they was, you know, just waiting for somebody just
14 to -- a random car to come -- a stereotype -- any type of
15 car that comes out that looks maybe like doing any type of
16 criminal activities or something like that.

17 Q. Could you clarify what you mean by hiding?

18 A. Because on Constitution -- they was like maybe
19 forty yards off of Constitution, so if you pulling in from
20 -- if you coming in from -- if you pulling in from
21 Dorchester Road making a left, you won't see them. But if
22 someone is coming back out, I guess they just -- you know,
23 they get right back behind them. So they was kind of like
24 blocking off like a cut or something.

25 Q. Was it a parking lot at a church?

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. Correct.

2 Q. Were they in a marked vehicle?

3 A. They was on a bicycle unit vehicle, but no
4 bicycle was on the back on the rack.

5 Q. Did it say anything like police or North
6 Charleston on it?

7 A. It said North Charleston on it, yeah.

8 Q. So you could tell it was a police car if you
9 looked at it?

10 A. You could tell it was a police car.

11 But you could kind of tell they was hiding.
12 They was definitely up to no-good business.

13 Q. Were they hiding like down in the seat?

14 A. No.

15 The car was like, you know, backed up in like a
16 cut area, like.

17 Q. In the parking lot?

18 A. Correct.

19 Q. And were they in uniform?

20 A. They remind me -- they was in a special kind of
21 uniform, not a regular North Charleston -- that you would
22 see on a regular -- they was like in a special unit type
23 of uniform.

24 Q. And was that uniform -- did it say North
25 Charleston Police anywhere on it?

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. I think it does say NC on the back. But I can't
2 remember if it says something on the front because it was
3 like a regular collar shirt, you know, with short pants or
4 whatever.

5 Q. Now, your testimony today is that when they
6 pulled you over, you were on a public street, a public
7 roadway?

8 A. I was in a public -- yeah. That's why I was
9 wondering why they would have pulled me over. Why didn't
10 they pull me over in -- well, you know, a secluded -- they
11 pulled me where everybody could, you know, like see the
12 traffic stop. Why would you wait four miles down and pull
13 me over in a secluded area? So I figured that, hey, they
14 must be up to no good or something like that.

15 Q. And so -- but you pulled over on that public
16 roadway?

17 A. Correct.

18 Q. And you said that there were cars going by?

19 A. Barely, yeah. Maybe one or two cars went by at
20 the time that --

21 Q. And they were in uniform?

22 A. The officers --

23 Q. Some kind of uniform?

24 A. The officers were in uniform?

25 Q. Yes, sir.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 A. Yeah, they was in -- yes, ma'am.

2 Q. But your testimony before the Court today is
3 that those officers in uniform, on a public roadway, they
4 had unzipped your pants?

5 A. Correct.

6 Q. And you remember them talking to you about a
7 strip search?

8 A. Correct.

9 Q. Do you remember that discussion?

10 A. When I'm going to the jail -- well, you know,
11 you go to the jail, you know, you'll be strip-searched.

12 Q. Do you know why they strip-search people at the
13 jail?

14 A. Yes, ma'am.

15 Q. Why is that?

16 A. The county jail strip-searches inmates due to
17 prior records. And so if I get locked up for anything, it
18 can be a trespassing charge, being that a prior record
19 they will automatically do a strip search.

20 Q. And what is the -- what is the goal of a strip
21 search? Do you know?

22 A. The goal of a strip search is to see if inmates
23 have any contraband, knives, drugs, anything of that
24 nature.

25 Q. And after this conversation, your testimony was

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 that you told them you didn't have anything?

2 A. Correct.

3 Q. Was that a true statement, Mr. Judon?

4 A. No.

5 Q. So then you said there was a moment of silence?

6 A. Correct.

7 Q. And then on your own, you decided to tell them
8 that, in fact, you had the drugs on you?

9 A. Correct.

10 Q. And what did you say?

11 A. I said, hey, I got something on me.

12 Q. And what was that something?

13 A. It was crack.

14 Q. And where was that located on you, Mr. Judon?

15 A. It was underneath my crotch area in my pants.

16 Q. And where did you go after you left the scene
17 that day?

18 A. Where did I go? One drove off in the car, and
19 I believe one of them took me to the police precinct.

20 Q. And why did you go there as opposed to the jail?

21 A. I don't know.

22 Q. Do you recall --

23 A. I mean, I guess sometimes -- yeah. I mean, some
24 officers take you to the precinct, before they book you in
25 the jail, to get additional information.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. Was there any discussion that day between the
2 officers and you about potentially working for narcotics?

3 A. Only one officer did. The other one seemed like
4 he didn't have no interest in it. But the officer that
5 drove me to the precinct, he seemed more interested than
6 the other officer.

7 Q. And can you tell me a little bit about that
8 discussion with the officer that was interested?

9 A. Just basic information. What's going on in the
10 streets, could you purchase something, you know, things of
11 that nature.

12 Q. And did you agree to go back and discuss this
13 with him as opposed to go straight to jail?

14 A. I agreed to when we got to the precinct. When
15 we got to the precinct, then, you know, I agreed.

16 Q. And so were you cooperative with them?

17 A. Correct.

18 MS. MULKEY: Beg the Court's indulgence.

19 THE COURT: Take your time.

20 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

21 Q. [Ms. Mulkey] Mr. Judon, going back to our
22 testimony before on Friday -- or your testimony, sir. Do
23 you recall talking about some digestive issues that were
24 going on?

25 A. Correct.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. Can you kind of explain to me a little bit what
2 was going on that day? I don't mean to put you -- make
3 you uncomfortable, but just kind of what that conversation
4 came up as a result of?

5 A. Because when one -- one of the officers was
6 searching the car, the other officer was like, you know,
7 field-interviewing me and he -- I was like, you know, I
8 went to the restroom, and I had some bathroom issues.

9 Q. So why did that conversation come up?

10 A. I don't maybe -- maybe because my pants was --
11 he said my pants was unzipped when I was walking towards
12 him or whatever.

13 Q. But your testimony is that they unzipped your
14 pants?

15 A. Correct.

16 Q. Do you think it would make sense for them to ask
17 you about bathroom issues if your pants weren't unzipped?

18 A. Only one officer asked me about that. The other
19 officer -- the way he patted me down, the other officer
20 really couldn't -- he couldn't like really see.

21 Q. But would it make sense to you to have a
22 discussion -- I mean, you said you've had several traffic
23 stops with law enforcement.

24 A. Correct.

25 Q. Did they ever ask you about bathroom or potty

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 issues or --

2 A. I never even -- well, I never even got out of
3 the car. When I had my license on a regular traffic stop,
4 I never even got out of the car.

5 Q. In all the traffic stops that you've had, these
6 encounters with officers, has anybody ever asked you about
7 going to the bathroom?

8 A. No, ma'am.

9 Q. So was that different this time around?

10 A. Not really, no, ma'am. It was kind of
11 different.

12 Q. Did you wonder why they were asking?

13 A. Because he played in my zipper area. When he
14 played in my zipper area, that was automatically -- he was
15 -- I don't know what he was looking for up in there. So
16 that's why I guess he asked me why my zipper was unzipped.

17 Q. And so he -- did he play with your zipper area,
18 or did he unzip your pants on that public roadway?

19 A. Yeah. He unzipped it and played up in there,
20 like something was concealed in there, something like
21 that.

22 Q. Can you explain that to me?

23 A. How you mean can I explain that to you?

24 Q. How that happened, where you were at.

25 A. I was in front of the police car.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. Okay. And which officer was that?

2 A. The officer that patted me down was that officer
3 right there [indicates]. The short one.

4 Q. And what do you -- take me through what happened
5 first. Did he play with your zipper and then unzip it?

6 A. Well, at the time he was patting me down, he was
7 playing up in the front of my area.

8 Q. When exactly was it, Mr. Judon, that you placed
9 those drugs in your pants?

10 A. When was it?

11 Q. Yes, sir.

12 A. Before I left Constitution.

13 Q. And did you do that in your vehicle?

14 A. No, ma'am.

15 Q. Where did you do that?

16 A. Inside the house.

17 Q. And where did you place them when you did that?

18 A. Well, I had on like brief boxer pantses, so you
19 can't just stick it in there in one or two seconds. You
20 got to really put it in there. You got to really -- you
21 got to be standing up to really put it in there.

22 Q. And when you did that -- and in order to do
23 that, did you have to unzip your pants?

24 A. No -- yeah. I can -- yeah, I had to unzip my
25 pants. Yeah.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. And were these the type of boxer briefs that
2 have a button or anything in the front, or are they closed
3 with a seam?

4 A. Closed with a seam. No buttons in front.

5 Q. And so your testimony today is that you placed
6 the drugs in your pants on Constitution?

7 A. Correct.

8 Q. At that point, you had to unzip your zipper?

9 A. Correct.

10 Q. And that you were subsequently stopped later by
11 the police?

12 A. Correct.

13 Q. And that they then, on a public roadway, played
14 with your zipper and then pulled it down?

15 A. Correct.

16 Q. That you were placed under arrest?

17 A. Correct.

18 Q. And that you subsequently handed over the drugs?

19 A. Correct.

20 Q. When you were at Constitution, did you take
21 anything out of the house and place it back in your car?

22 A. No, ma'am.

23 Q. How long had the scale and the knife been in
24 your vehicle?

25 A. Maybe a day or so.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 Q. And what do you do for a living, Mr. Judon?

2 A. I detail and I do barber.

3 Q. And so what do you use a scale and a utility
4 knife for in that occupation -- those occupations?

5 A. Well, I use scales -- you know, I do the drugs
6 at the same time and, you know, weigh it so you don't
7 overdose yourself. So you will weigh it so you don't
8 overdose the amount of drugs you do.

9 Q. So that scale is just for your own personal use?

10 A. Correct.

11 Q. So you admit that that scale is used in
12 conjunction with the cocaine base?

13 A. Correct.

14 Q. Can you explain why there would have been some
15 crumbs in the vehicle around you?

16 A. I have no recollection of that, ma'am, to be
17 honest.

18 MS. MULKEY: Court's indulgence.

19 THE COURT: Take your time.

20 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

21 MS. MULKEY: We have nothing further, Your
22 Honor.

23 THE COURT: I'm assuming you have more than one
24 question?

25 MS. GAY: Yes, I do, Your Honor.

Motion to Suppress
Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey

1 THE COURT: All right. We're going to take a
2 short comfort break.

3 Mr. Judon, you can stay right there -- because
4 you cannot talk to your client right at this point
5 anyway.

6 So about five minutes. Thank you.

7 [Whereupon, a recess is taken from 10:41 a.m. to
8 10:45 a.m.]

9 THE COURT: Thank you. Be seated.
10 Whenever you are ready, Ms. Gay.

11 MS. GAY: Thank you, Your Honor.

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Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

REDIRECT EXAMINATION

BY MS. GAY:

Q. All right. Mr. Judon, I want to get a couple of things straight.

First of all, the last thing that you testified to with Ms. Mulkey was this business about crumbs or drug stuff, you know, the cocaine, crack cocaine, in your car. Is it your testimony that there was no crumbly little pieces of cocaine or crack cocaine in your car?

A. No, ma'am.

Q. So and you've admitted that this business, this scale and this knife was, in fact, in the car. Can you tell us where in the car these two items were located?

A. In the armrest.

Q. Inside the armrest?

A. Correct.

Q. So if a person looked -- okay. We've got dark windows. We know they have dark windows. But if a person standing in [sic] your car looking in, could they have seen these two items?

A. No possibility.

Q. In order to have found or to have seen these two items, they would have had to enter the interior of your car and lift up the armrest to find it?

A. Correct.

Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 Q. And just to reiterate: you never gave anybody
2 consent to go in your car?

3 A. Never did.

4 Q. And then there was this question about where you
5 put the drug package in your pants, and I think that you
6 said that you have to be standing up and that it takes a
7 process. Did you at any point during the traffic stop,
8 from the time, you know, the officers approached your --
9 or the time you saw the blue light or whatever, did you
10 ever reach down and do anything inside your pants with
11 that package of drugs?

12 A. No. I wouldn't have time to do anything like
13 that.

14 Q. And did you ever take the drugs from some other
15 interior place in the car and stick it in your pants right
16 when the police either blue-lighted you or came up?

17 A. No, ma'am.

18 Q. So is it your testimony that you had not opened
19 your fly or your zipper on your own?

20 A. Correct.

21 Q. And she made all kinds of things about how this
22 occurred. And it's my understanding of what your
23 testimony was is that the person that came and talked to
24 you on the driver's side said, hey, what's up, and he's
25 the one who started kind of patting you down and kind of

Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 doing something with your zipper?

2 A. The second time. Yes, ma'am.

3 Q. And that's by the car?

4 A. Correct.

5 Q. And then later, I think we've got it clear in
6 testimony, that you were told to walk up in front of --
7 behind your car and in front of the patrol car to be on
8 camera and was talking to a different officer?

9 A. Correct.

10 Q. And that different officer is the one who said
11 to you, what's up with your pants, as you were walking
12 from the first officers' encounter where they --

13 A. Correct.

14 Q. And then -- and he's -- the second officer is
15 the one who asked you about your pants?

16 A. Correct.

17 Q. And he would not have been able to see that this
18 officer had done something with your zipper?

19 A. Exactly correct.

20 Q. Okay. Right.

21 And so -- and then you said that you were taken
22 to the precinct and you're not real sure why. And at that
23 time was there any piece of paper put in front of you that
24 said, you know, this is your Miranda warnings, you need to
25 sign here your name and you need to initial, at any point?

Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 Did anybody give you that piece of paper?

2 A. No, ma'am. Never did.

3 Q. So when you sat down with them at the precinct
4 and were having conversations about where you -- whether
5 you could buy drugs possibly, where you might have gotten
6 the drugs on you, was there ever an occasion where anybody
7 pulled out a card and read those Miranda warnings to you?

8 A. No, ma'am. Because there was numerous officers.
9 No, ma'am.

10 Q. And they never got you to sign anything or
11 initial anything?

12 A. No, ma'am.

13 Q. But they did, in fact, ask you a lot of
14 questions about the drugs on you and the drugs that you
15 might be able to buy for them?

16 A. Correct.

17 Q. And so those conversations -- those answers that
18 you gave them, those statements that you made, those
19 weren't in furtherance of any -- like they weren't after
20 Miranda warnings?

21 A. No, ma'am.

22 Q. Or anything signed?

23 A. No, ma'am.

24 Q. And the part that's the most confusing to me
25 about why we had to talk about it so much is this

Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 handcuffed thing, because you were here in the courtroom
2 on Friday when the officer initially testified that he
3 wasn't the officer who searched the car, that Officer Kirk
4 was the person who searched the car. But today, Officer
5 Stott says he's the person who searched the car.

6 Now, when he testified this morning that you
7 were in handcuffs and that he was telling you that he was
8 arresting you and y'all were discussing strip-searching at
9 the jail, is that how you remember it?

10 A. Correct.

11 Q. So when -- and I think you testified, well, I
12 guess when I had the handcuffs on, I figured I was going
13 to jail. But before that, you weren't real sure whether
14 they were going to arrest you or not?

15 A. Correct.

16 Q. And so the stuff about the strip search and is
17 there any drugs on you, and the questions, the specific
18 questions they asked you about whether or not you were
19 carrying drugs, was after they handcuffed you and told you
20 they were taking you to the jail?

21 A. Correct.

22 Q. And I believe your testimony was is that you
23 were pretty sure at that point you were a little confused,
24 but at that point you figured you had been under arrest?

25 A. Correct.

Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 Q. Or were going to be arrested?

2 A. Correct.

3 Q. Or maybe not even arrested if they took you to
4 the precinct and you agreed to cooperate with them. But
5 you knew you were handcuffed?

6 A. Correct.

7 Q. And then the part about these questions that
8 they asked you after they handcuffed you and after they
9 told you they were taking you to the jail, they
10 specifically asked you do you have any drugs on you?

11 A. Correct. More than once.

12 Q. More than once.

13 And you then said, nodded and acknowledged, I
14 believe your testimony was, yes, I do have some stuff on
15 me.

16 A. Correct.

17 Q. In furtherance of their question?

18 A. Ma'am?

19 Q. In furtherance of their question, they asked it
20 so you answered it?

21 A. Yes, ma'am.

22 Q. And this is my last question.

23 At the time that they went and were talking to
24 the officer who we now know is Kirk, even though that's
25 not what he said on Friday -- when Kirk was talking to you

Motion to Suppress
Elliott Judon, Jr.
Redirect Examination by Ms. Gay

1 in front of the camera, you know, in front of the car, the
2 Officer Stott went and looked inside the interior of your
3 car, lifted up that armrest, and found those items without
4 asking you for your permission?

5 A. Correct.

6 Q. And you didn't give consent?

7 A. Never did.

8 MS. GAY: I have no further questions, Your
9 Honor.

10 MS. MULKEY: Briefly, Your Honor.

11 Mr. Judon, I just want to clear up a few things
12 I'm confused on.

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Motion to Suppress
Elliott Judon, Jr.
Recross-Examination by Ms. Mulkey

RECROSS-EXAMINATION

BY MS. MULKEY:

Q. Your testimony is that the officers that day were in uniform?

A. Correct.

Q. In a marked vehicle?

A. Correct.

Q. In a parking lot?

A. Correct.

Q. During the day?

A. Correct.

Q. But that they were hiding and targeting you?

A. I didn't say they was targeting me. They could have been targeting me. I was the first car that came out.

Q. But you felt that they were -- they were looking for something specific?

A. Correct.

Q. While they were hiding?

A. Correct.

Q. Now, Mr. Judon, you put those drugs in your pants when those blue lights came on, didn't you?

A. Never did. I wouldn't have time to do it. It's impossible. Very little --

Q. That's why the crumbs were in the seat?

Motion to Suppress
Elliott Judon, Jr.
Recross-Examination by Ms. Mulkey

1 A. There was no crumbs.

2 When they drive off in the car -- he was
3 fumbling around inside the car when he drive off in the
4 car. I never gave permission to drive off in my rental
5 car and agreement, which deducted me \$250. I don't know
6 what he was doing in that car when he drive off.

7 Q. So is your testimony that you were going to walk
8 around all day with drugs in your crotch?

9 A. Correct.

10 Q. And you want the Court to believe that?

11 A. Whenever I wanted to do my little drugs, I had
12 it, I weighed it, and do my little part.

13 Q. And you also want the Court to believe that the
14 trafficking weight of cocaine base was just yours for
15 personal use?

16 A. In actuality, in the court system actually it's
17 not that much drugs. But in the street, it's just -- it's
18 not that much drugs, man, to weigh more than that --
19 that's the minimum.

20 Q. You ever dealt with more than that?

21 A. Yes, ma'am.

22 Q. And but you want the Court to believe that those
23 drugs right there that were found in your pants were just
24 your personal use?

25 A. Yes, ma'am.

Motion to Suppress
Elliott Judon, Jr.
Recross-Examination by Ms. Mulkey

1 We call it Louie [phonetic]. We crush it down,
2 put it in a cigar, and smoke it.

3 Q. Did you give officers any problem that day?

4 A. No, ma'am.

5 Q. And, in fact, you were actually very compliant?

6 A. Yeah.

7 Compliant, but kind of confused at the same
8 time.

9 Q. And did you fight with them or were there any
10 struggles?

11 A. No, ma'am.

12 Q. Would you agree that you were quite polite?

13 A. I'm a polite person. That's me in nature. I'm
14 a polite person.

15 Q. And I can see that.

16 Now, you were so compliant that you agreed to go
17 back to their substation with them to discuss working for
18 narcotics?

19 A. I didn't agree to go back.

20 That's what they said to me. I thought I was
21 going straight to the jail. They followed each other and
22 they took me to the precinct. I didn't agree to go to the
23 precinct.

24 But during -- once we got to the precinct and
25 made a suggestion, you know, maybe you --

Motion to Suppress
Elliott Judon, Jr.
Recross-Examination by Ms. Mulkey

1 Q. Okay. But once you got to the precinct, you
2 agreed to continue talking and working with them?

3 A. Correct.

4 Q. In fact, you actually went through and signed a
5 document while you were there?

6 A. The only document I signed when I was there was
7 that he said if you sign my money over, which I only had
8 like \$200 in my pocket, that I would get a lower bond; if
9 I didn't sign the bond [sic] over, he would make sure I
10 got a high bond. So that's the only thing I remember
11 signing.

12 Q. But you signed the paperwork to sign over money?

13 A. Definitely I signed that over. I know for a
14 fact I signed that over.

15 Q. And so, again, going back to -- you were
16 cooperative and compliant throughout the entire stop?

17 A. Yes, ma'am.

18 MS. MULKEY: No further questions, Your Honor.

19 THE COURT: You may step down. Thank you.

20 [Whereupon, Mr. Judon is excused and exits the
21 witness stand]

22 THE COURT: Do you have any other witnesses?

23 MS. GAY: No, Your Honor.

24 - - -

25 - - -

Motion to Suppress
Arguments

ARGUMENTS

THE COURT: Happy to hear arguments.

MS. GAY: Your Honor, initially, as I said, for purposes of this statement and suppression and all the rest of the statements I would like for you to consider all of this at one time in terms of fruit of the poisonous tree.

I think that we have an unlawful stop and detention. And I believe that we have a consent that is not even real. But even if they say it's true, then it should be looked at as involuntary. And I believe that the statements made pursuant to all of this, which they intend to use in this trial, should be inadmissible based on all the initial unconstitutional activity.

And in addition -- also, Your Honor, I would like to renew my motion again for motion to dismiss because today this officer testified under oath something completely different than he testified on Friday. He testified that Officer Kirk was the officer who did the search on Friday, and he testified today that he was the officer.

And I know that because the -- my client is very confused as to who these people were. And so when he initially testified, my client looked at me and went,

Motion to Suppress
Arguments

1 oh, that was him. And so it became -- he said, well,
2 that's not the person that I was talking to.

3 And I think that what he said was he was not the
4 person who searched the car, he was the person who was
5 talking to the defendant when I was talking to him and
6 saying that he was, you know, all this stuff about,
7 you know, which is why -- all this stuff is happening
8 in front of the police car, his testimony is that
9 Officer Kirk was the one searching the car, and today
10 it's completely separate.

11 And I would just like to renew my motion because
12 I believe, again, that that search was not consented
13 to. He said, I asked him for consent, he said yes. I
14 was having all these conversations with him; he was
15 not the person, as of today's testimony, that was
16 talking to my client. So I just renew that motion
17 because I believe that that's significant.

18 THE COURT: Ms. Mulkey?

19 MS. MULKEY: Thank you, Your Honor.

20 First, as to the traffic stop, we would argue
21 that that, in and of itself, was valid based on the
22 equipment violation --

23 MS. GAY: I'm not sure you're correct, but
24 that's okay.

25 THE COURT: Ms. Gay, I really don't need

Motion to Suppress
Arguments

1 conversations between the two of you.

2 As to Ms. Gay's assertion that there was
3 discrepancy between officers' testimony today and
4 Friday: that's all I need, her renewal of the motion
5 to dismiss.

6 MS. MULKEY: Your Honor, and the State would
7 submit that there has been no confusion in terms of
8 the defendant being able to identify who was there,
9 that Officer Stott was, in fact, the contact officer
10 that day. His testimony is that he was the one that
11 made contact with the defendant; Officer Kirk was on
12 the driver's side next to the defendant but Officer
13 Stott was actually the one speaking to him. He was
14 the one that asked for consent. He was the one that
15 actually did the search of the car, and Officer Kirk's
16 role was that of the cover officer to try and to stay
17 with the defendant and to be there for kind of safety
18 purposes to back him up

19 THE COURT: Who retrieved the items from the
20 console?

21 MS. MULKEY: Officer Stott, Your Honor.

22 THE COURT: All right. Ms. Gay, anything
23 further?

24 MS. GAY: Well, he testified on Friday that Kirk
25 is the one who says we retrieved the items from the

Motion to Suppress
Arguments

1 console, and that he was the one standing in front of
2 the car talking to my client. As I said, I remember
3 this because my client and I looked at each other and
4 went, you know, what?

5 And so I do believe that he's now given two
6 completely different versions of the same thing. And
7 it makes a significant difference as to who was the
8 person who was searching the car and whether or not
9 they asked for consent.

10 THE COURT: At this time, that is not how I
11 recall the testimony. Denying your motion to dismiss.

12 All right. So you're going to do the motion to
13 suppress argument?

14 MS. GAY: Yes, ma'am.

15 Your Honor, there are many -- as we make a
16 traffic stop and we see the -- what is the traffic
17 stop. I am not disputing that they had some tint
18 problem and had the ability to make a stop. He has
19 added testimony that he believes that he was targeted
20 in some kind of way and that it was outside the scope
21 of a normal traffic stop. However, I'm not bringing
22 to the table any information to establish was it some
23 type of traffic stop because he had tinting problems.
24 I mean, they provided information to me that said that
25 they had to remove the tint.. So I know that they made

Motion to Suppress
Arguments

1 a -- some type of valid stop.

2 Where I have a problem, Your Honor, is what
3 happened after that. My client testified that he
4 never gave consent to search at all, what they found
5 in the car. What they found in the car -- as the
6 testimony was very clear today, a little confused on
7 Friday -- is they found things in the car, then they
8 came to him, then they handcuffed him, then they
9 discussed with him and asked specific -- elicited
10 questions -- answers -- asked specific questions about
11 drugs, whether he had drugs, I think that were
12 incriminating. And then he said, yes, I do have drugs
13 on me, I'm carrying some stuff.

14 So it is my position, Your Honor, that under
15 Tindle we have a situation where even if they say he
16 consented, though he testified that he didn't, that is
17 an invalid situation because he was incarcerated or
18 detained -- not incarcerated -- but he was detained at
19 the time that this was going on. He was not free to
20 leave.

21 We testified to that at the hearing on Friday,
22 that he did not believe he was free to leave. We
23 believe that after the initial stop of what is your
24 license, you know, this is a rental car, that from
25 that point on, it turned into something completely

Motion to Suppress
Arguments

1 different and we do not believe they had reasonable
2 suspicion to assume that he was doing anything
3 criminal in nature. They testified that he had his
4 pants unzipped; he testified that he did not.

5 They didn't find the crumbs in the car, or
6 anything related to the scale and the knife, until
7 after he was removed from the car and taken back to
8 stand in front of the patrol car and wait to see what
9 was going on. So they can't say that they got
10 reasonable suspicion from seeing any type of substance
11 in his car all over the seat, because he testified
12 that wasn't the case.

13 So, Your Honor, we believe that their basis for
14 reasonable suspiciion, to turn it into something else
15 beyond a traffic stop is not -- can't be documented,
16 Your Honor, through the facts.

17 I do understand that it's a totality standard.
18 I understand what they're going to say. They're going
19 to say he was sweating. He said he wasn't sweating in
20 any kind of way. He said that he was -- they
21 testified, and she said many times, he was compliant,
22 he was not nervous-acting. There was no testimony
23 about him being -- sniffing a lot, or anything like
24 that, that would indicate he was some kind of user.

25 He's a -- the demeanor -- they went on and on

Motion to Suppress
Arguments

1 about his demeanor. But as we see from this trial,
2 the man is a very calm, pleasant personality. He was
3 sitting in the car. They came up to ask him about a
4 traffic stop. He provided a rental agreement. He did
5 all the things you're -- provided a license. He did
6 all these things you're supposed to do. And then
7 at -- he did all the things he was supposed to do for
8 a traffic stop. That should have ended at that point.

9 There was no facts to establish that they should
10 have taken him out of the car at that point and even
11 asked him to search his car. He testified that he
12 didn't consent; they testified that he did. But there
13 was no basis at that point, under Tindle, to even go
14 further than a traffic stop.

15 There is many cases, Your Honor, that have come
16 out in South Carolina about this stuff, this type of
17 situation, as the Court knows. There is the case of
18 Covet [phonetic], is one of the cases in South
19 Carolina talks about reasonable suspicion, Your Honor,
20 and it says that with reasonable suspicion -- it talks
21 about the need to establish, in many details and in
22 many facts, about what is reasonable suspicion. They
23 went on and on and got many details out, but I don't
24 believe that any of that was suspicious until after
25 they found what they found in the car.

Motion to Suppress
Arguments

1 And then, Your Honor, there is -- as I said,
2 there's Tindle. What's the other one? There's
3 Pichardo, P-I-C-H-A-R-D-O, Your Honor. That is
4 another case in this area that talks about when
5 voluntary consent alone is not sufficient.

6 And as I said, first of all, you know, my
7 client's position is he didn't even consent. They say
8 that he did consent. But as I said, Your Honor, I
9 don't believe that there's any type of reasonable
10 suspicion to even begin the process of asking for
11 consent.

12 And it says: the issue of voluntary consent
13 when contested is contrary testimony to the issue of
14 credibility to be determined by the jury, as well.

15 There's all these cases, Your Honor. There's
16 State v. Williams is another case talking about the
17 insufficiency of reasonable suspicion. And all this
18 comes from the Tindle case, Your Honor, which is a
19 South Carolina case that establishes that just because
20 a person is supposed to have consented does not mean
21 that there is not a constitutional problem.

22 And, Your Honor, there's the case of Williams --
23 Sullivan. I'm sorry. Sullivan is a case that has to
24 do with statements, as well, and that's where it all
25 kind of goes into the fruit of the poisonous tree,

Motion to Suppress
Arguments

1 that if you have a situation or you have a seizure
2 that's unlawful, and any evidence that they establish
3 pursuant to -- they obtain pursuant to that unlawful
4 seizure, it must then be looked at in light of the
5 constitutionality problem and it can be determined to
6 be inadmissible as fruit of the poisonous tree.

7 Now, flipping from that whole argument, Your
8 Honor -- if you need more case law, I have lots that I
9 can provide -- there is this problem of the statement
10 itself. And I made a motion -- or statements that
11 they intend to bring in against him to the jury, and I
12 made a motion under Jackson v. Denno, which is
13 basically the whole issues about Miranda and whether
14 or not the statements are made after questioning, in
15 furtherance of questioning, or whether they were
16 spontaneous utterances.

17 There is nothing in this case that establishes
18 that any of these comments that he made that were
19 incriminating or spontaneous utterances. They're not
20 just, hey, by the way, yeah, I'm carrying a bunch of
21 drugs. They are in furtherance of questioning,
22 they're in furtherance of detained, seized,
23 questioning that he was -- not only was he not free to
24 leave, he was handcuffed.

25 Whether he had been placed under arrest or not,

Motion to Suppress
Arguments.

1 he had been detained and handcuffed. And at that
2 point, Your Honor, it was clear -- much clearer today
3 that the people [sic] that they found, they had to go
4 inside of his car -- breach, you know, the security of
5 his car, go inside the interior, open the armrest,
6 find the scale and the knife. Then they brought that
7 back to him while he's having a conversation with
8 another officer in front of the patrol car, on camera,
9 saying, you know, hey, we found this, this is a
10 problem, we're handcuffing you.

11 So they handcuff him. And then they say, we're
12 going to take you to the jail, there's -- do you have
13 anything on you. No, no. He said he asked him a
14 couple of different times. And it wasn't until after
15 this conversation about the strip search at the jail,
16 based on his, you know, detention, and the fact that
17 they were going to arrest him, that he then said,
18 okay, I have some stuff on me. Anything further --
19 which I know that they do want to go into about, well,
20 he wasn't taken to the jail, he was taken to the
21 precinct and at the precinct he gave us -- we talked
22 to him about wanting to cooperate.

23 All of that is fruit of the poisonous tree in
24 this initial illegal search and seizure of the blade
25 and the scale that has residue on it. We don't

Motion to Suppress
Arguments

1 dispute that it didn't have residue on it. I
2 understand that. But all of that stuff that they want
3 to talk about about him wanting to cooperate with
4 them, asking him do you -- you know, him testifying
5 that they asked me could I buy drugs from them, all of
6 that should be excluded from his trial, Your Honor.
7 It's not at all -- well, for one, it's prejudicial.
8 But the other thing is, Your Honor, is it's definitely
9 a product of what happened on scene after this illegal
10 search.

11 And they never -- they testified that they
12 Mirandized him. He testified that they didn't
13 Mirandize him. Even if there was a possibility that
14 he had been Mirandized verbally, they didn't give him
15 any statement or any paperwork to sign or anything to
16 memorialize even his understanding or the fact that
17 they gave him Miranda at the precinct. And, Your
18 Honor, we believe that those statements that he made
19 were in furtherance of questioning, were a product of
20 detention, and it was an unlawful seizure of his
21 person and that it was unconstitutional.

22 THE COURT: Ms. Mulkey?

23 MS. MULKEY: Thank you, Your Honor. May it
24 please the Court.

25 While the traffic stop it -- it appears it's not

Motion to Suppress
Arguments

1 argued that it's unlawful. It's also -- in addition
2 to the equipment violation, there were safety reasons.

3 The officers were assigned to that neighborhood
4 that day in response to a violent shooting into a
5 residence that had occurred two days earlier. Over
6 thirteen shots were fired into the residence on two
7 different caliber weapons. And the tint on the
8 vehicle, which the officer --

9 MS. GAY: Your Honor, I would object. There's
10 nothing in evidence about that. I mean, she can say
11 that, but the officer didn't testify to any of that.

12 MS. MULKEY: Your Honor, the officer testified
13 that they were on a specific assignment in the
14 Dorchester Whalen community that day in response to a
15 violent crime that had happened two days earlier. And
16 it would be a shooting into a residence.

17 THE COURT: All right. Thank you. You may
18 continue.

19 MS. MULKEY: Thank you, Your Honor.

20 For safety reasons, with a tint violation or --
21 obvious that they could not even see the defendant.
22 Officer Stott testified they could not see in the
23 vehicle and it is his understanding and knowledge,
24 through experience as an officer, that a rental
25 company would not rent a vehicle with that tint which

Motion to Suppress
Arguments

1 the defendant subsequently testified that he had
2 placed on those windows.

3 As to the search, the State would argue first
4 that there was consent and that consent was
5 reasonable. It was given by the defendant under
6 circumstances such that he -- the test there is
7 whether he felt free to refuse consent, not whether he
8 felt free to leave the stop. And the State would
9 argue that his consent was, in fact, voluntary.

10 He was -- at that point that he consented to the
11 search of his vehicle, he was not under arrest. He
12 had no handcuffs on. He was detained only for
13 purposes of the traffic stop. There were two officers
14 on scene on a public roadway. No weapons were
15 brandished. There were no threats made.

16 And the defendant testified that he has been
17 involved with the police numerous times, he is no
18 newcomer to the law. And there were no adverse
19 reactions or discussions going on. He advised in his
20 own testimony, as well as Officer Stott, that that
21 consent came quickly after the additional stop.

22 If Your Honor is not inclined to find that that
23 consent was voluntary, the State would also argue that
24 there was a reasonable suspicion to lengthen the stop.
25 And the case law that the defense uses primarily is

Motion to Suppress
Arguments

1 it's got to be the illegal detention on traffic stops.
2 The State would argue that there is not, in fact, an
3 illegal detention. The officer had extensive training
4 and experience, not just in narcotics but in drugs.

5 But if you look at all the factors that went
6 into what made it reasonable for him to lengthen the
7 stop which, arguably, a few minutes into it was not an
8 illegal or a lengthening of it because at that point
9 they had not even received that verification on his
10 driver's license. He hadn't received it back. He
11 hadn't received a ticket, which is a somewhat
12 distinguishing factor in the cases that the defense
13 relied on.

14 But Officer Stott testified that, in fact, there
15 was illegal tint; it was on a rental vehicle, which in
16 his testimony on Friday I believe he testified that
17 rental vehicles are often used by drug dealers; they
18 were in a high-crime neighborhood. There is also --
19 he testified that rental companies do not install
20 these illegal tints. And the defendant testified
21 himself that he did.

22 It was suspicious to him that the defendant did
23 not pull over immediately. And when the defendant
24 does stop, Officer Stott testified that he immediately
25 noticed that his pants were undone. That was a safety

Motion to Suppress
Arguments

1 concern for him, as you don't know what's in there,
2 whether it's drugs or some other kind of contraband.
3 He testified that he found the defendant's responses
4 to why his pants were unzipped somewhat illogical and
5 evasive. He described the defendant's manner as
6 overly compliant at that point, which also raised his
7 suspicion.

8 Further, he described a change in his demeanor
9 when he exited the vehicle and the fact that he
10 discretely tried to pull up or adjust his pants in
11 such a manner to decide that they were, in fact, open.

12 Officer Stott testified that there was no
13 hesitation to provide consent to the car by the
14 defendant, who also provided consent to search his
15 person, and, finally, that demeanor changed. And he
16 testified today that when the focus was taken off the
17 defendant's person and he went to the vehicle, the
18 defendant's demeanor changed again. So the State
19 would argue that that provides reasonable suspicion to
20 lengthen the stop, in the event Your Honor did not
21 believe consent had reasonably been given.

22 And we also feel that under the automobile
23 exception, that would have given him probable cause to
24 search the vehicle, where they found the scale and
25 utility knife, which the defendant, by his own

Motion to Suppress
Arguments

1 testimony, admits was used in the furtherance of his
2 use of narcotics. And based on the residue that
3 tested positive there, the defendant was then placed
4 under arrest. So anything that came as a result of
5 that would have -- the State would argue was a search
6 incident to a valid arrest.

7 The defendant also provided that post Miranda
8 statement -- after Officer Stott had Mirandized him,
9 he advised using his card on scene. But there is no
10 requirement -- and Sullivan discusses this in detail
11 that there's no requirement that during questions
12 during traffic stops, persons temporarily detained
13 pursuant to ordinary traffic stops are not in custody
14 for the purposes of Miranda. And they compare the
15 traffic stop to a Terry stop, rather than a formal
16 arrest. And that particular case, the facts were such
17 that the defendant was stopped and there was fifteen
18 to twenty minutes before the officer engaged in a
19 series of questions which the defense argued were
20 designed to invite incrimination.

21 We simply do not have that here, Your Honor.
22 The defendant was Mirandized after he was placed under
23 arrest. He then, by his own statement here in court
24 today, said there was a moment of silence and then on
25 his own he said that he had the drugs in his pants.

Motion to Suppress
Arguments

1 So the State would respectfully --

2 Lastly, Your Honor, as a result of that valid
3 arrest for the possession, the drugs would inevitably
4 have been recovered at the Charleston County Detention
5 Center during a strip search.

6 And, as such, the State would request that you
7 deny the motion.

8 THE COURT: As to the statements -- which
9 statements? I've heard a lot, Ms. Gay. Which
10 statements, specifically, are you referring to?

11 MS. GAY: Well, Your Honor, ultimately, the
12 statement that says, hey, I have stuff, which led to
13 the search of the -- which led to the drugs passing
14 out, and any statements that they may be intending to
15 use. Because they said that he talked to them about
16 wanting to cooperate. And what those cooperation
17 statements that they talked about, that they took him
18 to the -- they both talked -- testified they took him
19 to the precinct to have further conversation with him
20 about cooperation because he's guilty.

21 THE COURT: You're not planning on using those
22 statements as to the cooperation, are you?

23 MS. MULKEY: Your Honor, the State does feel
24 like that goes to the overall cooperative nature of
25 the defendant.

Motion to Suppress
Arguments

1 He testified today, as well as Officer Stott
2 testified previously, that it -- their decision to not
3 immediately transport the defendant was based on the
4 defendant's cooperative nature and his desire to work
5 with narcotics. I think that that shows his
6 cooperative nature throughout the stop, and we do
7 think it's important to at least acknowledge that.

8 THE COURT: Tell me what statements, then, that
9 you're asking -- there was a lot of testimony that
10 even if the defendant testifies in trial, which I
11 don't know that he is or is not, that would not be
12 admissible. There was a lot of testimony elicited I
13 don't know that would be admissible. So I just need
14 to know what statements you're talking about. There
15 were a lot of statements.

16 MS. GAY: Well, I think that she just said
17 exactly what I anticipated for the trial: that in
18 front of the jury she intends to bring out testimony
19 about the fact that my client spoke with them. He has
20 to use statements and they can give me words or -- you
21 know, they haven't given me a specific sentence -- but
22 that he spoke to them and told them that he was
23 willing to cooperate with them, and that they then
24 took him back to the precinct where he was willing to
25 discuss his drug activity with them. And I believe

Motion to Suppress
Arguments

1 that that is prejudicial and should not be admitted,
2 for many reasons, including the fact that I think it's
3 in violation of Jackson v. Denno and in violation of
4 Miranda and a few other things, and fruit of the
5 poisonous tree and everything else.

6 Also, Your Honor, just that it's inappropriate
7 in this trial. I think it's prejudicial. I mean,
8 it's post arrest. It does nothing but, you know,
9 brings prejudice to him and it's -- I -- it's not
10 necessary in the case at all.

11 THE COURT: Ms. Gay, any response? Any further
12 argument?

13 MS. GAY: No, ma'am. I think I've put it on the
14 record.

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Motion to Suppress
Court's Ruling

COURT'S RULING

THE COURT: I'm crafting my response, my ruling, as to the motion to suppress the evidence that was obtained, as well as under Jackson v. Denno, Whether or not the statements become under a different analysis, we'll make at that time. But I'm just really concerned about the voluntariness of the statement.

Under the fourth amendment, a person is protected from unreasonable search and seizures, including procedures that involve only a brief detention.

And I apologize. The pollen is getting to me so I -- it annoys me hearing myself, so I apologize. I'm going to do this the best I can.

The temporary detention during an automobile stop, if even only for a brief and limited purpose, constitutes a seizure under the fourth amendment. Generally, the decision to conduct a traffic stop is reasonable when the police have probable cause to believe a traffic violation has occurred. Lengthening the detention for further questioning beyond the related -- beyond that related to the initial stop is acceptable in two situations: that the officer has an objectively reasonable and articulable suspicion

Motion to Suppress
Court's Ruling

1 that legal activity has occurred or is occurring; or,
2 two, that the initial detention has become a
3 consensual encounter.

4 Reasonable suspiciion requires a particularized
5 and objective basis that would lead one to suspect
6 another criminal activity. I must consider this under
7 the totality of the circumstances that have been
8 testified to. Officer Stott testified that he stopped
9 the defendant for excessive window tint. And at this
10 time, the defendant agrees that the stop was lawful.
11 He testified that when the blue lights were activated,
12 the defendant did not immediately pull over and that
13 when he approached the defendant's vehicle, he
14 observed the defendant's pants were disheveled, the
15 zipper was down and the belt was undone. He testified
16 that he noticed prior to pulling the defendant over
17 that the vehicle was operating with a rental vehicle
18 and he testified that he became suspicious, as rental
19 companies do not tint their windows on vehicles and
20 the tint itself was the violation.

21 Officer Stott testified that he asked the
22 defendant for his license and registration and
23 insurance and then he asked him to step out of the
24 vehicle, the tint was measured and found to be in
25 violation, and testified that he was not under arrest

Motion to Suppress
Court's Ruling

1 at this time.

2 I find that based upon the testimony of Officer
3 Stott presented here today, and taking into account
4 some of the testimony that I do recall from Friday's
5 hearing, a reasonable suspicion existed in this case
6 to support the detention of the defendant beyond the
7 initial traffic stop.

8 Officer Stott testified that the extensive
9 window tint, the appearance of the defendant, and his
10 pants, together with the rental status of the vehicle,
11 and the anxious behavior in attempting to hide the
12 unzipped portion of his pants, establishes suspicion
13 at the time of the stop. I find that the suspicion
14 and lengthening of the detention was reasonable given
15 the totality of the circumstances. Further, Officer
16 Stott has testified that the initial detention had
17 become a consensual encounter and that the defendant
18 gave his consent to the officers to search the vehicle
19 and his person.

20 Under Jackson v. Denno, a defendant is entitled
21 to a reliable determination as to the voluntariness of
22 his confession statement. The due process clause of
23 the fourteenth amendment requires that I determine
24 that the confession was voluntary before permitting
25 the jury to hear it.

Motion to Suppress
Court's Ruling

1 Again, a totality of the circumstances test
2 applies in determining whether or not a confession was
3 freely and voluntarily given. I must determine, again
4 under the totality of the circumstances, that the
5 State has proven that the statement was freely and
6 voluntarily given and must determine the admissibility
7 of the statement upon proof of its voluntariness upon
8 a preponderance of the evidence. Whether or not the
9 defendant's will was overborne by the circumstances
10 surrounding the given statement is something I must
11 consider. The due process test takes into
12 consideration the totality of the surrounding
13 circumstances, including both the characteristics of
14 the defendant and the details of the interrogation.

15 I must find that there was coercive police
16 activity to find that the confession was not
17 voluntary. The statement may not be extracted by any
18 sorts of threats or promise of any type. And a
19 promise -- a statement by the defendant induced by a
20 promise is involuntary only if so connected with the
21 inducement as to be a consequence of the promise.

22 I must consider the age of the accused, his
23 education, his physical, mental health, the lack of
24 advice to the accused of his constitutional rights,
25 the length of detention and its location, the use of

Motion to Suppress
Court's Ruling

1 physical punishment.

2 There was testimony that Mr. Judon understood
3 what was going on, that he indicated he had been
4 pulled over on several occasions, the length of the
5 detention was testified to a very length -- length of
6 time but it did not appear to be unduly long. There
7 was no indication that there was any repeated or
8 prolong nature of the questioning, or any use of
9 physical punishment such as deprivation of food or
10 sleep. There was no promise of any leniency, or
11 threats of violence. There was no isolation or any
12 misrepresentation. Officer Stott indicated that he
13 did read the Miranda warnings to the defendant, even
14 though Mr. Judon indicates that he does not recall
15 that.

16 I find that all of the statements in this case
17 were made voluntary under the totality of the
18 circumstances and that the statements under -- as to
19 whether or not they are voluntary would be admissible.

20 As we progress throughout the trial, it will be
21 necessary to determine whether or not they are
22 relevant or more prejudicial or probative. But I have
23 tried to parse out all of the statements and at this
24 point I'm not going to be able to do that without
25 hearing the testimony. All right?

Motion to Suppress
Court's Ruling

1 Note your exception to my ruling.

2 MS. GAY: Your Honor --

3 THE COURT: And anything further?

4 MS. GAY: Well, we just have an issue with the
5 prior record.

6 THE COURT: Well, it may or may not become an --
7 Any questions about my ruling?

8 MS. MULKEY: No, Your Honor.

9 THE COURT: Mr. Judon, please stand. You are
10 still under oath.

11 And, again, this is subject to change. But do
12 you plan to testify?

13 MR. JUDON: Yes, ma'am.

14 THE COURT: You do plan to testify? All right.
15 So then we'll need to do this now. All right.
16 Thank you.

17 What do you plan to use to introduce his -- or
18 plan to use for impeachment?

19 MS. MULKEY: The State, Your Honor, would seek
20 to introduce four I believe prior convictions for
21 possession of a stolen motor vehicle. The State
22 acknowledges that the Court would be required to
23 balance the prejudicial value versus the probative
24 value. We would seek to admit only one for purposes
25 of impeachment evidence.

State vs. Elliott Judon, Jr.
Voir Dire of Juror Number 97

1 State?

2 MS. MULKEY: Nothing from the State, Your Honor.

3 THE COURT: From the defendant?

4 MS. GAY: I just renew all my motions, Your
5 Honor. I realize what your rulings will be.

6 THE COURT: All right. Thank you.

7 Let's bring in the jury.

8 THE CLERK OF COURT: We're still missing one of
9 the jurors. 130.

10 THE COURT: We're still missing a juror? All
11 right.

12 THE CLERK OF COURT: I'll give him a call.

13 THE COURT: I'll be at ease.

14 [Whereupon, a recess is taken from 1:09 p.m. to
15 1:25 p.m.]

16 THE COURT: Ms. Criswell is the foreperson. We
17 are ready to go.

18 Anything before we bring in the jury? From the
19 State?

20 MS. MULKEY: Nothing from the State, Your Honor.

21 THE COURT: From the defendant?

22 MS. GAY: May I ask one question? Just one
23 question. I have a question and I wanted to ask this.

24 THE COURT: I assume you want to approach? Was
25 that --

State vs. Elliott Judon, Jr.
Voir Dire of Juror Number 97

1 determine.

2 In deciding whether to believe a witness, you
3 have the right to consider the interest of the
4 witness, the bias of the witness, the prejudice of the
5 witness, the opportunity for the witness to have seen
6 the matters and things about which the witness
7 testifies, as well as the way the witness acts on the
8 witness stand. You have a right to consider anything
9 that is in the record that will help you evaluate the
10 testimony of the witnesses. That means it's your duty
11 to pay attention. Please give strict attention. Do
12 not let your thoughts wander so at the end of the
13 testimony, after you have heard closing arguments on
14 behalf of counsel and I have instructed you on the law
15 applicable to this case, you will be in a position to
16 determine what the true facts are, apply the law to
17 those facts, and render a true and just verdict.

18 Ladies and gentlemen, please give your strict
19 attention.

20 Ms. Mulkey?

21 MS. MULKEY: Thank you, Your Honor. May it
22 please the Court.

23 THE COURT: Yes, ma'am.

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State vs. Elliott Judon, Jr.
Opening Statement by Ms. Mulkey
March 17, 2015

OPENING STATEMENT

MS. MULKEY: Good afternoon, ladies and gentlemen.

Drugs are illegal. It is illegal to possess them. It is illegal to sell them or distribute them in any manner whatsoever. And as citizens, in society we recognize laws and duties. There is a duty to follow or abide by the law and there is a duty for someone to enforce that law. Police officers are tasked with the enforcement. They don't make the law, they simply enforce what's on the books.

On August 26th, 2013, Officer Stott and his partner, Officer Kirk, with the North Charleston Police Department, were enforcing the law as their duty calls for. They came into contact with the defendant during a lawful traffic stop and you'll hear testimony from Officer Stott that during that lawful traffic stop, the defendant consented to a search of his vehicle and person.

Subsequent to the search of that vehicle there were some substances located, and a trafficking weight of cocaine base was located on the defendant's person in his possession. You'll hear testimony to confirm that that substance was, in fact, cocaine base in the defendant's possession.

State vs. Elliott Judon, Jr.
Opening Statement by Ms. Mulkey
March 17, 2015

1 I encourage you to listen to the testimony and
2 evidence presented throughout this trial, and the law
3 as provided to you by the judge, and I believe at the
4 end of this trial you will be firmly convinced of the
5 defendant's guilt and you will return a verdict of
6 guilty. Thank you.

7 THE COURT: Ms. Gay?

8 MS. GAY: Thank you, Your Honor.
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State vs. Elliott Judon, Jr.
Opening Statement by Ms. Gay
March 17, 2015

OPENING STATEMENT

MS. GAY: If you'll recall, I told you when we started this process that my name is Melisa Gay and I represent Mr. Judon. And Mr. Judon, the defendant, the person charged with this crime, is charged with possessing the drugs in a trafficking amount and he is being prosecuted by the State of South Carolina.

And there's a few things I just need to share with you. We thank you very much for being here. Jury service is difficult, it's inconvenient, but it's one of the most important days of my client's life to have you, his jury, picked to come in, a jury of his peers, to determine whether or not the State has met their burden of proof in this case.

Now, I'm not the judge. The judge is going to tell you the definition of a lot of these legal terms that we're going to talk about. But there are some things that I just want you to understand, is is that my client right now sits before you in this chair an innocent man. He's just as innocent as everybody else in this courtroom, as the court reporter, as you, every -- he sits in his chair as an innocent man, what they called cloaked in the veil of innocence. That veil cannot be taken off and he cannot be found guilty in a court unless you, the jury, find something called

State vs. Elliott Judon, Jr.
Opening Statement by Ms. Gay
March 17, 2015

1 beyond a reasonable doubt that the State has met its
2 burden to prove that he's guilty.

3 Now, those are also terms of art that the judge
4 will describe in detail after the case is over. But
5 basically what it is is a reasonable doubt is defined
6 as a doubt which would cause a reasonable person to
7 hesitate to act. Well, not only do they have to
8 find -- do they have to show you that -- it's like
9 that your doubt, you should not even, you know, have a
10 reasonable doubt to hesitate to act. But the law says
11 it has to be beyond that. And so it's a tremendous
12 burden for the State to prove in a case against a
13 citizen in the United States of America. It's a
14 tremendous burden.

15 And what -- as my client sits there as an
16 innocent man waiting to be tried by y'all, the jury of
17 his peers, he is asking you to look very clearly and
18 very carefully and with scrutiny at the evidence
19 that's going to be presented by the State. There are
20 going to be some very simple facts in this case. It's
21 not a difficult case. There's also going to be some
22 things that are on sort of a secondary level. Is it
23 fair, is it fair, what happened in this case? And in
24 asking a really -- that's really what I have to talk
25 to you about at the end of this case is do you -- is

State vs. Elliott Judon, Jr.
Opening Statement by Ms. Gay
March 17, 2015

1 fairness going to say that this is a guilty man?

2 And so when we go through this case today, I
3 want you to understand that we all know what the
4 evidence is already because, you know, he's been
5 charged, he knows what the facts are. And just to put
6 it out there, there was a traffic stop and my client
7 handed them some drugs. That's what happened. And
8 those drugs are going to be the drugs right there
9 [indicates], and those drugs are going to weigh a
10 certain amount. But at the end of this case I'm going
11 to tell you that I don't believe that they've met --
12 the State has met its burden. I believe he still
13 could be an innocent man.

14 And we thank you very much for participating in
15 this trial, and he thanks you so much for being the
16 jury that came here today to give him his day of
17 justice.

18 THE COURT: Call your first witness.

19 MS. MULKEY: Thank you, Your Honor. The State
20 calls Officer Stott.

21 [Whereupon, Mr. Stott comes forward]

22 [Whereupon, Mr. Stott is duly sworn by the clerk
23 of court as follows: do you swear or affirm that your
24 testimony will be the truth, the whole truth, and
25 nothing but the truth, so help you God]

State vs. Elliott Judon, Jr.
Opening Statement by Ms. Gay
March 17, 2015

1 THE WITNESS: I do.

2 THE CLERK OF COURT: Be seated.

3 [Whereupon, Mr. Stott takes the witness stand]

4 THE CLERK OF COURT: If you will please state
5 your full name, and spell your last name for the
6 record.

7 THE WITNESS: John Michael Stott, S-T-O-T-T, Jr.

8 MS. MULKEY: Thank you, Officer Stott.

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John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

JOHN MICHAEL STOTT, JR.,
Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Could you please tell the jury where you are presently employed?

A. The North Charleston Police Department.

Q. And could you tell the jury how long you've worked at the North Charleston Police Department?

A. Since February of 2009.

Q. Do you have any prior law enforcement experience?

A. I do.

Q. And where is that?

A. Mount Pleasant Police Department.

Q. And could you please tell us what kind of training and education you have?

A. I have a bachelor's degree in finance from East Carolina University. I graduated from the South Carolina Criminal Justice Academy in 2007. And I have advanced training in -- specifically in drug interdiction, approximately eighty hours in drug interdiction training.

Q. And what is your current assignment?

A. I'm a narcotics detective.

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. And have you worked in any other unit?

2 A. I have.

3 Q. What was your assignment back in August of 2013?

4 A. I was on the bike team.

5 Q. And on that bike team, did you have the occasion
6 to become involved with the defendant on August 26th of
7 2013?

8 A. I did.

9 Q. Could you please elaborate on that?

10 A. The defendant was operating a vehicle with an
11 equipment violation, a window-tint violation. He was
12 stopped, subsequently stopped, and placed under arrest for
13 a drug violation.

14 Q. And where did this traffic stop occur?

15 A. Meeting Street road and Hedgewood Road in North
16 Charleston.

17 Q. Is that in charleston County?

18 A. It is.

19 Q. And when you performed the traffic stop, were
20 you able to identify the driver?

21 A. Yes.

22 Q. Was anyone else in the vehicle?

23 A. No.

24 Q. Do you see the driver in the courtroom today?

25 A. I do.

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. Could you please point to him and describe what
2 he's wearing?

3 A. He is wearing a plaid -- gray-plaid shirt with a
4 white collar and it's looks like olive pants.

5 MS. MULKEY: Your Honor, please let the record
6 reflect that the witness has identified the defendant.

7 THE COURT: It will.

8 Q. [Ms. Mulkey] Thank you, Officer Stott.

9 Now, you mentioned earlier you were in a
10 specialized unit. Could you please explain to the jury
11 what made that unit specialized?

12 A. There's an interview process for these
13 specialized units. There's a -- there's minimum
14 requirements you need to meet, such as interpersonal
15 skills. You have to be -- you have to at least have
16 completed your probationary period and have no -- nothing
17 on your personnel record that would indicate dishonesty or
18 any kind of disciplinary action. You need to be
19 proficient in police work. You need to be familiar with
20 how to make a case and document a case, and be familiar
21 with the laws, and be familiar with how to collect and
22 process evidence.

23 Q. And as a specialized unit, what type of tasks or
24 assignments are you given?

25 A. In this particular unit, we were assigned to

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 areas that we were having problems where maybe there was a
2 pattern of crime or a major event that occurred.

3 Q. So on August 26, 2013, what was your assignment?

4 A. We were assigned to the Dorchester Whalen
5 Terrace community for a -- this was after a shooting that
6 occurred.

7 Q. And what type of job were you to have that day?
8 You said you were assigned there. What kind of -- were
9 you in patrol?

10 A. We were there to put the community at ease after
11 such a major event -- be accessible, be visible -- and
12 also try to prevent any further violence as a result of
13 this shooting two days prior.

14 Q. And I would like to get a little bit more
15 specific as to that day and the traffic stop. What time,
16 approximately, did the traffic stop occur?

17 A. 4:15 p.m.

18 Q. And where were you at prior to making the
19 traffic stop on the defendant?

20 A. I was parked -- we were parked in a church
21 parking lot near Constitution and Dorchester Road.

22 Q. Was there any significance to that location?

23 A. There was. That's an entry point into the
24 neighborhood, so we were visible to the community and to
25 anybody that was there to commit crimes. And also it was

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 a good way for us to observe who was coming to and from
2 and into the neighborhood during those times.

3 Q. And is that where you were at when you observed
4 the defendant's vehicle?

5 A. Yes.

6 Q. Could you actually see the defendant in the
7 vehicle?

8 A. No.

9 Q. How come you couldn't see the defendant?

10 A. The windows were too -- the window tint was so
11 dark, I couldn't see inside the car.

12 Q. And is that ultimately why you decided to stop
13 the defendant?

14 A. Yes.

15 Q. And when you went to pull over the defendant,
16 did you activate your blue lights to initiate that traffic
17 stop?

18 A. Yes.

19 Q. Were you in a marked vehicle?

20 A. Yes.

21 Q. Did the defendant stop immediately?

22 A. He did not.

23 Q. Can you elaborate on that and explain that to
24 the Court?

25 A. We were on Meeting Street road, which is a

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 busier road than any of the side roads, and we passed a
2 side road that would have afforded him a safer place to
3 pull over. And we went -- we proceeded past that turn,
4 and I would say approximately a hundred yards past that
5 turn, and then pulled over on the right shoulder.

6 Q. When the defendant finally did stop, could you
7 please tell the Court what happened next?

8 A. I was the contact officer, meaning I'm the one
9 that's going to make contact with the driver and explain
10 the violation. I did that from the passenger side of the
11 vehicle because we weren't pulled over completely off the
12 road and there was passing and oncoming traffic.

13 I asked the driver to roll the windows down,
14 because I couldn't see inside the vehicle, and I asked for
15 a license and a -- I explained the reason for the stop
16 being window tint and asked for his documents: license,
17 registration, and proof of insurance.

18 Q. Did you notice anything about the defendant at
19 that time?

20 A. I did.

21 Q. And what was that?

22 A. His pants were undone, his zipper was all the
23 way down, and his belt was open -- undone.

24 Q. And what was his demeanor like?

25 A. He was I would call it overly cooperative.

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. And so what did you have the defendant do?

2 A. After we used the meter to confirm that the
3 window tint was unlawful, I had him exit the vehicle.

4 Q. And did the defendant get out of the vehicle?

5 A. He did.

6 Q. And did you notice anything about his pants at
7 that point?

8 A. I did.

9 Q. And what was that?

10 A. They were, in fact, open. His belt was undone.

11 Q. And was he handcuffed or arrested -- arrest --
12 under arrest, excuse me, at that point?

13 A. No.

14 Q. So then what did you do?

15 A. He walked back to the -- I had him walk back to
16 the rear of his car and I asked him for consent to search
17 his vehicle.

18 Q. Did you confront him about his pants being
19 undone?

20 A. I did, briefly.

21 Q. And what did the defendant respond?

22 A. He said that he had used the bathroom. And I
23 asked him if he meant he used the bathroom in the car, and
24 he was somewhat evasive about that topic so I left it
25 alone at that time.

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. And you said you asked for consent to search his
2 vehicle?

3 A. Yes.

4 Q. And how did the defendant respond?

5 A. He granted consent to search the vehicle. And
6 he also added that we could search his person.

7 Q. And so based on the defendant giving you
8 consent, what did you do next?

9 A. I searched the vehicle.

10 Q. And did you locate any items in the vehicle?

11 A. Yes.

12 Q. What did you locate?

13 A. I located a digital scale, a functioning digital
14 scale that had a white residue on it, which I field-tested
15 and the substance was tested presumptive for cocaine
16 content. That was in the center console.

17 I located a utility knife that had presumptive
18 cocaine content on it.

19 And throughout the center console, the gearshift
20 area, and the driver's seat, I recovered and located small
21 pieces of crack cocaine.

22 Q. Was there anything about the location of those
23 items, their proximity to each other, that your training
24 and experience aroused your suspicion?

25 A. Yes.

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. And what was that?

2 A. They're all commonly -- those items collectively
3 are commonly used to distribute -- weigh and distribute
4 drugs.

5 MS. MULKEY: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 Q. [Ms. Mulkey] Officer Stott, I would like to
9 show you what has been marked as State's Exhibit 1 and
10 State's Exhibit 2. If you will look at those for me and
11 tell me if you recognize them.

12 A. I do.

13 Q. Could you please tell me what each item is?

14 A. This is a digital scale. There's some of the
15 residue still on the scale. This is the cover for the
16 scale. And this is a utility knife, or I'll call it a
17 utility knife, that had residue on it.

18 Q. And where were these items located?

19 A. The scale was in the center console underneath
20 the arm rest in between the driver and the passenger seat,
21 and the utility knife was in what I would consider a coin
22 tray that was just in front of the center console before
23 the cup holders.

24 Q. And when did you first see these items?

25 A. When I was searching the vehicle.

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. Do these items appear to be in substantially the
2 same condition as when you recovered them on August 26,
3 2013?

4 A. Yes.

5 Q. And what did you do after collecting these
6 items?

7 A. I placed Mr. Judon under arrest.

8 MS. MULKEY: And, Your Honor, at this time the
9 State would request to admit what's been pre-marked as
10 State's Exhibits 1 and 2 into evidence and publish
11 them to the jury.

12 MS. GAY: Without objection.

13 THE COURT: State's 1 and 2 into evidence
14 without objection.

15 [Whereupon, State's Exhibit Number 1 is admitted
16 into evidence by the Court]

17 [Whereupon, State's Exhibit Number 2 is admitted
18 into evidence by the Court]

19 THE COURT: You may publish.

20 Q. [Ms. Mulkey] So at this point, Officer Stott,
21 how long would you say you had been out with the
22 defendant?

23 A. Roughly eight minutes.

24 Q. And as a result of finding these items in the
25 vehicle, what was your next step?

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 A. Placing the defendant under arrest.

2 Q. And what was that for?

3 A. For the pieces of crack cocaine that were inside
4 the -- that I collected from inside the center console.
5 It amounted to possession of cocaine base.

6 Q. And how were you able to determine -- you said
7 it was presumptive for cocaine base. Could you explain
8 that to the jury?

9 A. Sure.

10 We have two ways of testing in the field. One
11 is a swab that almost looks like an alcohol swab, like
12 something you would clean your hands with after eating
13 wings or something. But it -- all you have to do is apply
14 that to the substance and it will turn the substance blue.
15 And usually it'll turn the little swab blue, as well. And
16 the other way is an Ample [phonetic] test, but I didn't
17 use that that day because they -- either one works fine.

18 Q. And as a result of that, you said you placed the
19 defendant under arrest?

20 A. Yes.

21 Q. Did you read the defendant his Miranda rights?

22 A. I did.

23 Q. And how did you do that?

24 A. I keep a card in my pocket and I read from the
25 card.

John Michael Stött, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. And then what happened?

2 A. I confronted him with my suspicions that he was
3 concealing more drugs in his pants.

4 Q. And why did you think that he had drugs in his
5 pants?

6 A. Because his pants were undone.

7 It took him -- there was a delayed stop,
8 possibly allowing him time to conceal drugs in his pants.
9 There was pieces of crack in and around the driver's seat,
10 which led me to believe that he had grabbed it once the
11 blue lights came on and stuffed it inside of his pants
12 that were still open.

13 Q. And you mentioned crack. Can you tell us what
14 that is in compared -- as compared to cocaine base?

15 A. They're the same.

16 Q. And when you confronted the defendant, did he
17 have a response?

18 A. Not initially. He was -- he denied having
19 anything inside of his pants.

20 Q. And you said initially. Did something change?

21 A. Yes.

22 I explained to him that since he was under
23 arrest for a drug violation, that once at the county jail
24 it's their policy to do a strip search and that if he was,
25 in fact, concealing something inside of his pants, that he

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 would be -- they would be located at that time.

2 Q. And what was the defendant's demeanor like at
3 this point?

4 A. He was growing increasingly nervous.

5 Q. And was that of any significance to you?

6 A. Yes.

7 Q. And how so?

8 A. I think he was getting closer to realizing that
9 we were going to locate the drugs that were in his pants.

10 Q. So then what happened next, sir?

11 A. I don't remember his exact words, but he said --
12 he admitted that drugs were concealed in the front of his
13 pants, and he kind of -- his hands were behind his back,
14 because he was under arrest, but he kind of nodded down
15 and looked down to indicate to me that that's where I
16 could retrieve them from.

17 Q. Did that substance appear similar to the items
18 or residue that you found in the vehicle?

19 A. Yes.

20 Q. And take us through the recovery process, if you
21 will.

22 A. Okay. Once he acknowledged that there was
23 something inside of his pants, I stood to his left, I
24 placed a latex glove on, and I retrieved a clear plastic
25 bag with the crack cocaine inside of -- from inside of his

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 boxers.

2 Q. And during that, did he move or object?

3 A. No.

4 Q. And did you take the defendant straight to jail
5 after that?

6 A. No.

7 Q. Where did you take the defendant?

8 A. From the stop, Officer Kirk actually drove him
9 to the substation, the precinct, at Rivers and Cosgrove.

10 Q. And why was that?

11 MS. GAY: Your Honor, at this time I may want
12 to -- may we approach?

13 THE COURT: You may.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 Q. [Ms. Mulkey] Was your decision to return to the
17 substation based on the defendant's cooperativeness?

18 A. Yes.

19 Q. And at this point, what was his charge?

20 A. Trafficking cocaine base.

21 Q. And why was it trafficking?

22 A. Because of the weight.

23 Q. Did the weight make a difference in this charge?

24 A. Yes.

25 Q. And did the scale and utility knife play a role

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 in your decision to charge him with trafficking?

2 A. No.

3 Q. So would you have been able to charge him with
4 trafficking just based on the weight alone?

5 A. Yes.

6 Q. Did you locate any other items during your
7 search of the defendant and his vehicle?

8 A. No.

9 Q. Did you locate any additional cell phones?

10 A. Yes.

11 Q. Where did you locate those?

12 A. I don't recall if they were in the vehicle or
13 on -- in his pockets.

14 Q. Was there someone else in the vehicle?

15 A. No.

16 Q. Knowing what you know at this point, did you see
17 any significance in the defendant having two cell phones?

18 A. Yes.

19 Q. And what would that be?

20 A. That's common for people that are in drug sales,
21 in the drug business.

22 Q. Why? Can you elaborate on that?

23 A. Sure.

24 A lot of times one phone is a personal phone
25 that's used for personal calls. And one phone is

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 generally used for just sales, and that phone is typically
2 temporary. It'll be switched out. There are certain
3 carriers that drug dealers feel more comfortable with that
4 they may or may not believe that those phones aren't as
5 traceable or aren't as tapable.

6 MS. MULKEY: May I approach the witness?

7 THE COURT: You may. You have continuing
8 permission.

9 Q. [Ms. Mulkey] Officer Stott, I would like to
10 show you what has been pre-marked as State's Exhibit 3.

11 MS. GAY: I have no objection to --

12 THE COURT: Are you -- you're going to move it
13 into evidence?

14 Go ahead.

15 Q. [Ms. Mulkey] Could you please tell me what
16 those are?

17 A. Two cell phones.

18 Q. And where did you locate those?

19 A. They were either on his person or in the
20 vehicle.

21 Q. And are they in substantially the same condition
22 they were as when you located them?

23 A. Yes.

24 Q. And what did you do with them after you
25 recovered them?

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 A. I placed them into evidence.

2 MS. MULKEY: Your Honor, at this time we would
3 ask to admit these into evidence.

4 THE COURT: Without objection?

5 MS. GAY: Without objection.

6 THE COURT: State's 3 into evidence without
7 objection.

8 [Whereupon, State's Exhibit Number 3 is admitted
9 into evidence by the Court]

10 MS. MULKEY: The Court's indulgence.

11 THE COURT: Take your time.

12 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

13 Q. [Ms. Mulkey] Officer Stott, when you pulled
14 over the defendant, you mentioned you asked for his
15 paperwork?

16 A. Yes.

17 Q. What kind of paperwork would that be?

18 A. License, registration, and proof of insurance.

19 Q. Did the defendant have those items?

20 A. He had a driver's license. And in lieu of a
21 registration and insurance, he had a rental agreement for
22 the vehicle.

23 Q. The vehicle was a rental?

24 A. Yes.

25 Q. Was the defendant the one who had rented the

John Michael Stott, Jr.
Direct Examination by Ms. Mulkey
March 17, 2015

1 vehicle?

2 A. Yes.

3 Q. And is it customary, in your training and
4 experience, for a rental vehicle to have a window tint?

5 A. No.

6 Q. Would that be something that would have to be
7 placed on by the actual lessee or --

8 A. Yes.

9 MS. MULKEY: Court's indulgence.

10 [Whereupon, Ms. Mulkey reviews documents]

11 MS. MULKEY: No further questions. Please
12 answer any questions the defense may have.

13 MS. GAY: Thank you, Your Honor.

14 I would like to see a document that we -- was a
15 part of the earlier things that we did.

16 THE COURT: I'm sorry?

17 MS. GAY: There's a document in evidence that I
18 would like to see.

19 THE COURT: The only thing that is in evidence
20 is 1, 2, and 3 from the State for the purposes of this
21 hearing.

22 MS. GAY: Okay. All right.

23 - - -

24 - - -

25 - - -

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

CROSS-EXAMINATION

BY MS. GAY:

Q. Officer, when you made this stop -- and your position and testimony to the jury that the -- my client consented to his -- to the search of his car, you're aware that he says he didn't consent. You're aware of that; right?

A. Yes, ma'am.

MS. MULKEY: Objection, Your Honor.

Q. [Ms. Gay] And --

THE COURT: Hold on. Counsel approach.

[Whereupon, an off-the-record bench conference is held]

THE COURT: Objection -- the objection is sustained, Ms. Gay.

MS. GAY: Yes, ma'am.

Q. [Ms. Gay] In the process of your job, you said -- you went on and said that there were lots of things that you learned how to do, and you said that you had been on a -- especially trained to be part of a specialized unit. Is that true --

A. I went --

Q. -- that you were part of a --

A. I went through a procedure to be on a specialized unit.

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 Q. And I think that you said that that -- as a
2 requirement for that, that you were familiar with how to
3 make case reports, what the laws were, and other specific
4 things that you needed to know to be able to be -- to
5 qualify to be on the specialized unit?

6 A. Yes, ma'am.

7 Q. And you said in your report, that you created
8 for this incident, there was -- you detailed the things
9 that were relevant to you in this report --

10 A. Yes, ma'am.

11 Q. -- that you provided?

12 And I believe that report -- if you need to see
13 the report, I can show it to you for purposes of -- to
14 refresh your recollection. But are you familiar with the
15 time frame of when your report was created?

16 A. Yes, ma'am.

17 Q. It was done the same day, basically?

18 A. Yes, ma'am.

19 Q. And so all the things that you were trained to
20 do to make special stuff, and all the important facts in a
21 case, you were actually specially trained, not just the
22 police academy, to put everything relevant about a case in
23 the police report?

24 A. Yes, ma'am.

25 Q. Now, on the day that this stop occurred, there

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 -- well, you were riding in a marked police car?

2 A. Yes, ma'am.

3 Q. And that marked police -- and I believe you had
4 an outfit on that said North Charleston that identified
5 yourself as officers?

6 A. I was in uniform.

7 Q. In uniform.

8 And you were there and you made the -- you
9 testified that you stopped them for -- you stopped my
10 client for too dark a windows. And, in fact, they were
11 too dark. You tested them and they were too dark?

12 A. I didn't test them. But, yes, ma'am, they were
13 tested.

14 Q. And that was done by Officer Kirk, who was the
15 gentleman riding with you?

16 A. He was driving. Yes, ma'am.

17 Q. And that car that y'all were in, that car was
18 equipped with an in-car camera?

19 A. It was.

20 Q. And that in-car camera was I think -- there are
21 two types of cameras, and the one that you had was the one
22 that was mounted like maybe the front windshield?

23 A. I'm not familiar with two types of cameras, but
24 this particular car had a camera mounted to the front
25 windshield.

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 Q. And the camera that was mounted to the front
2 windshield -- there had been some confusion about the car
3 that y'all were in. But that day that car had a working
4 camera?

5 MS. MULKEY: Objection. Relevance, Your Honor.

6 THE COURT: I'm going to allow it. You may
7 answer.

8 A. I'm not -- I don't know if the camera was
9 working or not.

10 Q. [Ms. Gay] Let me ask it this way. Are you
11 familiar with the fact that in North Charleston that if
12 there's a problem with a camera, that the officers are
13 supposed to report it to their superiors?

14 A. Yes.

15 Q. Had you reported any -- you or Kirk either -- my
16 understanding of the situation of that day, reported any
17 problems with that camera to the North Charleston
18 supervisors?

19 A. I had not. But this --

20 Q. You had not --

21 A. -- is not my vehicle.

22 Q. I believe that there was maybe -- Officer Kirk
23 was the one driving.

24 A. [No response]

25 THE COURT: Was that a yes?

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 THE WITNESS: [No response]

2 Q. [Ms. Gay] Officer Kirk was the one driving, you
3 said?

4 A. He was the one driving and it was -- it's his
5 vehicle, yes.

6 Q. And so are you familiar with the fact that North
7 Charleston's policy and procedures says that if an
8 incident is possibly on camera, that it goes to the server
9 at North Charleston Police Department? Are you familiar
10 with that policy?

11 A. I'm familiar with the process now, how the -- a
12 video leaves the hard drive in the vehicle and how it gets
13 from there to a server that's more secure.

14 Q. In the North Charleston Police Department?

15 A. Yes.

16 Q. And are you familiar that if a person, an
17 officer, is going to put in evidence the -- you know, that
18 burns DVDs of an incident, that they are to request that
19 from the powers that be over there that can burn them down
20 on CDs?

21 A. I believe you're speaking about the evidence
22 technicians.

23 Q. And that the officers involved in an arrest have
24 to be the ones that ask of the evidence technicians to do
25 that, to create the object?

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 A. That's correct.

2 Q. And so if -- so that day, the day that this
3 happened, when Mr. Judon was arrested -- and I think you
4 testified that he was taken back behind his car and he was
5 asked to stand behind his vehicle; right?

6 A. Correct.

7 Q. Now, isn't it true that behind his vehicle was
8 also right in front of the marked police car?

9 A. Yes.

10 Q. And I think there was some issue about how, you
11 know, the conversation that Kirk was having with my client
12 was right behind -- right in front of the police car right
13 behind his car.

14 A. [No response]

15 Q. Okay. And these cameras that they have in the
16 car, is it your understanding that they -- if they're
17 working, that they come on when the blue lights come on?

18 A. Correct.

19 Q. And so that from the time the blue lights come
20 on, until the time that the whole thing's over, that -- if
21 there's a working camera, it's supposed to take a picture
22 of what happens in its range if it's, you know, like in
23 front of the police car?

24 A. It's a video.

25 Q. A video.

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 Videos can be used, then, to have still
2 pictures, and they also have audio; right?

3 A. Yes, ma'am.

4 Q. So they have -- you can actually -- even if you
5 didn't want to see the picture, you could listen to what
6 happens because I think the officers wear lapel pins and
7 things like that or some kind of microphone --

8 A. Yes, ma'am.

9 Q. -- to pick it up?

10 And so in this case my client was asked to stand
11 in front of the police car and was having a conversation
12 -- not with you, but with Kirk -- and in a marked police
13 car with a blue light on with a camera in it?

14 A. Correct.

15 Q. And I think that your testimony was that you
16 went over and you found, in the armrest of my client's
17 car, these things?

18 A. The scale was in the center console and the
19 utility knife was in the coin tray.

20 Q. And these windows were dark. So if you were to
21 look into the car from the outside with these dark
22 windows, you would never have been able to see these
23 things from the outside of the car?

24 A. Not -- certainly not the scale. But I think if
25 you looked through the windshield, you probably would be

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 able to see the knife.

2 Q. And so -- but you didn't do that because you
3 didn't actually find the items until after you went inside
4 the car?

5 A. That's correct.

6 Q. And so my client, Mr. Judon, is back there
7 talking to Kirk. And then your testimony was is that you
8 came up and you said, look what I found, and that's when
9 they handcuffed him and there was discussion about
10 arresting him?

11 A. I didn't say, look what I found, or anything
12 like that.

13 Q. Did you handcuff him after you found the stuff
14 in the car?

15 A. Yes.

16 Q. And then there was talk about strip-searching
17 and going to the jail. You testified to that?

18 A. Yes.

19 Q. And pursuant to that conversation, my client
20 then told you, by a nod you said, and maybe even some
21 words, that there was stuff in between his legs?

22 A. He did.

23 Q. And then I believe you testified that at that
24 point he was cooperative, you said he was cooperative, and
25 throughout the process off to the jail he was cooperative?

John Michael Stott, Jr.
Cross-Examination by Ms. Gay
March 17, 2015

1 A. Yes.

2 MS. GAY: And let me just see if I have anything
3 else.

4 Q. [Ms. Gay] Now, when you -- these videos, these
5 cameras that take videos and they go off to the server in
6 North Charleston, are you familiar with the fact that the
7 North Charleston policies and procedures says that the
8 officers -- it says that, you know, if the information on
9 the video may be helpful, it will be put into evidence?
10 Are you familiar with that?

11 A. Yes.

12 Q. So it says may be helpful and it says will be
13 put into evidence. Did you contact evidence -- or the
14 evidence custodian and technicians to put a video of
15 this -- or burn a DVD of this stop to put into evidence?

16 A. I did not.

17 Q. And you know that the actual policy and
18 procedures says will? that you're supposed to?

19 MS. MULKEY: Objection. Irrelevant.

20 THE COURT: Overruled. You may --

21 Q. [Ms. Gay] You know that it says will?

22 A. Yes.

23 MS. GAY: I have no further questions.

24 THE COURT: Ms. Mulkey?

25 MS. MULKEY: Thank you, Your Honor.

John Michael Stott, Jr.
Redirect Examination by Ms. Mulkey
March 17, 2015

REDIRECT EXAMINATION

BY MS. MULKEY:

Q. Officer Stott, per that policy that was just being discussed: does policy trump law?

A. It does not.

Q. Are you required by law to enter that video into evidence?

A. No, ma'am.

Q. Are you required by policy to enter that video into evidence?

A. No, ma'am.

Q. What might affect whether you decide to enter a particular video from a traffic stop into evidence?

A. If there's something of value on the video or if it's required by law, like a DUI.

Q. And when you say something of value, can you elaborate on that for the jury?

A. Maybe there was something recorded that couldn't be shown through the evidence that was taken and the documentation of the report.

Q. If you were in struggle with someone on a traffic stop, would that be a reason to enter it?

A. I think so, yes.

Q. If there had been an act of violence on a traffic stop, would that be a reason to enter it?

John Michael Stott, Jr.
Redirect Examination by Ms. Mulkey
March 17, 2015

1 A. Sure.

2 Q. If someone is compliant during a traffic stop,
3 what are your thoughts on entering it?

4 A. I don't think it's necessary.

5 Q. And how long were you say that -- would you say
6 that you were out with the defendant on this traffic stop?

7 A. Roughly ten minutes, from stop to arrest.

8 Q. And you mentioned that he was nervous. But
9 was -- in terms of compliance, what was his demeanor like
10 in terms of compliance?

11 A. Overall, he was very compliant.

12 Q. Officer Stott --

13 MS. MULKEY: May I approach the witness?

14 THE COURT: You may.

15 MS. MULKEY: I would like to show the witness
16 what's been pre-marked as State's Exhibit Number 5.

17 THE COURT: You may.

18 Q. [Ms. Mulkey] Officer Stott, would you take a
19 look at this and please tell the Court what that is?

20 A. This is crack cocaine in one bag, and then
21 there's another bag in here that has the smaller pieces
22 that I found inside of the car.

23 Q. And could you specify where you located each? I
24 know you did for one, but where each of those were
25 located?

John Michael Stott, Jr.
Redirect Examination by Ms. Mulkey
March 17, 2015

1 A. Yeah.

2 The smaller pieces were recovered from inside
3 the center console and in and around the driver's seat,
4 and the larger bag was recovered from inside of the
5 boxers.

6 Q. And do those appear to be in substantially the
7 same condition as when you recovered them?

8 A. Yes.

9 Q. And after you recovered them, can you please
10 explain to the jury how -- what happens next?

11 A. Sure.

12 They are weighed, first of all, and then they're
13 submitted into evidence into what's called a best kit, and
14 that's submitted from our evidence technicians to the
15 State Law Enforcement Division. They have a laboratory
16 where they conduct further analysis of the drug.

17 Q. Thank you.

18 MS. MULKEY: The Court's indulgence.

19 [Whereupon, Ms. Mulkey reviews documents]

20 MS. MULKEY: The State has no further questions.

21 THE COURT: Ms. Gay?

22 MS. GAY: Thank you.

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John Michael Stott, Jr.
Recross-Examination by Ms. Gay
March 17, 2015

RECROSS-EXAMINATION

BY MS. GAY:

Q. Officer Stott, you said, I don't think it's necessary to possibly retrieve a video of an arrest that has occurred on the street for a traffic stop; that would have been put into the server at North Charleston and retrieved to be a DVD. Your testimony was that you didn't think it was necessary?

A. Yes, ma'am.

Q. You're aware that people can have differing views of reality? Their memories are different, their biases are different. People have different versions of the facts. You know that; right?

A. I understand that people have different interpretations.

Q. Okay. Different interpretations. You may have a different interpretation than me or the solicitor or my client or the judge or the jury or whoever. Everybody has their ability to have their own memory of what occurred on a certain day; right?

A. Yes, ma'am.

Q. And so you would agree with me that having a movie, a video, of a certain thing that happened at a particular time, like August 26, 2013, would be very helpful, very, very helpful, to decide what really

John Michael Stott, Jr.
Recross-Examination by Ms. Gay
March 17, 2015

1 happened during a traffic stop if they had a movie of it?

2 A. If there was a video, yes.

3 Q. Right.

4 And if an officer as part of a stop contacts the
5 evidence technicians and asks them to burn a video, the
6 video would then be able to be shown or seen by the
7 defendant or we would be able to watch what really did
8 happen contemporaneously of the night of this stop?

9 A. Yes.

10 Q. And we don't have that, do we?

11 A. We do not.

12 Q. And you didn't ask to have that burned, did you?

13 A. I did not.

14 Q. Because you didn't think it was necessary?

15 A. No.

16 Because I never saw the video and I don't know
17 that it exists.

18 Q. I understand that.

19 But in the event that it had existed, you never
20 saw it so you don't know that it didn't exist. But you
21 didn't think it was necessary in this case with Mr. Judon
22 to have a recorded history of what happened that day. But
23 that's the evidence of what happened that day. We don't
24 have that because you didn't ask them to burn it; right?
25 Whether it exists or not. You don't know that it didn't

John Michael Stott, Jr.
Recross-Examination by Ms. Gay
March 17, 2015

1 exist. So it could have existed. And if it existed, it
2 would have been the whole video of all of these facts that
3 night, how the search occurred --

4 A. It there were a video --

5 Q. -- how these things occurred --

6 A. -- I don't disagree that it would be beneficial.

7 MS. GAY: Okay. Well, thank you very much.

8 THE COURT: You may step down.

9 [Whereupon, Mr. Stott is excused and exits the
10 witness stand]

11 THE COURT: This would be an appropriate time to
12 take a break. Do you need a break? All right.

13 You may leave your notepads in the chair or take
14 them with you.

15 Please remember all my admonitions. Do not
16 discuss this case amongst yourselves. Do not begin
17 your deliberations.

18 Please rise for the jury.

19 Let us know when you are ready to come back in.
20 Thank you.

21 [Whereupon, the jury exits the courtroom at
22 2:22 p.m.]

23 THE COURT: Thank you. Be seated. About ten
24 minutes.

25 MS. GAY: Thank you, Your Honor.

John Michael Stott, Jr.
Recross-Examination by Ms. Gay
March 17, 2015

1 [Whereupon, a recess is taken from 2:22 p.m. to
2 2:37 p.m.]

3 THE COURT: Let's bring in the jury.

4 [Off the record momentarily]

5 THE COURT: Please rise for the jury.

6 [Whereupon, the jury enters the courtroom at
7 2:38 p.m.]

8 THE BAILIFF: All are seated, Your Honor.

9 THE COURT: Thank you. Please be seated.
10 Call your next witness.

11 MS. MULKEY: Thank you, Your Honor. The State
12 calls Officer Kirk.

13 THE CLERK OF COURT: This way, Officer. Up
14 here, please.

15 [Whereupon, Mr. Kirk comes forward]

16 THE CLERK OF COURT: Left hand on the Bible, and
17 raise your right hand.

18 [Whereupon, Mr. Kirk is duly sworn by the clerk
19 of court as follows: do you swear or affirm that your
20 testimony will be the truth, the whole truth, and
21 nothing but the truth, so help you God]

22 THE WITNESS: Yes, sir, I do.

23 THE CLERK OF COURT: Be seated.

24 [Whereupon, Mr. Kirk takes the witness stand]

25 THE CLERK OF COURT: If you will please state

John Michael Stott, Jr.
Recross-Examination by Ms. Gay
March 17, 2015

1 your full name, and spell your last name for the
2 record.

3 THE WITNESS: It's Matthew Kirk. Last name is
4 K-I-R-K.

5 MS. MULKEY: Thank you, Your Honor. May it
6 please the Court.

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Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

MATTHEW KIRK,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. MULKEY;

Q. Officer Kirk, where are you presently employed?

A. City of North Charleston.

Q. And how long have you worked there?

A. Roughly six and a half years.

Q. And could you please tell the jury what type of
training and education you have?

A. High school, graduated, and ended up training at
the South Carolina Criminal Justice Academy in their basic
law enforcement.

Q. Do you have annual ethics training?

A. Yes, ma'am.

Q. And what is your current assignment?

A. I'm a school resource officer.

Q. And what was your assignment back on August 26,
2013?

A. I was in our bike unit.

Q. Did you have the occasion to become involved
with the defendant back on that date?

A. Yes, ma'am.

Q. And how so?

MIA PERRON, CVR-CM-M

-404-

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 A. It was on a traffic stop.

2 Q. Was the defendant the driver of the vehicle?

3 A. Yes, ma'am.

4 Q. Do you see the driver of the vehicle, the
5 defendant, in the courtroom today?

6 A. Yes, ma'am.

7 Q. Could you please point him out and describe what
8 he is wearing, sir?

9 A. Yes, ma'am.

10 He's over there. Khaki pants and a gray-striped
11 shirt.

12 MS. MULKEY: Could the record please reflect
13 that the witness has identified the defendant?

14 THE COURT: It will reflect.

15 MS. MULKEY: Thank you.

16 Q. [Ms. Mulkey] Now, August 26, 2013, were you
17 working with Officer Stott?

18 A. Yes, ma'am.

19 Q. And were you riding in the same vehicle?

20 A. I was.

21 Q. Did you assist in a lawful traffic stop of the
22 defendant?

23 A. Yes, ma'am.

24 Q. And what was that stop for?

25 A. Illegal window tint.

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. How do you actually determine if it's illegal,
2 Officer?

3 A. Through a window-tint meter.

4 Q. And do you have a window-tint meter?

5 A. I did on the day of the traffic stop, yes,
6 ma'am.

7 Q. Do you buy that on your own, or is it supplied
8 to you?

9 A. It's supplied through the City.

10 Q. The City of North Charleston?

11 A. Yes, ma'am.

12 Q. And can you explain to the jury how that device
13 operates?

14 A. Yes, ma'am.

15 It's a rectangle device that has a slot going
16 down the center of it. And you would slide it over the
17 top of the window of the vehicle, and it has a small
18 display screen on it and it will give you a reading of
19 what the window tint is, the percentage of light that's
20 passing through.

21 Q. And do you have any ability to manipulate the
22 reading?

23 A. No, ma'am.

24 Q. As long as there are batteries in it, does it
25 work?

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 A. Yes, ma'am.

2 Q. Now, getting back to the traffic stop. Did you
3 and Officer Stott have the same duty on that traffic stop?

4 A. No, ma'am.

5 I was the backup officer, cover officer, for
6 Officer Stott.

7 Q. Could you explain to the jury what a cover
8 officer does?

9 A. Yes, ma'am.

10 I watch out for the entire scene. I make sure
11 that Officer Stott and myself are safe, handle radio
12 communications, and just assist in any way that I can.

13 Q. So were you actually the one talking to the
14 defendant?

15 A. No, ma'am.

16 Q. Were you on scene when Officer Stott asked the
17 defendant for consent to search his vehicle?

18 A. Yes, ma'am, I was.

19 Q. And did the defendant provide consent?

20 A. Yes, ma'am.

21 Q. So based on this consent, did Officer Stott
22 search his vehicle?

23 A. Yes, ma'am.

24 Q. Did you see Officer Stott locate or retrieve any
25 items from the defendant's vehicle?

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 A. Yes, ma'am, he did retrieve the items from the
2 vehicle.

3 Q. And do you recall what they were?

4 A. Yes, ma'am.

5 Q. What were they?

6 A. It was a small amount of crack cocaine, a
7 digital scale, and a knife.

8 Q. Were you -- was there any residue on either of
9 those items recovered?

10 A. Yes, ma'am.

11 The knife and the digital scale both had
12 residue.

13 Q. And were you able to test that?

14 A. Yes, ma'am.

15 Q. How were you able to test that?

16 A. With a cocaine swab that tests the -- you know,
17 to see if there's cocaine on it. It turns -- the swab
18 turns blue and it lets you know that it, you know, tested
19 positive for cocaine.

20 Q. And in your training and experience, Officer
21 Kirk, was there any significance to the items that were
22 recovered?

23 A. Yes, ma'am.

24 Q. And what is that significance?

25 A. It's the tools that are used in drug trade.

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 Digital scales is going to be for weighing out
2 the amount to be sold, and the knife is what's used to cut
3 the crack into little small pieces --

4 Q. Was the --

5 A. -- for resale. Sorry.

6 Q. Thank you.

7 Was the defendant placed under arrest during
8 this traffic stop?

9 A. Yes, ma'am.

10 Q. What was he placed under arrest for?

11 A. For possession of cocaine.

12 Q. And were you present when Officer Stott advised
13 the defendant of his Miranda rights?

14 A. Yes, ma'am.

15 Q. After that, was anything else located in the
16 defendant's possession?

17 A. Yes, ma'am.

18 Q. And do you know what that was?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. It was a quantity of crack cocaine weighing
22 eleven and a half grams.

23 MS. MULKEY: Court's indulgence.

24 THE COURT: Take your time.

25 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. [Ms. Mulkey] Officer Kirk, going back real
2 quick to the window tint. Can you tell us, could you see
3 inside the vehicle prior to making that stop that day?

4 A. No, ma'am.

5 Q. Do you know what the legal limit for the tint
6 is?

7 A. Yes, ma'am.

8 Q. And what is that?

9 A. It's twenty-seven percent.

10 Q. Do you recall the reading for the defendant's
11 vehicle?

12 A. Yes, ma'am.

13 Q. And what was that?

14 A. Eighteen percent.

15 Q. And that was a violation?

16 A. Yes, ma'am.

17 Q. Were there any other violations that were
18 related to that window tint?

19 A. Yes, ma'am.

20 Q. And what were they?

21 A. There were no validation stickers on any of the
22 windows of the vehicle.

23 Q. Is that required if you have a tint?

24 A. Yes, ma'am.

25 Q. Can you get those stickers if you have an

Matthew Kirk
Direct Examination by Ms. Mulkey
March 17, 2015

1 illegal tint?

2 A. Only from the -- who were to put the window tint
3 on.

4 MS. MULKEY: Thank you.

5 I have no further questions at this time, Your
6 Honor.

7 THE COURT: Ms. Gay?

8 MS. GAY: One moment, Your Honor.

9 [Whereupon, Ms. Gay and Mr. Judon confer]

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Matthew Kirk
Cross-Examination by Ms. Gay
March 17, 2015

CROSS-EXAMINATION

1
2 BY MS. GAY:

3 Q. When this stop occurred, you were the driver of
4 the vehicle?

5 A. Yes, ma'am.

6 Q. And I believe that when -- initially, Stott went
7 out and talked to him --

8 A. Yes, ma'am, Stott --

9 Q. -- or did you both go out and talk to him?

10 A. -- Stott made contact with the --

11 Q. Do you remember whether it was the passenger
12 door or the driver door that he talked to him at?

13 A. Through the passenger-side door.

14 Q. And so where were you during that process?

15 A. I was at the rear driver's side of the vehicle.
16 Behind the trunk, but towards the driver's side of the
17 car.

18 Q. So you were in front of the patrol car?

19 A. Yes, ma'am.

20 Q. And so the situation -- did Officer Stott end up
21 with my client's driver's license and registration, and/or
22 paperwork regarding the rental car, when he was at the car
23 talking to my client?

24 A. I believe so, yes, ma'am.

25 Q. Do you recall being -- going with him or getting

Matthew Kirk
Cross-Examination by Ms. Gay
March 17, 2015

1 back in the police car to run the name and things like
2 that? Or did you ever get back in the police car?

3 A. I don't believe so.

4 Q. But did somebody go to run the name?

5 A. I believe that I ran it. But I would have done
6 it outside of the car.

7 Q. Outside the car.

8 And then it was after that situation that there
9 was -- Officer Stott went and got this stuff out of his
10 car? It was like after y'all ran his name?

11 A. I believe so. I --

12 Q. And when you ran his name, he had a valid
13 driver's license?

14 A. I believe so, yes, ma'am.

15 Q. Okay. And if he had -- you know, y'all could
16 issue a ticket for tint. You know, if somebody has an
17 invalid tint, you can issue a ticket. They don't have to
18 be arrested. Right?

19 A. Yes, ma'am.

20 Q. And so if he -- if at that point y'all had said,
21 hey, there was a tint problem and here is your blue ticket
22 and you have court in three weeks in the North Charleston
23 court at 2500 Mall Drive, that could have been the end of
24 it?

25 A. Yes, ma'am.

Matthew Kirk
Cross-Examination by Ms. Gay
March 17, 2015

1 Q. However, there was further discussion and Stott
2 went and got -- and searched the car and found those two
3 items that were found in the car, the blade and the scale?

4 A. Yes, ma'am.

5 Q. And you -- I think you had said that you were
6 standing in front of his car, behind his car --

7 A. Yes, ma'am.

8 Q. -- in front of the police car, in the range of
9 video camera type stuff in cars, right in front of the car
10 the whole time?

11 A. Yeah. I was in between -- both in between our
12 car and the defendant's car, yes, ma'am.

13 Q. And at the point where Stott was looking for
14 those things, my client was standing in front of that
15 police car with you --

16 A. Yes, ma'am.

17 Q. -- talking to him?

18 A. Yes, ma'am.

19 Q. And then when he came back, that's when he was
20 handcuffed --

21 A. Yes, ma'am.

22 Q. -- and placed under arrest?

23 A. For the possession. Yes, ma'am.

24 Q. Right.

25 And then he was then -- he then, at that point,

Matthew Kirk
Cross-Examination by Ms. Gay
March 17, 2015

1 gave up the drugs that was in his pants?

2 A. Yes, ma'am.

3 MS. GAY: One moment, Your Honor.

4 [Whereupon, Ms. Gay and Mr. Judon confer]

5 MS. GAY: I have no further questions, Your
6 Honor.

7 THE COURT: Redirect?

8 MS. MULKEY: The State has nothing further, Your
9 Honor.

10 THE COURT: You may step down. Thank you.

11 THE WITNESS: Yes, ma'am. Thank you.

12 [Whereupon, Mr. Kirk is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness.

15 MS. MULKEY: The State calls Shanta Middleton.

16 [Whereupon, Ms. Middleton comes forward]

17 [Whereupon, Ms. Middleton is duly sworn by the
18 clerk of court as follows: do you swear or affirm
19 that your testimony will be the truth, the whole
20 truth, and nothing but the truth, so help you God]

21 THE WITNESS: Yes.

22 THE CLERK OF COURT: Have a seat.

23 [Whereupon, Ms. Middleton takes the witness
24 stand]

25 THE CLERK OF COURT: If you will please state

Matthew Kirk
Cross-Examination by Ms. Gay
March 17, 2015

1 your full name, and spell your last name for the
2 record.

3 THE WITNESS: Shanta Middleton. M-I-D-D-L-E-
4 T-O-N.

5 MS. MULKEY: Good afternoon, Ms. Middleton.

6 THE WITNESS: Good afternoon.

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Shanta Middleton
Direct Examination by Ms. Mulkey
March 17, 2015

SHANTA MIDDLETON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Where are you presently employed, ma'am?

A. North Charleston Police Department.

Q. And how long have you been with the North
Charleston Police Department?

A. Eight years.

Q. And what is your position?

A. Evidence technician.

Q. What type of training and education do you have?

A. Inventory training, inventory control, drug
analysis, just basic computer knowledge.

Q. And what are your duties for your employment at
North Charleston Police Department?

A. Intake and process all evidence items, drug
analysis, data entry, just office, secretarial work.

Q. And while working in that capacity at the North
Charleston Police Department, did you happen to receive
evidence in this particular case, the State versus Elliott
Judon?

A. Yes, ma'am.

Q. From whom and where did you receive that kind of

Shanta Middleton
Direct Examination by Ms. Mulkey
March 17, 2015

1 evidence?

2 A. The evidence drop box.

3 Q. Can you explain to the jury what the evidence
4 drop box is and how that works?

5 A. It's a drop box that's in our evidence
6 department. After hours, or during the time evidence is
7 open, officers drop any evidence items into the secure
8 box.

9 Q. And does the evidence -- when you take evidence
10 from there, if it appears to be tampered with, what do you
11 do?

12 A. We don't process it. Notify the officer and
13 their supervisor.

14 Q. Did you receive any evidence in this case that
15 appeared to be tampered with?

16 A. No, ma'am.

17 Q. And had it been, would you have accepted it?

18 A. No, ma'am.

19 Q. How do you -- if you could explain to the Court
20 how you actually log in evidence.

21 A. Once we retrieve it from the drop box, we verify
22 case numbers, signatures, seals, and we input it into our
23 inventory system.

24 Q. And is that where you log it in?

25 A. Yes, ma'am.

Shanta Middleton
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. Do you assign the evidence a case number or
2 identifying marker?

3 A. We assign it to a location, but the case number
4 is assigned through our communications department.

5 Q. And then what do you do with it?

6 A. Assign it to a proper location.

7 Q. Does all of the evidence go in the same place,
8 or different places?

9 A. Different places.

10 Q. And can you explain to the jury why?

11 A. They have to be separated whether it's drugs,
12 guns, jewelry. Anything of monetary value have to have a
13 separate location.

14 MS. MULKEY: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 MS. GAY: I have no objection, Your Honor, when
18 it gets to that point.

19 Q. [Ms. Mulkey] Ms. Middleton, I would like to
20 show you what's been pre-marked as State's Exhibit Number
21 5. If you could look at this and examine it for a minute.
22 I would like to ask you a few questions.

23 A. Okay.

24 Q. Have you seen that before?

25 A. Yes, ma'am.

Shanta Middleton
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. And where did you first see this item?

2 A. The evidence drop box.

3 Q. And how can you tell that this is the same item?

4 A. It has our case number, and it also has our
5 label sticker on it.

6 Q. It is in substantially the same condition as
7 when you last saw it?

8 A. Yes, ma'am.

9 Q. Can you please, by holding that to the jury,
10 kind of explain the bagging systems that are going on
11 there? The different bags.

12 A. The bag that's inside this bag is what they call
13 a best-kit bag. That's the bag it originally came in with
14 any drugs or control substances in it.

15 Once it's been analyzed by SLED, the outer bag
16 is what they seal it in and send it back to our
17 department.

18 Q. And you said the best bag is what? Could you
19 just clarify that again?

20 A. The best-kit bag is what's inside this plastic.

21 Q. And where does that go after you have logged it
22 in?

23 A. In a secure drug location.

24 Q. And so what do you do with the evidence after
25 receiving it?

Shanta Middleton
Direct Examination by Ms. Mulkey
March 17, 2015

1 A. We place it in a drop locker.

2 Q. And other than for transportation purposes to
3 SLED, do you ever have any contact with the evidence
4 again?

5 A. No, ma'am.

6 MS. MULKEY: Court's indulgence.

7 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

8 Q. [Ms. Mulkey] And, Ms. Middleton, this kind of
9 goes with the last question. But did you, in fact, take
10 those what appear to be narcotics up to SLED --

11 A. Yes, ma'am.

12 Q. -- for further testing?

13 A. Yes, ma'am.

14 MS. MULKEY: The State has no further questions.

15 THE COURT: Ms. Gay?

16 MS. GAY: I have no questions for this witness,
17 Your Honor.

18 THE COURT: You may step down. Thank you.

19 [Whereupon, Ms. Middleton is excused and exits
20 the witness stand]

21 THE COURT: Call your next witness.

22 MS. MULKEY: The State calls Lawrence Zivkovich.

23 THE CLERK OF COURT: Up here, sir, please.

24 [Whereupon, Mr. Zivkovich comes forward]

25 [Whereupon, Mr. Zivkovich is duly sworn by the

Shanta Middleton
Direct Examination by Ms. Mulkey
March 17, 2015

1 clerk of court as follows: do you swear or affirm
2 that your testimony will be the truth, the whole
3 truth, and nothing but the truth, so help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Be seated.

6 [Whereupon, Mr. Zivkovich takes the witness
7 stand]

8 THE CLERK OF COURT: If you will please state
9 your full name, and spell your last name for the
10 record.

11 THE WITNESS: Lawrence Zivkovich. Z-I-V-K-O-
12 V-I-C-H.

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Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 LAWRENCE ZIVKOVICH,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. MULKEY:

6 Q. Mr. Zivkovich, what is your occupation?

7 A. I'm a forensic chemist with the South Carolina
8 Law Enforcement Division.

9 Q. And how long have you been employed by South
10 Carolina Law Enforcement Division?

11 A. Almost nine years.

12 Q. And does that agency commonly go by SLED?

13 A. Yes, ma'am.

14 Q. What position do you hold at SLED?

15 A. I work in the drug identification department as
16 a chemist.

17 Q. And what are your duties as a chemist, sir?

18 A. We analyze evidence for the presence of
19 controlled substances.

20 Q. And what type of training and experience do you
21 need in order to get that job?

22 A. I received a Bachelor of Science in chemistry
23 from the University of South Carolina, and then I went
24 through training at South Carolina Law Enforcement
25 Division to be certified as a forensic scientist. And

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 I've also attended seminars with the Drug Enforcement
2 Agency.

3 Q. And have you had the occasion to chemically
4 analyze substances to determine whether they contain a
5 narcotic or a narcotic-type drug?

6 A. Yes, ma'am.

7 Q. And how many times would you say that you have
8 performed that type of analysis?

9 A. Approximately 10,000.

10 Q. Have you specifically had an opportunity to
11 analyze substances that would contain cocaine base?

12 A. I have.

13 Q. And approximately how many times would you say
14 you've done that?

15 A. Probably about 4 or 5,000.

16 Q. How many cocaine-based analyses would you say
17 you do in a given week?

18 A. Depending on what county I happen to be working,
19 anywhere from a couple up to ten or fifteen.

20 Q. And do you make these analyses as a regular part
21 of your duty?

22 A. I do.

23 Q. Have you previously been admitted as an expert
24 for a drug -- for drug analysis in a court?

25 A. I have.

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. About how many times, sir?

2 A. Twenty-eight.

3 Q. What kind of equipment do you use at SLED to
4 test these drugs?

5 A. The normal types of equipment are an FTIR and a
6 GC mass spectrometer.

7 Q. Are these pieces of equipment precise and
8 accurate in their testing abilities?

9 A. Yes, ma'am.

10 Q. And after making these analyses, do you produce
11 a report?

12 A. I do.

13 MS. MULKEY: Your Honor, at this time I would
14 like to admit Mr. Zivkovich as an expert.

15 THE COURT: In what area?

16 MS. MULKEY: In chemical analysis.

17 THE COURT: Any objection?

18 MS. GAY: No, Your Honor.

19 THE COURT: Any further voir dire requested?

20 MS. GAY: I didn't hear that last part.

21 THE COURT: Anymore questions of this witness
22 regarding his qualifications?

23 MS. GAY: No.

24 THE COURT: Ladies and gentlemen, normally when
25 a person testifies, they can't give an opinion. They

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 must testify as to either what they heard or saw or
2 sensed by smell, or something of that nature. There
3 is an exception in our law when someone is qualified
4 because of their education and experience. They are
5 permitted to give an opinion in certain areas if they
6 are qualified in that area.

7 This witness will be qualified as an expert in
8 the area of chemical analysis and he will be allowed
9 to give opinion testimony in that area. That does not
10 mean that you must accept his opinion. It is simply
11 evidence for you to use in any way that you see fit.

12 Ms. Mulkey, your witness.

13 MS. MULKEY: Thank you, Your Honor.

14 Q. [Ms. Mulkey] Mr. Zivkovich, in preparation for
15 this case, did you produce a lab report?

16 A. Yes, ma'am.

17 Q. And is that the copy that you are referring to
18 for your testimony here today?

19 A.. Yes, ma'am.

20 MS. MULKEY: Your Honor, may I approach?

21 THE COURT: You may.

22 MS. GAY: Once the foundation is laid, I don't
23 have an objection, Your Honor.

24 Q. [Ms. Mulkey] Mr. Zivkovich, this is being shown
25 to you as State's Exhibit Number 4. Have you seen that

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 before?

2 A. Yes, ma'am. It's --

3 Q. Can you -- I'm sorry. Go ahead.

4 A. It's a report that I issued for case number L13-
5 11314.

6 Q. And who prepared that report?

7 A. I did.

8 Q. When did you prepare that report?

9 A. It was finalized on October 1st, 2013.

10 Q. Is that report signed by you, sir?

11 A. Yes, ma'am.

12 Q. And who is the subject of that drug report?

13 A. Elliott Judon, I believe.

14 MS. MULKEY: Your Honor, at this time I would
15 like to admit State's Exhibit Number 5 [sic] into
16 evidence and publish it to the jury.

17 THE COURT: Any objection?

18 MS. GAY: No, ma'am.

19 THE COURT: State's 5 into evidence without
20 objection.

21 And you may publish.

22 MS. MULKEY: May I approach, Your Honor?

23 THE COURT: You may.

24 Q. [Ms. Mulkey] Mr. Zivkovich, I would like to
25 show you what has been pre-marked as State's Exhibit

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 Number 5 [sic]. Can you take a look at that and I would
2 like to ask you a few questions about it.

3 A. Yes, ma'am.

4 MS. MULKEY: Your Honor, just for clarification
5 on the record, I believe the lab report should be
6 Number 4. I apologize. I think I said 5. I
7 misspoke. And this packet is number 5.

8 THE COURT: So the packet is 5; right?

9 MS. MULKEY: Yes.

10 THE COURT: Any objection to 4? Just so the
11 record is clear.

12 MS. GAY: No. No, ma'am.

13 THE COURT: State's 4 into evidence without
14 objection.

15 [Whereupon, State's Exhibit Number 4 is admitted
16 into evidence by the Court]

17 Q. [Ms. Mulkey] Do you see a bag within that outer
18 bag?

19 A. Yes, ma'am.

20 Q. And can you tell us what the inner bag is
21 called?

22 A. We call them best-evidence packs that we issue
23 to law enforcement agencies for the submission of drug
24 evidence.

25 Q. And can you explain what -- like what that best

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 bag does?

2 A. We designed these bags specifically for drug
3 evidence so that it makes it convenient for the drug
4 officer -- for the police officer to submit them to the
5 South Carolina Law Enforcement Division.

6 And each of the bags has a serial number on it
7 and then it has typing around the outside of the bag, and
8 a glue seal on the top and what that does is it allows --
9 once the bag has been sealed, it allows anybody to examine
10 the bag to see if the evidence has been tampered with.

11 Q. And from whom did you receive this bag?

12 A. If I can refer to the chain of custody.

13 [Whereupon, the witness reviews documents]

14 A. I received this bag from Courtney Smith on
15 September 3rd, 2013.

16 Q. [Ms. Mulkey] And can --

17 MS. MULKEY: May I approach the witness?

18 THE COURT: You may.

19 Q. [Ms. Mulkey] I would like to show you what's
20 been noted as State's Exhibit 4. And if you could review
21 the first line of the report and read your -- the first
22 line of your report to the Court.

23 A. The submission 1: on August 30th, 2013, items
24 were received in B228681 from Shanta Middleton, of the
25 North Charleston Police Department.

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. Thank you.

2 And going back to this bag right here, State's
3 Exhibit Number 5, you were discussing the best bag inside?

4 A. Yes, ma'am.

5 Q. Did this bag appear to be tampered with?

6 A. No, ma'am.

7 Whenever I pick up evidence from the evidence
8 log-in area, when I bring it upstairs to be analyzed I
9 check the glue seal and the markings on the outside and if
10 it's not sealed properly, then we return it to the agency.

11 And if it is sealed properly, then I write on
12 the front of the bag that the seal was intact and the date
13 that I inspected it and my initials. And on this one it
14 says, seal intact 9/3/13, LAZ.

15 Q. Per your policies and procedures, would you have
16 accepted this bag if it appeared to be tampered with?

17 A. No, ma'am.

18 Q. And what is the outer bag?

19 A. The outer bag is just -- we call this a K-pack,
20 and all it is is a plastic bag that we reseal the evidence
21 in once we're done analyzing it.

22 Q. Did you seal the outer bag?

23 A. I did.

24 There's a heat seal at the bottom with the date
25 9/16/13 with my initials.

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 Q. So are those the drugs that you tested?

2 A. Yes, ma'am.

3 Q. And are those the drugs that were delivered to
4 you by that report from Shanta Middleton?

5 A. That's correct.

6 Q. And how -- do the drugs appear to be in
7 substantially the same condition as when you received
8 them?

9 A. They do.

10 Q. And what test did you perform on these drugs?

11 A. If I can refer to my paperwork.

12 [Whereupon, the witness reviews documents]

13 A. The report -- the analyses that I did was a
14 chemical spot test that -- it's a preliminary test that
15 allows us to kind of have an idea of what type of drugs we
16 might be analyzing. And then upon the completion of the
17 chemical test, I did a gas chromatography mass
18 spectrometry test on them and I determined both items, 1.1
19 and 1.2, to be cocaine base.

20 Q. [Ms. Mulkey] And did you perform those tests
21 yourself?

22 A. I did.

23 Q. And please tell the Court again what those tests
24 determined.

25 A. They determined that items 1.1 and 1.2 were

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 cocaine base.

2 Q. Were you able to determine a weight for that
3 cocaine base?

4 A. I was.

5 Q. And what was that?

6 A. Item 1.1 was 10.1 grams, and item 1.2 was less
7 than .0 -- .1 grams.

8 MS. MULKEY: At this time, Your Honor, I would
9 like to admit the cocaine base, State's Exhibit Number
10 5, into evidence and publish to the jury.

11 MS. GAY: I would like to see the package before
12 she --

13 THE COURT: All right. You may.

14 [Whereupon, Ms. Gay and Mr. Judon confer]

15 MS. GAY: Without objection, Your Honor.

16 THE COURT: State's 5 into evidence without
17 objection.

18 MS. MULKEY: Thank you, Your Honor.

19 [Whereupon, State's Exhibit Number 5 is admitted
20 into evidence by the Court]

21 MS. MULKEY: The State has no further questions
22 at this time. Please answer any questions the defense
23 may have.

24 THE COURT: Ms. Gay?

25 MS. GAY: One moment, Your Honor.

Lawrence Zivkovich
Direct Examination by Ms. Mulkey
March 17, 2015

1 [Whereupon, Ms. Gay and Mr. Judon confer]

2 MS. GAY: I have no questions for this witness,
3 Your Honor.

4 THE COURT: You may step down. Thank you.

5 [Whereupon, Mr. Zivkovich is excused and exits
6 the witness stand]

7 THE COURT: Call your next witness.

8 MS. MULKEY: The State rests, Your Honor.

9 THE COURT: Ladies and gentlemen, that indicates
10 to the Court there is a matter of law that I must take
11 up outside of your presence.

12 Do not begin your deliberations. Do not discuss
13 this case amongst yourselves.

14 You, again, may leave your notepads right where
15 they are or you may take them with you.

16 Please rise for the jury.

17 [Whereupon, the jury exits the courtroom at
18 3:09 p.m.]

19 THE COURT: Thank you. Be seated.
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State vs. Elliott Judon, Jr.
Motion for a Directed Verdict by Ms. Gay
March 17, 2015

MOTION FOR A DIRECTED VERDICT

THE COURT: Any motions or matters, Ms. Gay?

MS. GAY: Yes, ma'am.

At this time, I make a motion for a directed verdict, Your Honor, on behalf of my client. I believe that the evidence presented in the light most favorable to the State does not rise to the level of all the elements that it would take for him to be prosecuted on the charge of trafficking.

And I would renew all of my prior motions, you know, my motion to dismiss, my motion to suppress, my motion to suppress his statements, and I will be doing that on behalf of my client, Your Honor.

THE COURT: Ms. Mulkey?

MS. MULKEY: Yes, Your Honor.

The State would argue against a directed verdict. As Your Honor knows, at this time you can consider only the existence or nonexistence of the evidence, not the weight.

We feel that there has been testimony presented from several officers, as well as the lab tech, that there was evidence of cocaine base. And we're not required to point conclusively to the defendant's guilt. We would request that the issues of fact are properly presented to the jury.

State vs. Elliott Judon, Jr.
Motion for a Directed Verdict by Ms. Gay
March 17, 2015

1 THE COURT: Anything further, Ms. Gay?

2 MS. GAY: Not at this time.

3 THE COURT: As to all previous motions, I
4 haven't heard anything that would change the initial
5 rulings so I stand by all of the rulings on all the
6 previous motions and matters.

7 As to your motion for a directed verdict, Rule
8 19 of the South Carolina Rules of Criminal Procedure,
9 I must view the evidence and all reasonable inferences
10 in the light most favorable to the nonmoving party. I
11 am concerned, again, with the existence or
12 nonexistence of evidence.

13 The defendant is charged with trafficking
14 cocaine base ten to twenty-eight grams. The State
15 must prove beyond a reasonable doubt that the
16 defendant knowingly sold, manufactured, cultivated,
17 delivered, purchased, brought into the state or
18 otherwise aided, abetted, conspired, or was knowingly
19 in actual or constructive possession of cocaine base.

20 To prove possession, the State must prove beyond
21 a reasonable doubt that the defendant had both the
22 power and the intent to control the disposition or use
23 of the cocaine base. Possession may be either actual
24 or constructive.

25 The State must also prove that the -- beyond a

State vs. Elliott Judon, Jr.
Motion for a Directed Verdict by Ms. Gay
March 17, 2015

1 reasonable doubt the amount of cocaine base was ten
2 grams or more but less than twenty-eight grams.
3 Officer Stott testified that he found the cocaine base
4 on the defendant's person inside the defendant's
5 pants. Officer Stott and Kirk testified that the
6 substance field-tested positive for cocaine base. The
7 defendant admitted to Officer Stott that the cocaine
8 base was his and that he gave law enforcement then
9 consent to search the vehicle. Ms. Middleton
10 testified that the weight found on the defendant's
11 person was above the trafficking weight. And the
12 officer -- or the agent from SLED testified, and his
13 report was admitted, that it was cocaine.

14 Viewed in the light most favorable to the
15 nonmoving party, your motion for a directed verdict is
16 denied.
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State vs. Elliott Judon, Jr.
Defendant's Rights
March 17, 2015

DEFENDANT'S RIGHTS

1
2 THE COURT: Mr. Judon, please stand. I remind
3 you you are still under oath.

4 We've reached the stage of the trial where you
5 now may present your defense. Do you wish to testify?

6 MR. JUDON: Yes, ma'am.

7 THE COURT: You will testify. All right. So
8 we'll take a short comfort break and then we will have
9 -- then you will testify. Do you have any --

10 You may have a seat, Mr. Judon.

11 Do you have any additional witnesses, Ms. Gay,
12 or will this be it?

13 MS. GAY: No, Your Honor.

14 THE COURT: All right. Thank you.

15 [Whereupon, a recess is taken from 3:13 p.m. to
16 3:22 p.m.]

17 THE COURT: Anything before we bring in the
18 jury? From the State?

19 MS. MULKEY: Nothing from the State, Your Honor?

20 THE COURT: From the defense?

21 MS. GAY: This is Paul Courser [phonetic]. He
22 goes to Wando. He's a senior. He works in my office
23 as an intern and I just wanted him to be introduced to
24 you. He's going to be watching part of it. He's a
25 student.

State vs. Elliott Judon, Jr.
Defendant's Rights
March 17, 2015

1 THE COURT: Okay. Thank you.

2 Let's bring in the jury.

3 [Whereupon, the jury enters the courtroom at
4 3:24 p.m.]

5 THE BAILIFF: The jurors are all present and
6 seated, Your Honor.

7 THE COURT: Thank you. Please be seated.

8 Ms. Gay, call your first witness.

9 MS. GAY: Thank you, Your Honor. I would like
10 to call Elliott Judon.

11 THE COURT: Mr. Judon, please take the stand.

12 [Whereupon, Mr. Judon comes forward]

13 THE CLERK OF COURT: Put your left hand on the
14 Bible, and raise your right hand.

15 [Whereupon, Mr. Judon is duly sworn by the clerk
16 of court as follows: do you swear or affirm that your
17 testimony will be the truth, the whole truth, and
18 nothing but the truth, so help you God]

19 THE WITNESS: I do.

20 THE CLERK OF COURT: Be seated.

21 [Whereupon, Mr. Judon takes the witness stand]

22 THE CLERK OF COURT: Speak into this mike here.
23 You need to get pretty close to it.

24 State your full name. and spell your last name.

25 THE WITNESS: Elliott Judon. J-U-D-O-N.

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

ELLIOTT JUDON, JR.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. GAY:

Q. Mr. Judon, we are here today for your trial in this case, and so tell the jury a little bit about yourself. How old are you?

A. I'm thirty-six years of age.

Q. And what kind of work do you do?

A. I do barbering and I do upholstery.

Q. Do you do some window-tinting sometimes, as well?

A. Correct.

Q. Do you know how to do that?

A. Yes. I did that for about a year.

Q. And did you tint the windows on that rental car that you had?

A. Yes, I did, in fact.

Q. And so do you have any children?

A. I have two children, a boy and a girl. One's a -- a boy that's nine and a daughter that's ten.

Q. And you've been from Charleston your whole life?

A. Correct.

Q. And you've been in some trouble before?

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 A. Correct.

2 Q. And like at one point you've been convicted of
3 possession of a stolen vehicle?

4 A. Correct. When I was young, yes.

5 Q. How old were you when that happened?

6 A. I was about seventeen years old.

7 Q. And what are you now? Thirty-six?

8 A. Correct.

9 Q. And I think that at some point you had some
10 problem with some kind of -- having to do with false claim
11 for insurance payments. So you did something false and
12 you got in trouble for that?

13 A. Well, me and my girlfriend --

14 Q. I don't need details --

15 A. Correct.

16 Q. -- yes?

17 A. Correct.

18 Q. And so at some point you were convicted of that,
19 as well?

20 A. Correct.

21 Q. So you've been convicted of possession of stolen
22 motor vehicle in the past when you were young, and you've
23 been convicted of false claim for insurance payments in
24 the past?

25 A. Correct.

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 Q. About ten years ago on both of those things?

2 A. Correct.

3 Q. And on this day, which is August 26, 2013, you
4 were driving a rental car that you had put extra tint on?

5 A. Not extra tint. I put tint on the car.

6 Q. I'm sorry.

7 And that's kind of important because one of the
8 officers testified that you had -- that it was eighteen
9 percent. And you're -- you do this regularly? You've
10 tinted before?

11 A. Yes.

12 Thirty-five percent is legal -- twenty-seven
13 percent is legal by South Carolina, twenty percent is you
14 can still see but it's barely dark, five percent is
15 considered a limited [phonetic] but you cannot see in a
16 car at all.

17 Q. And the testimony was that the tint in this car
18 was eighteen percent. Would you agree with that?

19 A. Not at all.

20 Q. Got any idea what you believe that you put on
21 it?

22 A. Thirty-five percent.

23 I got it from Auto Zone and there's only twenty,
24 thirty-five, and five.

25 Q. You're saying there's only -- that's the only

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 packages that you can get?

2 A. Correct.

3 Q. Is that you can get a thirty-five, a twenty-
4 something, or a five?

5 A. Correct.

6 Q. And yours was what again?

7 A. Thirty-five.

8 Q. And so on that day when you were driving around
9 and you were stopped by these officers, can you tell the
10 jury where you were and where you were going?

11 A. I was coming off Constitution Avenue toward my
12 aunt house and --

13 Q. Is Constitution Avenue down there by Leeds and
14 Dorchester?

15 A. Correct.

16 As I was approaching the intersection of
17 Dorchester Road, coming up Constitution, I noticed a
18 patrol car approaching my way as I was coming to the
19 light. I was caught by the light so they got behind me.
20 So they was actually behind me. The light turned -- I
21 made a left on Dorchester Road. They followed me all the
22 way to Meeting Street road and Dorchester. They was very
23 close behind me. I mean, if I would tap my brakes, they
24 probably hit me off the road.

25 The light caught me again at Dorchester and

Elliott Judon, Jr.
Direct Examination by Ms. Gay.
March 17, 2015

1 Meeting Street. I initially made a left, went down
2 another maybe a mile and a half again. They was following
3 me. They initiated the blue lights. I thought they were
4 going to pursue -- the way the light -- it was not an
5 actually red and blue light, it was a little blue light
6 that made it seem that they was in pursuit or something
7 like that. So I immediately pulled over to the -- pulled
8 over to the right side of the road and I stopped my
9 vehicle, the rental vehicle.

10 Q. Let me stop you there for a minute.

11 So is it your testimony that when the blue light
12 came on, that you stopped as fast as you could?

13 A. Because the speed limit is only thirty-five. I
14 mean, and the brakes was pretty good, so maybe from here
15 to that door, which is a twenty-yard mark, twenty-five-
16 yard mark.

17 Q. Before you pulled over?

18 A. Correct.

19 Q. And you weren't ever given a ticket for speeding
20 at that time so nobody believed that you were doing over
21 the speed limit that day?

22 A. No, ma'am.

23 Q. And so to follow up: you've been now stopped?

24 A. Correct.

25 Q. And the officer -- the police car is where in

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 relation to your car?

2 A. Well, both officers came. The tall officer came
3 to the driver's side and the shorter officer came to the
4 passenger side. They approached the vehicle and told me
5 to down the windows now. The other officer, where's your
6 paperwork to the car. So I was like, I can't do two
7 things at one time.

8 I initiated my rental car agreement and my
9 driver's license. Both officers went back to their
10 vehicle. They stayed approximately five to ten minutes.
11 They came -- one officer -- the shorter officer --

12 Q. Okay. Well, let's stop for a minute.

13 When you were sitting in the car of your --
14 while you were waiting, were your pants zipped or not
15 zipped?

16 A. My pants were zipped.

17 Q. And so your pants were zipped?

18 A. Correct.

19 Q. The fly was not open?

20 A. Correct. Not open.

21 Q. Was there any crumbly pieces of drugs scattered
22 around the console of that car?

23 A. No, ma'am.

24 Q. And so if a person -- if the officers were
25 standing outside of your car, when they looked inside

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 could they have seen these items that you placed in the
2 car, a scale and a knife, that are yours?

3 A. No, ma'am.

4 Q. And these -- this has been marked as Defendant's
5 [sic] Exhibit 1. And I think it's 1 and 2. And these are
6 items -- one's a digital scale and one's a knife. Are
7 these yours?

8 A. Correct.

9 Q. Where were they located in the car?

10 A. They was located in the armrest of the vehicle.

11 Q. Were both of them located in the armrest of the
12 vehicle?

13 A. Correct.

14 Q. And that would not have been something that
15 somebody could see from the window?

16 A. No, ma'am. Impossibly.

17 Q. And so on that day when you were in the car
18 waiting for them to come back with your paperwork, did you
19 scramble around or do anything --

20 A. Not at all --

21 Q. -- stick anything in your pants in the car at
22 that time?

23 A. Not at all.

24 Q. So describe to the jury now what happened after
25 either one or both of them came back after they checked

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 out your driver's license and your rental agreement.

2 A. Well, the short officer came back and
3 immediately told me to step out of the car so I figured my
4 driver's license, or something was wrong with my rental-
5 car agreement.

6 And so I said, what am I stepping out of the car
7 for; is my license suspended. And he said, no, just step
8 outside the car.

9 So when I step out the vehicle, he patted me
10 down, he played around my zipper area. And then once he
11 patted me down, he -- I walked to the other officer and
12 the other officer said, hey, your pants is unbuckled,
13 what's going on with this. So I said, ain't nothing going
14 on.

15 So he started asking me a couple of questions,
16 where I worked, because I had my work uniform on. Asked
17 me where I worked at. And he believed he had known me
18 from somewhere. And I was like, I wasn't in trouble for
19 five years; you don't know me.

20 The other officer that was searching the
21 vehicle, after he came out of the vehicle he gave --

22 Q. Well, let's back up a minute.

23 Okay. So this officer that was talking to you
24 about who you were and he might have known you, where were
25 you standing when this officer was talking to you?

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 A. Directly in front of the vehicle. In front of
2 the --

3 Q. So he had --

4 A. -- patrol car.

5 Q. -- he had moved you from the driver's side and
6 he was standing right in front of the driver's -- in front
7 of the car?

8 A. Correct.

9 Q. What was your understanding about whether or not
10 that car had a camera in it?

11 A. Because he placed me in front of the camera.
12 That's what I believed.

13 Q. It was your belief that you had been placed in
14 front of a camera. Do you have a -- what basis -- what
15 did you base that belief on?

16 A. Because he told me to step in front of the
17 camera. That's why I believed that.

18 Q. So you're having a conversation with one of the
19 officers and they're talking to you about yourself and
20 your person while the other officer is doing what?

21 A. Searching the vehicle.

22 Q. Now, let me ask -- let's back up a minute.

23 At any point from the time that you were taken
24 out of your car -- or even this way: at any point from
25 the time they came up to your car, to where we are now,

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 did either of these two officers ask you to consent to
2 search?

3 A. Never did.

4 Q. Neither Officer Stott or Officer Kirk?

5 A. Never did.

6 Q. And so when you're standing in front of the car
7 that's got the camera in it and you're being told that,
8 this officer that's asking you questions, did he tell you
9 that you're going to be arrested or anything?

10 A. Not until the other officer indicated like a
11 head motion. So I thought they had some kind of device in
12 their ears, because he made the --

13 Q. Device in their ears?

14 A. He had to, because the other officer never even
15 -- he was talking to me, so he couldn't know what the
16 other officer saw in the car. So he give a head shake and
17 he told me, hey, you got stuff in the car.

18 Q. So the officer who went and found these things,
19 these are yours, 1 and 2 --

20 A. Correct.

21 Q. -- said that there was stuff in the car?

22 A. Correct.

23 Q. Now, were you aware that there was residue from
24 drugs on these two items?

25 A. Not to my recollection.

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 Q. So when you -- so he came over to you and now
2 you're all three right in front of this car right where
3 the camera would have been on. What happened after that?

4 A. They handcuffed me and said you know you can go
5 to jail for the residue and the scale inside the car.

6 Q. So you were advised that you would be taken to
7 jail based on what they found in the car?

8 A. Correct.

9 Q. And after they have you in handcuffs and were
10 telling you this, what else did they say about the what
11 was going to happen next?

12 A. Well, the other officer patted me down one more
13 time. And they asked me, hey, I believe you got something
14 on you. And I was like, I already told you once I ain't
15 got nothing on you [sic]. So we both carried on a
16 complete silence for maybe about thirty seconds. And
17 that's when I told him I had something on me.

18 Q. That's when you coughed up and said you had some
19 stuff on you?

20 A. Correct.

21 Q. And at that point, did you -- your pants were
22 still undone from what happened over by your car?

23 A. Correct.

24 Q. And did you take the stuff out yourself, or did
25 the officer take it out?

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 A. The officer, he put on some kind of gloves and
2 he went down there and pick it up.

3 Q. Where -- okay. This -- I'm going to show you
4 what's marked as State's Exhibit 5. And does this look
5 like what you had in your pants?

6 A. That's correct.

7 Q. So this stuff was packaged how? I mean, was it
8 packages in this little tiny bag, or was it packaged
9 differently?

10 A. It wasn't packaged at that time, if I -- it was
11 actually packaged in a different bag.

12 Q. And where was that bag on you?

13 A. The bag on me was under my crotch area inside of
14 a brief. Brief drawers, or a jockey, whatever you want to
15 call it.

16 Q. Right. Some underwear?

17 A. Correct.

18 Q. Some drawers, you said. And they -- were they
19 pretty tight?

20 A. Very tight.

21 Like maybe like football pants or -- you know,
22 really real tight.

23 Q. Now, where did you put this stuff in your pants?
24 Where were you when that occurred?

25 A. I was on Constitution, before I left out the

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 house.

2 Q. Before you left your house?

3 A. Correct.

4 Q. And once again, did you scramble around with
5 this stuff in your pants at the time that the officer
6 stopped you?

7 A. No, ma'am.

8 Q. And did you have any specific -- any reason of
9 yours at all that your pants are undone when you were --
10 you know, before you got stopped by the police?

11 A. No, ma'am.

12 Q. And these two things right here, these Exhibit
13 3, which are two cell phones, you -- do you recognize
14 these? Were they on you?

15 A. Yes, ma'am. No, they were not on me.

16 Those cell phones don't even work, actually. It
17 was just in the glove box.

18 Q. So these were some extra cell phones that were
19 in your glove box?

20 A. Once that -- you know, the cell phone is so
21 cheap, once you drop it or do something, you got to get
22 another one so --

23 Q. Okay. So when you were there that day and they
24 found this stuff and they came over to you, did they ask
25 you to consent -- did they ask consent, you know, to

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 search you and stick your hands -- their hands in your
2 pants?

3 A. No, ma'am. Never did.

4 MS. GAY: Okay. Hold on one moment. I don't
5 have anybody to consult with, because my client is up
6 there, so I have to think for a second.

7 THE COURT: Take your time.

8 Q. [Ms. Gay] Now, you've been shown the evidence
9 in this case as we've been going on here. And these
10 things are all things that you were aware were, you know,
11 part of this case: 1 and 2, this knife and the scale?

12 A. Correct.

13 Q. And these two cell phones?

14 A. Correct.

15 Q. And these drugs?

16 A. Correct.

17 Q. Because you had been given some paperwork and
18 some things like that as a part of this case, so it lists
19 out what the evidence was in your case?

20 A. Correct.

21 Q. Was there anything on that piece of paper that
22 said anything about an in-car video disk?

23 A. Uh-huh.

24 Q. Was that in your evidence?

25 A. No.

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 That's the first thing that I actually looked
2 for because due to prior experience, I had some
3 difficulties.

4 Q. I understand.

5 So you had looked for --

6 MS. MULKEY: Objection. Relevance.

7 THE COURT: Do you want to approach?

8 MS. MULKEY: Yes, Your Honor.

9 [Whereupon, an off-the-record bench conference
10 is held]

11 MS. GAY: So one last thing, sir.

12 Q. [Ms. Gay] After this, after they took you out
13 of the car, what were your thoughts on whether this was
14 your basic traffic stop or not?

15 A. Well, I thought my license was suspended or
16 something like that. That's why I thought he stepped me
17 out the car.

18 Q. And did you think that they were just going to
19 just hand you a blue ticket that said that the tint was
20 too dark, or was there some other thoughts going on in
21 your head?

22 A. That's what I thought, I was just going to get a
23 ticket like I normally do. I've been pulled over before
24 one time for tint, so --

25 Q. Well, so in this particular case, after they

Elliott Judon, Jr.
Direct Examination by Ms. Gay
March 17, 2015

1 didn't do that, after they didn't give you the blue ticket
2 and just let you go home, what were your thoughts on the
3 scene? What do you think was going on?

4 A. I was trying to figure out what was going on,
5 like some type of investigation or something like that.

6 Q. Okay. But in your case you said that -- your
7 testimony is that you didn't have any crumbled crack
8 cocaine all over the inside of your car?

9 A. No, ma'am.

10 Q. And that what you had was in your pants and
11 that's what it is?

12 A. Correct.

13 MS. GAY: I have no further questions, Your
14 Honor, at this time.

15 THE COURT: Ms. Mulkey.

16 MS. MULKEY: Thank you, Your Honor. May it
17 please the Court.

18 Good afternoon, Mr. Judon.

19 THE WITNESS: Good afternoon.

20

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Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

CROSS-EXAMINATION

BY MS. MULKEY:

Q. You testified that was a rental vehicle?

A. Correct.

Q. Can you tell me a little bit about what kind of vehicle it was?

A. I can definitely tell you it was a nineteen -- not a nineteen. I'm so sorry. It was a 2014 Nissan Ultima.

Q. And how long had you rented it?

A. I was in a car wreck, due to an accident, so I was in a rental car for about six months during the -- waiting on the insurance claim to come back.

Q. And where did that wreck happen?

A. That wreck happened on -- where the wreck happened at? It was south of Piggly Wiggly Drive.

Q. And what happened in that incident?

A. Someone hit me.

Q. And so why was it taking six months to get your vehicle back?

A. Because I got a title loan -- I got a title loan on my vehicle and before they would pay me off, the insurance company, I wanted the title to the car -- the title in my possession, so I had to pay some kind of paperwork to get the paperwork correct through the title

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 loan company.

2 Q. Well, you were able to come up with enough money
3 to rent a vehicle in the interim?

4 A. No, ma'am. My insurance company was paying for
5 that.

6 Q. And you said you rented the vehicle without the
7 tint?

8 A. One -- yeah. One window was tint, but the rest,
9 I tint the rest.

10 Q. Now, if you -- you said you have experience in
11 tinting windows?

12 A. Correct.

13 Q. So if you put a twenty-percent film on a window
14 that had some existing tint, then that would combine to
15 make it less; correct?

16 A. Correct. Screen be too dark.

17 Q. And less than that would be illegal?

18 A. Correct.

19 Q. So then do you also know, as a tint specialist,
20 that the law requires decals?

21 A. It requires decals if you work in a tint shop.
22 But being that I done it on the side, there's no decal
23 come from the Auto Zone part, so --

24 Q. So then how, as a tint specialist, do you comply
25 with the law that requires a decal if there's a tint on

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 the vehicle?

2 A. The decal only reflects that it came from a
3 specialist. That's the only the thing a decal really
4 indicates.

5 Q. And you were stopped for this tint violation?

6 A. Correct.

7 Q. And why did you think that your license was
8 suspended?

9 A. Because he told me to step out the vehicle.
10 That was the only reason. I suspected it was suspended,
11 or something was wrong indicating that auto rental
12 agreement or something like that.

13 Q. Did you stop immediately?

14 A. Immediately.

15 Q. And when you were stopped, were you in
16 possession of cocaine base?

17 A. When he stopped me?

18 Q. Yes, sir.

19 A. Correct.

20 Q. And were your -- were your pants unzipped?

21 A. No, ma'am.

22 Q. So did you testify earlier in a court of record
23 here before the jury and your lawyer and myself, under
24 oath, that you were, in fact, having some issues that day?

25 A. Yes, ma'am.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. What were those issues?

2 A. I was at a restaurant earlier. You know, I had
3 some type of stomach problem.

4 Q. And did you testify that you and Officer Stott
5 had a conversation, when he approached the vehicle, about
6 your pants being unzipped?

7 A. Not Officer Stott, no. The other officer.

8 Q. Okay. Do you -- did you have a conversation
9 with an officer that day, when they came up to your
10 vehicle, about your pants being unzipped?

11 A. Correct.

12 Q. But your testimony is that they were not
13 unzipped?

14 A. Correct.

15 Q. Your testimony is that they were playing with
16 you on the side of the road in broad daylight?

17 A. Well, they actually thought my -- thought I had
18 something in my zipper and they were like, you know,
19 fumbling around that area.

20 Q. Mr. Judon, is there any reason why an officer
21 would ask you about digestive issues on a traffic stop if
22 your pants were unzipped?

23 A. Because when -- one officer played around the
24 zipper. When I was approaching the other officer, he
25 said, hey.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. But your testimony is they didn't play with your
2 zipper until you were out of the vehicle?

3 A. One officer, yeah. The officer that told me to
4 come out of the vehicle.

5 Q. And earlier you testified that that conversation
6 happened while you were still sitting in the vehicle?

7 A. I never had no conversation sitting in the
8 vehicle. Everything was outside the vehicle.

9 Q. When the officer approached your driver --
10 excuse me -- the passenger-side window, did you have a
11 conversation with him about giving you your license and
12 your registration?

13 A. Yeah. Both of them did. Yes, ma'am.

14 Q. So you had some conversation --

15 A. Oh, yeah. Yes, ma'am. Dealing with that
16 particular part, yes, ma'am.

17 Q. Now, where did they locate the cocaine base on
18 you?

19 A. Well, in my crotch area.

20 Q. And who put it there?

21 A. I put it there.

22 Q. Why did you put it there?

23 A. Because that's my use of cocaine during the
24 daytime. Sometimes at night.

25 Q. Is 10.1 grams a normal personal use of cocaine?

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 A. That's barely -- it sounds like a lot, but it's
2 really not if you --

3 Q. How much do you use at any given time?

4 A. Maybe like seven grams a day, not all at one
5 time.

6 Q. Can you explain the -- why you carry a knife and
7 a residue in your vehicle?

8 A. Well, utility knife --

9 Q. Excuse me. A knife and a scale.

10 A. Well, the knife is just for protection. The
11 scale is the way so you don't overdose yourself. You want
12 to be correct on the weight-wise.

13 Q. Then, Mr. Judon, how do you explain the residue
14 that they located on the knife?

15 A. I have no recollection of that. I don't know.

16 Q. Have you ever testified in court under oath, in
17 a previous hearing here, that that knife was used to cut
18 down cocaine?

19 A. Yeah, knives are used to cut -- people use a
20 knife to cut down cocaine. Yes, ma'am.

21 Q. And did you previously testify to that under
22 oath?

23 A. I said -- I didn't say that particular knife.

24 Q. But you have used knives?

25 A. Correct.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. So just to make sure I understand. Kind of
2 going back to this pants issue, your testimony here today
3 is that officers had a conversation with you about
4 digestive issues?

5 A. One officer. Correct.

6 Q. But that just randomly came up during a stop?

7 A. Correct.

8 Q. Because your pants were not unzipped?

9 A. Correct.

10 Q. But then once you got out of the vehicle at 4:15
11 in the afternoon on a public roadway, you had an officer
12 start messing with your zipper and unzip your pants in
13 front of anybody driving by?

14 A. There was no car. It was a included -- it was a
15 included area.

16 Q. Secluded area?

17 A. Correct.

18 Q. And where was this traffic stop at?

19 A. Meeting Street road.

20 Q. You believe Meeting Street road to be quite
21 secluded?

22 A. Compared to Dorchester Road, where he should
23 have initiated the traffic stop, I figured he was trying
24 to put me in a secluded area, something like that, when he
25 pulled me over for the tinting violation.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. What made that area secluded?

2 A. Because so many cars don't drive up and down
3 that road during that time of day.

4 Q. Mr. Judon, have you always told the truth?

5 A. Correct.

6 Q. And always have?

7 A. Correct.

8 Q. Earlier, your lawyer mentioned that you were
9 convicted of a possession of a stolen vehicle.

10 A. Correct.

11 Q. And you mentioned that that was when you were
12 about seventeen years old?

13 A. Correct. Joyriding.

14 Q. That was a 2005 conviction. Could you please
15 tell me how old you were in 2005?

16 A. In 2005, I was like twenty-six.

17 Q. So you weren't seventeen, like you testified to?

18 A. Correct.

19 Q. Okay. And isn't it true you were also convicted
20 of presenting a false claim for payment?

21 A. Correct.

22 Q. And that was in 2006?

23 A. Correct.

24 Q. So you were about how old then?

25 A. Twenty-eight.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. Would you agree that those are crimes that the
2 reason you were convicted is because was an underlying not
3 telling of the truth?

4 A. Correct.

5 Q. But today you want us to believe what you have
6 to say?

7 A. Correct.

8 Q. Were you present in the court when officers said
9 that they were in a specialized unit?

10 A. I couldn't -- I couldn't tell by their uniform.
11 They was not in a regular uniform -- a uniform.

12 Q. Pretty familiar with the police?

13 A. Yeah. North Charleston, yeah.

14 Q. And did you hear them testify that in order to
15 get into that unit, they cannot have any disciplinary
16 issues or allegations of dishonesty?

17 A. Correct.

18 Q. And you've been convicted of lying twice as an
19 adult, but you want us to believe you here today?

20 A. Twice?

21 Q. Yes, sir.

22 A. No, ma'am.

23 Q. So the convictions we spoke of, possession of
24 stolen motor vehicle and presenting a false claim for
25 payment, those aren't convictions?

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 A. Possession? Yeah, I was in possession of a
2 stolen motor vehicle. I don't consider that to be a part
3 of lying.

4 Q. Okay. Mr. Judon, how about after the traffic
5 stop? Did you go straight to jail, or did you go anywhere
6 else?

7 A. One officer drove off in my rental car and the
8 other officer followed him.

9 Q. And why did you go somewhere else?

10 A. I don't know. I guess that's part of their
11 procedures. Sometimes they take you to the precinct
12 first, you know, to write down additional information, and
13 sometimes they take you straight to the jail.

14 Q. Do you normally go to the jail after you've been
15 arrested?

16 A. I have noticed a narcotic agent doesn't really
17 take you straight to the jail. You're taken to the
18 precinct. And a regular patrol officer takes you to --

19 Q. And is that --

20 A. -- to jail.

21 Q. Is that because they give you an opportunity to
22 discuss your situation and if you decide to continue to
23 cooperate --

24 A. Correct.

25 Q. -- they give you that option?

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 A. Correct.

2 Q. And your desire to go back to the station that
3 day -- or the substation that day, was that based on a
4 conversation with Officer Stott about that kind of stuff?

5 A. Well, it wasn't my desire. They automatically
6 went down there. So I guess since we were already down
7 there, I -- you know, we talked about a few things.

8 Q. And while you were there, did you continue to
9 cooperate?

10 A. Yeah, I --

11 MS. GAY: Your Honor, I would object at this
12 point. We're going to need to come to the bench.

13 THE COURT: Please approach.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 THE COURT: Note your objection for the record.
17 Overruled. You may answer.

18 Ms. Mulkey, you may want to just restate or
19 rephrase your question.

20 Q. [Ms. Mulkey] Mr. Judon, did you go to the
21 substation that day with Officer Stott and Officer Kirk?

22 A. Correct.

23 Q. And was that because at that time there was a
24 discussion that you might work for the narcotics unit?

25 A. Correct.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. And that was why your rental vehicle went back
2 there, as well?

3 A. I thought my rental vehicle would have got
4 towed. I don't know why he left in the rental vehicle.

5 Q. In the event that you were going to work for
6 narcotics, would you have been able to use that vehicle?

7 A. I don't know how they would have did it, ma'am,
8 to tell you the truth.

9 Q. Now, based on your testimony just a minute ago,
10 you said that the cell phones were extra?

11 A. Yeah.

12 The cell phones I had way back there. Old.
13 Real old cell phones.

14 Q. And -- well, how old?

15 A. Four or five months old.

16 Because they real cheap cell phones. When you
17 drop them or if you had them for a long period of time,
18 you can't really hear them so just go to Walmart and get
19 another one for like \$14.

20 Q. And do you just keep them in your --

21 A. For battery purposes, yeah.

22 Q. So you can use the same batteries?

23 A. Correct.

24 MS. MULKEY: The Court's indulgence, Your Honor.

25 THE COURT: Take your time.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

2 MS. MULKEY: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 Q. [Ms. Mulkey] Mr. Judon, I would like to show
6 you something. I would like you to tell me if you know
7 what that is.

8 [Whereupon, the witness reviews documents]

9 A. It look like a rental car inspection. That's
10 what it looks like.

11 Q. [Ms. Mulkey] Okay. Is this your signature?

12 A. Correct. That's my signature.

13 Q. And would this be the rental agreement that you
14 entered when you got the rental car --

15 A. Correct.

16 Q. -- that you were in?

17 A. Correct.

18 Q. And have you -- you've seen that before?

19 A. Correct.

20 Q. And you recognize that as your signature?

21 A. Yeah, it's my signature. Correct.

22 Q. And was this the vehicle that you were pulled
23 over in that day?

24 [Whereupon, the witness reviews documents]

25 A. I don't see where it says --

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 [Whereupon, the witness reviews documents]

2 A. It had to be, because my signature's right
3 there, but I --

4 Q. [Ms. Mulkey]. Had you --

5 A. I don't know, because, I mean, I'm trying to
6 figure out. I want to see where it says the type of
7 vehicle it is.

8 Q. Your testimony was that you had been in that
9 same vehicle?

10 A. I been in that vehicle for about maybe a week or
11 two weeks. The other vehicle got turned back because they
12 had to do the brakes on it. So I don't know which --
13 exactly which one it is, but --

14 Q. Okay.

15 MS. MULKEY: Your Honor, I would like to enter
16 this into evidence. It's the rental agreement for the
17 defendant. This would be State's Exhibit Number 6.

18 [Whereupon, State's Exhibit Number 6 is marked
19 by the court reporter]

20 THE COURT: Any objection?

21 MS. GAY: No, Your Honor.

22 THE COURT: State's 6 into evidence without
23 objection.

24 [Whereupon, State's Exhibit Number 6 is admitted
25 into evidence by the Court]

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 MS. MULKEY: May I publish it to the jury?

2 THE COURT: You may.

3 Q. [Ms. Mulkey] Mr. Judon, I'm going to put this
4 on the screen. If you could turn around and look, I just
5 have a few questions.

6 Mr. Judon, can you tell me when it says this
7 vehicle was rented?

8 A. 8/16/13.

9 Q. And can you tell me where it says where it
10 discusses any type of money on here or payments? Is there
11 anything that references that?

12 A. No, ma'am. I don't see it there.

13 Q. What does this mean to you, Mr. Judon: customer
14 cash receipt?

15 A. Correct.

16 Q. And your testimony today was that insurance was
17 paying for it?

18 A. Correct. Insurance paid for half and I paid for
19 half.

20 Q. So you were paying for half?

21 A. I was paying for -- the rental car was like \$22.
22 I was paying like maybe 5 or \$6 out of the 22.

23 Q. And why were you paying additional?

24 A. I don't know why they had me doing it.

25 Q. Does your coverage include rental cars?

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 A. Yes, my coverage does include rental cars up to
2 a certain amount, I think.

3 Q. So were you getting more? Were you getting --
4 excuse me. Let me rephrase that. Were you getting a
5 nicer car than they would pay for?

6 A. Correct. Yeah.

7 Q. So what was your first option? What did they
8 present you with that you weren't happy with?

9 A. My first option was I want to say a Malibu.
10 Impala. Impala or Malibu.

11 Q. But you preferred this?

12 A. Well, I had to turn it in because the brakes --
13 I don't really pick which one. You know, they actually
14 give you which one. I don't -- I haven't picked it.

15 Q. But you were presented with an option from the
16 rental-car company, you weren't happy with it, and you
17 wanted to upgrade?

18 A. I had to take it back because the brakes needed
19 to be done. Either I could pay for the brakes out of my
20 pocket or I could change it in and they exchange it and
21 put me in another vehicle.

22 Q. So the rental company wanted you to cover the
23 damage to the vehicle?

24 A. Yes.

25 Q. Did they find you at fault for some kind of

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 damage?

2 A. Not the damage. I guess the brakes were way
3 down. It was time for the brakes to get repaired.

4 Q. And they wanted to make you pay for that?

5 A. If I could pay for it, if I paid for it, then
6 they would have take it out the rental car payment. But I
7 choose not to pay for it and I turned the vehicle in.

8 Q. And when was that?

9 A. Probably the day before.

10 Q. So had you just recently -- had you recently
11 re-entered this agreement --

12 A. Yes.

13 Q. -- on the car?

14 A. Yeah. Yes, ma'am.

15 Q. Do you know when?

16 A. Probably the day before. I got -- if I signed,
17 they got to be on that day right there.

18 Q. What date? I'm sorry.

19 A. 8/16/13.

20 Q. Can you tell me what this date right here is?

21 A. 8/26.

22 Q. And was that the date that you were stopped in
23 that vehicle?

24 A. Correct.

25 Q. And can you tell me what that time is?

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 A. 1325.

2 Q. And do you know military time, by chance?

3 A. That would be like three o'clock.

4 Q. And do you know what time you were stopped by
5 the officers?

6 A. I probably been stopped about maybe around four
7 o'clock.

8 Q. So within an hour before your stop, you renewed
9 your rental agreement?

10 A. Might have been, yeah.

11 Q. And you paid cash?

12 A. Correct. Half cash and half that they took out.

13 Q. And where on here does it say there was an
14 insurance payment, Mr. Judon?

15 A. They don't say it on there. They never did.

16 Q. They never did?

17 A. No. Matter of fact, I -- yeah, they never did.
18 They never did.

19 MS. MULKEY: Court's indulgence, Your Honor.

20 [Whereupon, Ms. Mulkey and Mr. Kidd confer]

21 Q. [Ms. Mulkey] The only other question I have,
22 Mr. Judon, is so you tinted the window of this vehicle?

23 A. Correct.

24 Q. You had had it for roughly ten days?

25 A. Correct.

Elliott Judon, Jr.
Cross-Examination by Ms. Mulkey
March 17, 2015

1 Q. But in that time you put a tint on it?

2 A. Correct.

3 Q. And you had upgraded the vehicle so that you --
4 and you were going to pay out of pocket so you could have
5 this better vehicle than what your insurance company was
6 going to give you?

7 A. They provided me the other vehicle.

8 Q. And despite having been dishonest before the
9 Court in previous years as an adult, you want all of us
10 here to believe your testimony today?

11 A. Correct.

12 MS. MULKEY: Thank you, sir.

13 THE COURT: Ms. Gay?

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Elliott Judon, Jr.
Redirect Examination by Ms. Gay
March 17, 2015

REDIRECT EXAMINATION

BY MS. GAY:

Q. Just to kind of clarify some of that stuff that was being talked about with this document. And unfortunately, some people on the jury may be familiar with these kind of cases where you have an accident and the insurance company puts you in a car. And apparently that's what your testimony is, is that you had had an accident like six months before this?

A. Correct.

Q. And how many rental cars had you had during the whole course of the time between the time of this incident and the time you got first put in a car?

A. About three.

Q. Yeah.

And isn't it true that you don't really -- like you said, you really don't have much control over what they tell you to do? You turn your car in and you go in and you sign your paperwork?

A. Correct.

Q. And when this piece of paper -- and if you need to look at it again -- it's dated three o'clock in the afternoon, or so, for 8/26. Had you actually gone in and shown them the car? Or you just had gone by and signed some paperwork with them to renew it?

MIA PERRON, CVR-CM-M

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Elliott Judon, Jr.
Redirect Examination by Ms. Gay
March 17, 2015

1 A. I just went in and signed the car. I parked --
2 I parked in front -- in the front.

3 Q. And so all you had to do that day was go in and
4 kind of sign to keep the car?

5 A. Correct.

6 Q. And I believe that when you got this car, they
7 said that somewhere around ten days or more before that
8 that you got it, that you chose to tint the windows?

9 A. Correct.

10 Q. And that wasn't your car?

11 A. Correct. It was a very hot -- hot summer day.

12 Q. I understand.

13 And so with regard to all this incident that
14 happened -- because this is going to be the last thing we
15 talk about. Okay. You know it's wrong to have this stuff
16 on you?

17 A. Correct.

18 Q. Yeah, you know that.

19 And in terms of what happened on that day, do
20 you think you were treated fairly how this all went down?

21 A. Not at all.

22 Q. And why not?

23 A. Because there's so many different sides to the
24 story.

25 Q. And do you think that when they went in your

Elliott Judon, Jr.
Redirect Examination by Ms. Gay
March 17, 2015

1 car, that that was the right thing for them to have done?

2 A. No, ma'am.

3 Q. And do you think that when they handcuffed you
4 and said, you know, we found stuff and we're going to take
5 you to the jail and we're going to do a strip search at
6 the jail, that that was a fair thing to have done?

7 A. No, ma'am, not at all.

8 Q. And all that business about whether or not you
9 wanted to be cooperative after your arrest, would any of
10 that have been talked about if they hadn't gone in your
11 car and found this stuff without your consent?

12 A. Not at all.

13 MS. GAY: I have no further questions.

14 THE COURT: Ms. Mulkey?

15 MS. MULKEY: The State has no further questions,
16 Your Honor.

17 THE COURT: Mr. Judon, you may step down.

18 [Whereupon, Mr. Judon is excused and exits the
19 witness stand]

20 THE COURT: Call your next witness.

21 MS. GAY: I have no further questions -- no
22 witnesses, Your Honor.

23 The defense would rest. We have some motions.

24 THE COURT: All right. Reserving all motions
25 and matters, any rebuttal?

Elliott Judon, Jr.
Redirect Examination by Ms. Gay
March 17, 2015

1 MS. MULKEY: No, Your Honor.

2 THE COURT: Please approach for scheduling.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: Ladies and gentlemen, there is a
6 matter of law that I must take up outside of your
7 presence. We need to stop by 5:00 p.m., so it does
8 not make sense for us to begin closing arguments and
9 instruction on the law so we will retire -- you will
10 retire for the evening. We will continue working
11 outside of your presence.

12 Ladies and gentlemen, please take your notepads
13 with you. The bailiffs will lock them up over the
14 evening hour.

15 Please remember all of my admonitions. Do not
16 discuss this case amongst yourselves or with anyone.
17 You have not received instructions on the law
18 concerning this case.

19 Please be back in your jury room at 9:30 and we
20 will begin promptly at 9:45. So you may report at
21 9:30.

22 Please remember, we can't start until all of you
23 are here, so please be mindful of each other's time,
24 and we will begin at 9:45 once all of you are here.

25 Please have a wonderful evening. Remember all

Elliott Judon, Jr.
Redirect Examination by Ms. Gay
March 17, 2015

1 of my admonitions.

2 Please rise for the jury.

3 [Whereupon, the jury exits the courtroom at
4 4:05 p.m.]

5 THE COURT: Thank you. Be seated.

6 [Off the record momentarily]

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State vs. Elliott Judon, Jr.
Renewed Motions by Ms. Gay
March 17, 2015

RENEWED MOTIONS

THE COURT: Any motions or matters?

MS. GAY: Yes, ma'am.

I would be renewing all of my motions: my motion for directed verdict, my motion to dismiss, my motion to suppress statements and evidence, and any other motions that I've made objections along the way.

THE COURT: Ms. Mulkey, any response?

MS. MULKEY: No, Your Honor.

THE COURT: Again, I have heard nothing that would make me change any of my rulings.

Deny all of -- deny your request.

MS. GAY: Thank you, Your Honor.

THE COURT: Anything further?

MS. GAY: No, ma'am.

MS. MULKEY: Nothing from the State, Your Honor.

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State vs. Elliott Judon, Jr.
Charge Conference
March 17, 2015

CHARGE CONFERENCE

1
2 THE COURT: I'm preparing the charges. Anything
3 I need to place in there that you think I may not?

4 MS. GAY: Your Honor, I would make a request to
5 charge possession with intent to distribute. I think
6 weight is merely one of the elements that goes into
7 the drugs -- into the statute. And I think that at
8 any point in time -- there are two -- there's like a
9 1.1 and a 1.2, and obviously if it was not -- if they
10 didn't find that it was all ten grams, that he has the
11 ability to argue for a less than an amount with ten
12 grams. I mean, it is not a trafficking if it's not
13 ten grams but it could be a possession with intent to
14 distribute if for some reason the jury decides that --

15 THE COURT: And how could they possibly find
16 that it was less than ten grams?

17 MS. GAY: Because they might decide to.

18 THE COURT: But what testimony -- in the
19 testimony that I have heard, it has been consistent.
20 First of all, your client admitted to the possession
21 of all of it. And there has been no testimony
22 different than less than ten grams.

23 MS. GAY: I just want to put it on the record
24 that I asked for that.

25 THE COURT: Ms. Mulkey, I should have asked you.

State vs. Elliott Judon, Jr.
Closing Statement by Mr. Kidd
March 18, 2015

CLOSING STATEMENT

MR. KIDD: Good morning, ladies and gentlemen.

This is my opportunity to discuss a little bit about the law of the case that governs really why we're here today.

And before I get started, I want to let you know that should anything I say ever be inconsistent with the law the judge charges you, I defer to her. She is the be-all, end-all, the authority of the law, in this courtroom. So if ever I say anything that's inconsistent with the law she charges you momentarily, as I said, I defer to her.

But I try to put things in my own words and try to make things understandable because sometimes in this courtroom we use terms that have a variety of definitions. So as I said, this is my opportunity to go over that with you. When I'm done, Ms. Gay will have her opportunity to give her summation to you and then you'll hear from me one more time and then begin your deliberations shortly.

In criminal cases, the State, we have the burden of proof. What that means is that it's my burden and it's the State's burden to prove to you beyond a reasonable doubt each element of a crime that is charged to a defendant.

State vs. Elliott Judon, Jr.
Closing Statement by Mr. Kidd
March 18, 2015

1 So what is beyond a reasonable doubt? As the
2 judge will tell you shortly, beyond a reasonable doubt
3 does not mean beyond all doubt. There are very few
4 things in this world which are absolute certainties.
5 Absolute certainty is not required. Beyond a
6 reasonable doubt is that which leaves you firmly
7 convinced of the defendant's guilt, and that's all.

8 So what do I have to prove to you beyond a
9 reasonable doubt for you to find Mr. Judon guilty?

10 Switch to the second page.

11 As the first page told you, Mr. Judon has been
12 charged with trafficking in cocaine base. Cocaine
13 base is just another word for crack. In order for me
14 to prove to you, in order for you to find Mr. Judon
15 guilty of trafficking in cocaine base, we must meet
16 three elements. Okay?

17 The first is that the substance that he was in
18 possession of is actually crack cocaine or cocaine
19 base. That's the first thing I must prove to you.

20 The second is that the defendant was in
21 possession of that cocaine, either actual or
22 constructive possession. So it's not so much an issue
23 in this case, but actual -- excuse me -- actual versus
24 constructive possession can mean a couple of things.
25 Like for example, the pen in my hand: I'm in actual

State vs. Elliott Judon, Jr.
Closing Statement by Mr. Kidd
March 18, 2015

1 possession of this pen in my hand. I have dominion
2 and control over it. It's in my hand. I can put it
3 in my pocket. I can do whatever I want because I'm in
4 actual possession of it. Similar to this, I have a
5 pen on my desk in my office. That would be more
6 constructive possession. While it's not in my pocket,
7 it is my pen and I had dominion and control over it in
8 my office across the street. So that would be
9 constructive possession. So that's just the
10 difference between active and constructive possession.
11 So the second element that I have to -- that we have
12 to prove beyond a reasonable doubt that the defendant
13 was in actual or constructive possession of the
14 cocaine, which we have to prove was, in fact, crack
15 cocaine.

16 And the third and final element for this charge,
17 which is trafficking cocaine between ten and twenty-
18 eight grams, is if the weight of the crack cocaine,
19 that he would be in possession of it, weighed between
20 ten and twenty-eight grams. So that is the third and
21 final element.

22 And possession is all that is required. When
23 the judge charges you the law on trafficking cocaine,
24 she's going to read you a laundry list of things that
25 you can consider when reaching a trafficking verdict.

State vs. Elliott Judon, Jr.
Closing Statement by Mr. Kidd
March 18, 2015

1 Not just possession: manufacturing, bringing into the
2 state, cultivation, distribution, those sort of
3 things. So those sort of things do go into the
4 consideration. But in order for you to find him
5 guilty of trafficking, all that you must find is that
6 he was in possession of this amount of drugs. That's
7 all that's necessary.

8 And that's the sole issue for your
9 determination. And as the judge has told you, she is
10 the authority on the law and you're the authority of
11 the facts. And the only thing that you need to
12 consider are these three elements. Lawfulness of a
13 search, whether or not consent is given, things of
14 that nature, those are questions of law for the judge.
15 The only issue for you as the jury, as the judges of
16 the facts, are to determine whether he was in
17 possession of this [indicates]. That's it.

18 And it seems a little over-simplified in a case
19 like this because it's not a case where it's a who-
20 done-it, it's not a case where there's a lot of
21 disputed facts. But, nevertheless, it is an issue, it
22 is a charge, it has elements, and we must meet them.
23 And you, as a jury, are confined to that
24 determination. And that is what we have all taken --
25 or you have taken the oath to uphold. And it is the

State vs. Elliott Judon, Jr.
Closing Statement by Mr. Kidd
March 18, 2015

1 law of South Carolina, it is the elements, and it is
2 determining the facts as you heard from that witness
3 stand, meet those elements that are charged to you.

4 So with that, I'm going to sit back down and
5 allow Ms. Gay to give you her closing arguments and
6 then I'll readdress you again. Thank you.

7 THE COURT: Ms. Gay?

8 MS. GAY: Thank you, Your Honor.

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State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

CLOSING ARGUMENT

MS. GAY: Ladies and gentlemen, as I told you at the very beginning, this is a pretty simple case, and that my client was going to tell you that he was in possession of drugs that day. But what the solicitor just said is probably why we're still here three days later with twelve people in this community trying to determine what is just and fair in this case.

You as a juror are confined to whatever choice he just said. Is that American, that you as a juror can find? You as a juror are fact-finders and you can find any facts that you believe are significant in this case and you get to make any decision you want. And, yes, the judge will tell you law and, yes, there are things that were testified, disputed things, you know, that were testified from the evidence.

But if we listen to the solicitor, what he just said, American citizens sitting in jury boxes don't get to think about things and decide facts the way they think they should be decided. They are robots. They're robots and they come in here and they rubber-stamp what's been told, what's been put before them. And that's not we do, and that's not what anybody in this room even expects you to do.

Now, we all know that there's racial tension in

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 American. We all know there's racial tension all over
2 the world. We all know that right now, there's some
3 very serious stuff going on around the country.
4 Hopefully, our community never turns into anything
5 like that. But there are significant problems with
6 arrests in this area, in this state, in this country.
7 There are significant problems with how things occur
8 on the street when an arrest occurs.

9 My client, knowing that he was going to get up
10 there and tell y'all that he, in fact, had these drugs
11 in his pants, was willing to do that to get his day in
12 court to get you, the jury that he picked
13 specifically, each one of y'all, to hear what happened
14 on the street that day. And what happened on that
15 street that day, he's [indicates] got one version of
16 it and my client has got another version of it.

17 It makes a tremendous difference how the actual
18 time, incident, situation, circumstances under which
19 my client said, yes, there are drugs in my pants, yes,
20 any other statement that you might find relevant
21 afterwards that he said. Because he testified very
22 clearly that up to a certain point, they had not found
23 that -- they didn't -- you know, they didn't reach
24 into his pants and grab into his underwear to get his
25 stuff. He handed it to them. But he only did that

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 after these officers, without his consent, went in and
2 found stuff that they believed to be incriminating,
3 and that they asked him about, in his car.

4 Okay. We're all riding around in our cars. And
5 there's laws about cars. And some people know it more
6 than others. But they're just not supposed to come
7 inside your car without, you know, a legal provocation
8 or an actual consent. They're not supposed to enter
9 the interior of your vehicle and search around for
10 things. Because we have rights in this country. Or
11 we think we do. We have rights that -- you know, we
12 have the fourth amendment. We're supposed to be
13 secure in our person and place. They're not supposed
14 to be able to seize things from us without some kind
15 of reason.

16 This was a man who was leaving his house at four
17 o'clock in the afternoon. And, yes, he acknowledged
18 that he had tinted his windows because he knows how to
19 do that. But he said that they weren't overly tinted
20 and he thought it was within the law. And he's
21 traveling and he has a traffic stop. He didn't do
22 anything wrong except have tinted windows.

23 And at that point he testified -- and I kept
24 doing this. I hope y'all noticed -- this was my car
25 and I kept standing in front of my car and saying,

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 okay, well, there's the police car with the camera in
2 it, and here's my client talking to one of the
3 officers while someone else, without his permission,
4 is going to ramble around in his car to find things.
5 And that person came back and handcuffed him -- didn't
6 say, oh, you know, let's talk about this -- handcuffed
7 him and told him that pursuant to this arrest what
8 they were going to do, that he was going to be strip-
9 searched at the jail so he had better cough it up.

10 And at that -- it was only at that point based
11 on what, you know, his thought of what a strip search
12 at the jail was going to be that he agreed to say,
13 yeah, okay, and whatever.

14 And he was very cooperative. They kept saying
15 he was very cooperative. Yes, he was very cooperative
16 because he was, at that point, handcuffed and going to
17 jail for something that they found without his consent
18 in his car.

19 And, you know, there's a few things that -- the
20 most important stuff in this case. The evidence
21 custodian: the evidence custodian came and testified
22 that she took those drugs from one place to the other,
23 and that she's an evidence custodian having to do with
24 drugs.

25 You know what she didn't testify to? I was

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 informed, or anybody in my office was informed, that
2 there was a video -- that there was like a video
3 picture of this incident for August 26, 2013, that was
4 relevant to this arrest and had all of this stuff that
5 happened on the roadway in the server, in the North
6 Charleston computer mainframe, and it should be burned
7 as a CD to be preserved as evidence in this case. The
8 evidence custodian never said that she was told to
9 burn a CD. She was never told that as part of the
10 evidence they have in this case, a CD that was burned.

11 And do you know what the officer said, which was
12 the next most important stuff in this case? Well, we
13 know that he says that he did not tell anybody in
14 Evidence to burn a CD and make it as evidence in this
15 case. We know that. Because things are important in
16 cases. Evidence is important. The absence of
17 evidence is important. The omission of something
18 significant, that would have been helpful to figure
19 out this fact pattern is significant. The only person
20 who had any control over making that video that we all
21 could be looking at today, to see what really
22 happened, were these officers. And these officers
23 never asked them to burn this video.

24 And one thing that the State is probably going
25 to say is that, we don't have any idea if it was

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 really there. Working camera in a marked patrol car
2 that, procedurally, the camera turns on when the blue
3 lights come on. There was information from the
4 officer that he was aware that a working camera sends
5 something up to a server and to -- I'm just telling
6 you, because I'm telling you, that as we go through
7 this and there is discussion about how, but there's no
8 real fact of whether or not that was really working.
9 Well, wouldn't it have been the time to find out if
10 there was, in fact, a video of this, the day of the
11 arrest or shortly thereafter, as the North Charleston
12 regulation tells them that they're supposed to?

13 The North Charleston regulation officer
14 testified that he was aware that if information on the
15 video may be helpful, it will be preserved, it will be
16 turned over to evidence. And he testified that he was
17 aware of that. So discretionary -- this is actually
18 what came out of his mouth. He said, if it was
19 something of value, I would have watched it. And then
20 he said, I don't think it was necessary.

21 That's why we're here, that Officer Stott, that
22 the video camera, the picture, the movie, the stills
23 that could have been taken from it, the audio, all the
24 things that we want as American citizens, to be able
25 to see what happens so, you know, it's not just he-

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 said, she-said, all that stuff that we could have had
2 in this case was not something of value to him. It
3 was not necessary in this case.

4 And the solicitor is going to stand up and say a
5 couple of things. Well, it's his choice. Well, it
6 was not necessary or valuable because this was a
7 consent search and they know that he agreed. Okay.
8 Is that -- we're here three days later after a trial.
9 Was it not something of value? Did it not become
10 necessary to have this DVD video of what happened at
11 this arrest so that we could figure out what really
12 went on here?

13 And, you know, one of the things that Ms. Mulkey
14 asked, which was just amazing to me, is she said, so,
15 Officer, that wasn't the law, that was just a
16 regulation from North Charleston, it wasn't the law
17 that said that you had to turn the video in -- the in-
18 car video over to evidence in this case. And he
19 agreed: you're right, it wasn't the law.

20 Well, shouldn't it be at this point? You know,
21 you and I, this courtroom, we're not making law today
22 because we can't get the legislature to pass things
23 certain ways. But we're making principle. And we're
24 making justice. And that's what my client said, he
25 wanted justice. He stood up here and he testified

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 that he had some drugs on him that he ended up giving
2 up to them voluntarily because he wanted justice
3 because he didn't think his arrest was fair.

4 And, you know, the solicitor can stand up and
5 say you don't have a right to open the veil and see
6 the Wizard of Oz, you don't have a right to question
7 this officer because he said that it was consent and
8 because he said it was consent, his discretion, his
9 consent, his everything, North Charleston's
10 everything.

11 My client had rights. He is a man that is
12 innocent and he has sat here for three days asking you
13 people to question what happened here, asking you
14 people to say is it fair what happened here, is it
15 fair that we do not have that video, is it fair that
16 he was pulled out of his car and that -- whether or
17 not, you know, they zipped his pants down or whatever.

18 He was put in front of a marked police car with
19 a working camera in it, a car that's video would have
20 been uploaded to the North Charleston City Police
21 Department, a camera, video, that all it took was a
22 call from the officer to say, hey, this was a traffic
23 stop that, you know, I found a bunch of drugs, this is
24 important to this guy, this will be important to his
25 case, this will be important to his constitutional

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 rights, we need this video, can you burn it.

2 You know what it takes? What? How much does it
3 cost to get a stack of little printable CD -- or DVDs?
4 Nothing. Nothing. It would have cost nothing to say,
5 oh, well, we printed it. Then it would be sitting
6 right here, right here next to the cell phones, next
7 to all this stuff. It would be here and we would know
8 whether or not it was consent, and we would know
9 whether or not they did what my client said or whether
10 they did what the officer said. But we don't know
11 that. We don't know that.

12 And, you know, in this court you give the
13 benefit of the doubt to the defendant because the
14 State has the burden of proof and the State has to be
15 the one to make that veil of innocence be taken off.
16 The State has to prove it beyond a reasonable doubt
17 that everything in this case was hunky-dory and
18 everything in this case was constitutional. They have
19 to prove that. And after I do all this, and I pour --

20 MR. KIDD: Objection, Your Honor.

21 MS. GAY: -- my heart and soul out --

22 THE COURT: What is your basis?

23 MR. KIDD: Improper statement of the law.

24 THE COURT: Ladies and gentlemen, please
25 remember that I will instruct you on the law that is

State vs. Elliott Judon, Jr.
Closing Argument by Ms. Gay
March 18, 2015

1 applicable to this case.

2 Ms. Gay?

3 MS. GAY: Thank you, Your Honor.

4 After I finish, what they're going to do is
5 they're going to get up and they are going to tell you
6 that you don't get to decide that, that it's a done
7 deal. But that's not what you're sitting here for.
8 What you're sitting here for is to decide what's fair.
9 What you're sitting here for is to decide in your
10 minds. You're the fact-finders, you're the ones who
11 get to decide the weight and importance of what has
12 been said in this courtroom. You get to decide. You
13 get to decide. And I believe that you will find, as
14 we know, that he should be found not guilty.

15 THE COURT: Mr. Kidd?

16 MR. KIDD: Thank you, Your Honor. May it please
17 the Court.

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State vs. Elliott Judon, Jr.
Closing Argument by Mr. Kidd
March 18, 2015

CLOSING ARGUMENT

1
2 MR. KIDD: Ladies and gentlemen, you know, we
3 all have sort of differing opinions about the drug
4 laws of the state and this country. And I would
5 imagine if we all sat down around a table in another
6 forum, we would probably have a variety of different
7 positions on it amongst us all. You would probably
8 even be surprised about what some of the opinions
9 about our drugs laws are on this side of the
10 courtroom. But why we're here, our roles are not to
11 decide whether or not the laws on the books are
12 appropriate or not. We do not make law in this
13 courtroom. Our legislature makes laws. We uphold
14 them. We enforce them. That's what you take in your
15 oath to do.

16 The question of whether or not you liked the
17 search or not, or whether or not you think there
18 should be a video or not, those are issues of law
19 which the judge rules on. You're here to determine,
20 as a fact-finder, that whether or not the defendant
21 met the elements of the offense. And I hate to
22 oversimplify it like that. That's exactly what it is.
23 That's what a jury's role is in every criminal trial.
24 You look at the elements of the crime and did his
25 conduct fit those elements. That's what we do.

State vs. Elliott Judon, Jr.
Closing Argument by Mr. Kidd
March 18, 2015

1 That's what you, as a jury, do.

2 And it's not always easy to uphold that oath.

3 You're not always going to feel good about it. You

4 heard from Mr. Judon. He seems like a perfectly nice

5 guy. He's a drug dealer, but that doesn't make him an

6 evil person. You know, you're going to have feelings

7 of sympathy. It's not always going to feel good.

8 You're not going to feel warm and fuzzy when you give

9 a verdict that affects someone's life. Let me be

10 clear. I mean, that's his life. This is a serious

11 day for him and for all of us here. But feeling

12 sympathy, and holding him accountable for what he did,

13 you can do both of those things. He made his choices.

14 You know, you all have different jobs, whether

15 it's nurses, truck drivers, IT, human resources, and

16 you get up every day and you go to work. You know, I

17 grab my briefcase. I put on my suit. You might put

18 on your scrubs. You go to work every day. That's

19 something we all have in common. That's one of the

20 things I like about this process, especially on the

21 first day in jury qualification when we're downstairs

22 and you see that cross-section of our community,

23 everyone stands up and tells us what they do.

24 Well, Mr. Judon gets up and he doesn't have a

25 tool belt or a hammer or a hard hat. He's got scales,

State vs. Elliott Judon, Jr.
Closing Argument by Mr. Kidd
March 18, 2015

1 he's got drugs, he's got phones. These are the tools
2 of his trade as a drug dealer. And he makes that
3 choice every day. And we're just asking you to hold
4 him accountable for it.

5 And you just use your common sense. I mean, you
6 listened to the facts that -- the testimony that came
7 out from the officers on the stand. You know, they're
8 controlling the Whalen subdivision because there was a
9 shooting, you know, a couple of days before. See a
10 car with dark tint. They pull it over. There's a
11 delay in the stop so, you know, their curiosity is
12 peaked when someone doesn't pull over right away. And
13 he rolls down the window and his pants are undone and
14 so, you know, as an officer who's been trained you're
15 thinking, all right, delayed stop, pants are undone,
16 he's hiding something.

17 So they get him out of the car and they ask him
18 for consent to search. So why do you think he gives
19 consent to search the car? Because the drugs are in
20 his pants. He's not worried about anything they find
21 in the car. He's hoping they search the car and maybe
22 they find the scale, but it's not enough to arrest
23 him, is what he's thinking. So let them search the
24 car and I'll be on my way.

25 But, no, that wasn't the case. They found the

State vs. Elliott Judon, Jr.
Closing Argument by Mr. Kidd
March 18, 2015

1 scale and the residue and the knife and they were
2 going to arrest him for possession and then he decided
3 to give it up. Common sense. It makes perfect,
4 logical sense.

5 But, ladies and gentlemen, don't believe the
6 officers. Don't believe a word that they say.
7 Believe every word that came out of Mr. Judon's mouth,
8 if you would like. It does not matter. He told you
9 the drugs were his. He told you he gave them to the
10 officer. The SLED analyst, and his report which
11 you'll have back there, says it's cocaine base, crack
12 cocaine, and it weighs 10.1 grams. That's all you
13 need.

14 Just like I went over those elements with you.
15 Proved he was in possession. He admitted it. We
16 proved it's cocaine base, and we've proved it's over
17 ten grams. The elements have been met, so he's guilty
18 of trafficking cocaine base, ten to twenty-eight
19 grams. Like I said, it doesn't make him a terrible
20 person. It makes him a drug dealer, but it doesn't --
21 you know, he has people that love him. He has family.

22 And, you know, it's always a defendant's tactic
23 to look over here -- almost like a slight of hand.
24 You know, it's like everything is right here but don't
25 look at that, look over here, look at something that

State vs. Elliott Judon, Jr.
Closing Argument by Mr. Kidd
March 18, 2015

1 doesn't exist, that's not here. I mean, sure, would
2 it be great to have a video? Yeah, it would be.
3 Okay? But it's not there, and it doesn't matter. The
4 issue of the search, the existence of the video, is
5 questions of law that the judge has answered.

6 If the law wants to change -- if you want the
7 law to change, contact your local representatives,
8 because laws change all the time. And we're not here
9 to legislate. We're here to enforce the laws as they
10 are. I'm not asking you to condemn this man. I'm
11 asking you to hold him accountable. Hold him
12 accountable for what he did.

13 You know, it's not that your jobs are
14 oversimplified here on a normal basis. This is sort
15 of a rare occasion in a case like this where there's
16 really not that much in dispute for you to determine.
17 I mean, I've never been involved in a trial like this,
18 I will admit. And so your role is diminished
19 somewhat. But you still have a role. And despite the
20 fact that the issues which you're determining aren't
21 necessarily disputed, you still have that role and you
22 still have that oath and you're still obligated to
23 uphold it.

24 And what we ask you to do is to put all of the
25 law, all the laws the judge charges you, follow your

State vs. Elliott Judon, Jr.
Closing Argument by Mr. Kidd
March 18, 2015

1 oath, and to hold him accountable for what he did.
2 Nothing more, nothing less. And if you do that, and
3 if you use your common sense, you're going to find him
4 guilty of trafficking cocaine. And I ask you to do
5 that. Thank you.
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State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, we have reached the stage of the trial where I will instruct you on the law applicable to this case.

I typically do not send back written instructions, so please listen very carefully.

As I indicated, Madam Foreperson, you are responsible for writing the verdict.

I remind you that during this trial, you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case. I have the duty to rule on the admissibility of the evidence that has been offered throughout this trial.

You are to consider only the evidence before you. If there was any testimony ordered stricken from the record, you must disregard that testimony. You are to consider only the testimony that you heard from the witness stand, as well as the exhibits that have been made part of the record in this case.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. It is your duty as jurors to accept the law and apply the law exactly as I state it to you now. If you already have any idea as to what the law is or what the law ought to be and it does

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 not agree with what I now tell you the law is, you must
2 abandon your own idea because you are sworn to accept the
3 law and apply the law exactly as I state it to you now.

4 In every case tried in this Court before a jury,
5 the jury becomes the sole and exclusive judges of the
6 facts. As I indicated to you earlier, a trial judge may
7 not make any comment about the facts in this case. You,
8 the jury, are the sole judges of the facts in this case.
9 You are not to infer from anything that I have said or
10 done throughout the progress of this case that I have any
11 opinion about the facts in this case. The law does not
12 allow me to have an opinion about the facts in this case.

13 The indictment in this case charges Mr. Judon
14 with one count of trafficking cocaine base ten to twenty-
15 eight grams. I remind you the fact that Mr. Judon was
16 arrested, charged, and indicted in this case is not
17 evidence and cannot be considered by you as evidence of
18 guilt, nor does it create any presumption or inference of
19 guilt. An indictment is simply the formal written
20 instrument which contains the charge made against the
21 defendant. It is the formal document by which this case
22 is brought into court. Mr. Judon has pled not guilty to
23 this indictment. A person charged with committing a
24 criminal offense in South Carolina is never required to
25 prove himself innocent.

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 I charge you it is an important rule of law that
2 the defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be presumed
4 to be innocent of the crime for which the defendant was
5 indicted unless guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.
7 The presumption does not end when you begin your
8 deliberations but it accompanies the defendant throughout
9 the trial until you reach a verdict of guilt, based upon
10 evidence satisfying you of the standard of guilt beyond a
11 reasonable doubt. This presumption of innocence is not
12 mere legal theory. It is not just a legal phrase. It is
13 a substantial right to which ever defendant is entitled
14 unless you, the jury, are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 The State has the burden of proving Mr. Judon
17 guilty beyond a reasonable doubt. Some of you may have
18 served as jurors before in civil cases where you were told
19 it was only necessary to prove that a fact is more likely
20 true than not true, such as a greater weight or
21 preponderance of the evidence.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.
24 There are very few things in this world that we do know
25 with absolute certainty and in criminal cases, the law

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 does not require the burden of proof that overcomes every
2 possible doubt. If based upon your consideration of the
3 evidence you are firmly convinced that Mr. Judon is guilty
4 of the crime charged, you must find him guilty. If, on
5 the other hand, you think there is a real possibility that
6 Mr. Judon is not guilty, you must give him the benefit of
7 the doubt and find him not guilty.

8 There are two types of evidence that are
9 generally presented throughout a trial: direct evidence
10 and circumstantial evidence. Direct evidence directly
11 proves the existence of a fact and does not require
12 deduction. Circumstantial evidence is proof of a chain of
13 facts and circumstances indicating the existence of a
14 fact. Crimes may be proven by circumstantial evidence.
15 The law makes no distinction between the weight or value
16 to be given either direct or circumstantial evidence.
17 However, to the extent the State relies on circumstantial
18 evidence, all of the circumstances must be consistent with
19 each other and, when taken together, point conclusively to
20 the guilt of Mr. Judon beyond a reasonable doubt. If
21 these circumstances merely portray his behavior as
22 suspicious, the proof has failed. The State has a burden
23 of proving him guilty beyond a reasonable doubt. This
24 burden rests with the State regardless of whether the
25 State relies on direct evidence, circumstantial evidence,

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 or a combination of the two.

2 Necessarily, you must determine the credibility
3 of witnesses who have testified in this case. Credibility
4 simply means believability. It becomes your duty as
5 jurors to analyze the facts and determine which evidence
6 convinces you of its truth. In determining the
7 believability of the witnesses who have testified in this
8 case, you may believe one witness over several witnesses,
9 or several witnesses over one witness. You may believe a
10 part of the testimony of one witness and reject the
11 remaining part of the testimony of that same witness. You
12 may believe the testimony of a witness in its entirety or
13 reject the testimony of a witness in its entirety. You
14 may consider whether the witness has exhibited to you any
15 interest, bias, prejudice, or other motive in this case,
16 and you may also consider the manner and appearance of a
17 witness while he or she was on the witness stand.

18 You have heard evidence that the defendant was
19 convicted of a crime other than the one for which the
20 defendant is now on trial. This evidence may be
21 considered by you, if you conclude it is true, only in
22 deciding whether the defendant's testimony is believable
23 and for no other purpose. You must not consider the
24 defendant's prior record as any evidence of the
25 defendant's guilt of the charge we are trying today.

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 The rules of evidence ordinarily do not permit
2 witnesses to testify to opinions or to conclusions. An
3 exception to this rule exists for witnesses we call expert
4 witnesses. A witness who by education or experience has
5 become expert in some art, science, profession, or calling
6 may state an opinion as to relevant and material matter in
7 which the witness claims to be an expert and may also
8 state the reasons for that opinion. You should consider
9 any expert opinion received in evidence in this case and
10 like any other evidence, give it the weight you think it
11 deserves. If you decide that the opinion of an expert
12 witness is not based on sufficient education and
13 experience, or if you conclude the reasons given in
14 support of the opinion are not sound, or that the opinion
15 is outweighed by other evidence, you may disregard the
16 opinion entirely. You should give no greater weight to
17 that of an expert witness' testimony than that of other
18 witnesses simply because the witness is an expert.
19 Further, you are not required to accept an expert's
20 opinion, even though it is not contradicted.

21 A statement alleged to have been made by
22 Mr. Judon outside of the testimony given in court has been
23 admitted into evidence. While the Court has determined
24 that the statement is admissible, I instruct you that you
25 make the ultimate decision of whether or not Mr. Judon

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 made the statement. If he did make the statement, you
2 must determine whether the statement was made by the
3 defendant voluntarily and of his own free will. This
4 means the statement was not caused by pressure, force,
5 fear, threats, coercion, or intimidation, or by hope or a
6 promise of leniency or reward of any kind.

7 In determining whether the statement was
8 voluntary, you should consider both the characteristics of
9 the defendant and the details of the questioning. Some of
10 the factors that you must consider are the age of the
11 defendant, the defendant's education or lack thereof, the
12 defendant's mental ability or capacity, the defendant's
13 IQ, the defendant's background and environment, the place
14 and length of detention, the nature of the detention and
15 questioning, the advice or lack thereof to the defendant
16 of his constitutional rights including, but not limited
17 to, the right to remain silent, that any statement can be
18 used against him in a court of law, the right to have a
19 lawyer present and that if he could not afford a lawyer, a
20 lawyer would be appointed to represent him without any
21 cost, and that he could stop making a statement at any
22 time. You must carefully consider all of the surrounding
23 circumstances before you give any weight to an alleged
24 statement. The State has a burden of proving beyond a
25 reasonable doubt that the alleged statement was voluntary.

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1. If you determine it was, you may give the statement any
2. further consideration that you deem proper. You must
3. decide what weight, if any, should be given to that
4. statement. If you determine the alleged statement was not
5. the free and voluntary statement of Mr. Judon, you should
6. not consider the statement at all.

7. In order to establish criminal liability,
8. criminal intent is required. For example, the mental
9. state required to be proven by the State for a particular
10. crime might be purpose, intent, knowledge, recklessness,
11. or criminal negligence. Criminal intent must be proven by
12. the State beyond a reasonable doubt. Criminal intent is
13. always a matter to be determined by the jury from the
14. circumstances surrounding the situation. Because there is
15. no way to prove intent to a mathematical certainty, the
16. law says that criminal intent may be inferred from the
17. circumstances shown to have existed. This is how you make
18. a determination of whether or not the element requiring
19. intent was present. It is not necessary to establish
20. intent by direct and positive evidence, but intent may be
21. established by inference in the same way as any other
22. fact: by taking into consideration the acts of the
23. parties, and all facts and circumstances of this case.
24. Criminal intent is a mental state. It is a conscious
25. wrongdoing. It is up to you, the jury, to determine what

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 the defendant intended to do based upon these
2 circumstances shown to have existed.

3 Mr. Judon is charged with trafficking in cocaine
4 base. The State must prove beyond a reasonable doubt that
5 Mr. Judon knowingly sold, manufactured, cultivated,
6 delivered, purchased, brought into this state, provided
7 financial assistance, or otherwise aided, abetted,
8 attempted, or conspired to sell, manufacture, cultivate,
9 deliver, purchase, or bring into this state, was knowingly
10 in actual or constructive possession, knowingly attempted
11 to become in actual or constructive possession, of cocaine
12 base. The State must also prove beyond a reasonable doubt
13 that the amount of the cocaine base was ten grams or more
14 but less than twenty-eight grams. To prove possession,
15 the State must prove beyond a reasonable doubt that
16 Mr. Judon had both the power and the intent to control the
17 disposition or the use of the cocaine base. Possession
18 may be actual or constructive. Actual possession means
19 that the cocaine base was in the actual physical custody
20 of the defendant. Constructive possession means that the
21 defendant had dominion and control, or the right to
22 exercise dominion and control, over either the cocaine
23 base itself or the property on which the cocaine base was
24 found.

25 Mere presence at the scene where drugs were

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 found is not enough to prove possession. The defendant's
2 knowledge and possession may be inferred when a substance
3 is found on the property under the defendant's control.
4 However, this inference is simply an evidentiary fact to
5 be taken into consideration by you, along with other
6 evidence in this case, and to be given the weight you
7 decide it should have. To deliver means to actually
8 constructively or attempt to transfer the drug.

9 Ladies and gentlemen, I am now going to go over
10 the verdict form with you. There is no significance in
11 the way that things appear on the verdict form, it's
12 simply something has to go on the paper first. In the
13 Court of General Sessions for the Ninth Judicial Circuit,
14 2013-GS-10-7257, County of Charleston, State of South
15 Carolina versus Elliott Judon, Jr., we, the jury, find the
16 defendant, Elliott Judon, Jr., not guilty, or we, the
17 jury, find the defendant, Elliott Judon, Jr., guilty, of
18 trafficking cocaine base ten to twenty-eight grams.

19 Madam Foreperson, once you have reached a
20 unanimous verdict, meaning all twelve of you have agreed,
21 you will sign the verdict form and date it, indicating
22 that you have reached a unanimous decision.

23 To my alternate, you have completed your service
24 to this case at this time, but we're going to keep you
25 separate for just a few moments to make sure that the

State vs. Elliott Judon, Jr.
Charge of The Court
March 18, 2015

1 first twelve have begun their deliberations.

2 Ladies and gentlemen, this is the last time that
3 I will say this to you. Do not begin your deliberations.
4 Do not discuss this case amongst yourselves. We will be
5 gathering the evidence and the verdict form. The bailiffs
6 will alert you when you may then begin your deliberations.

7 Please rise for the jury.

8 [Whereupon, the jury exits the courtroom at
9 10:32 a.m.]

10 THE COURT: Thank you. Be seated.

11 Any objection, corrections to the charge as
12 read? From the State?

13 MR. KIDD: No, ma'am.

14 THE COURT: From the defendant?

15 MS. GAY: No, ma'am.

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State vs. Elliott Judon, Jr.
Renewal of Motions by Ms. Gay
March 18, 2015

RENEWAL OF MOTIONS

MS. GAY: Your Honor, I think I need to renew my motions --

THE COURT: Please bring Mr. Judon back. We weren't done. Sorry.

Ms. Gay?

MS. GAY: At this time I would like to renew my motions that I've made in this trial, Your Honor: my motion for a directed verdict; my motion to have a continuance so that I can have my client psychologically evaluated for competency. I do think that my client, based on even his testimony, his choice to testify against my wishes or my advice, that he has some kind of delusion that he's living under about the outcome or the reality of this proceeding, Your Honor; as well as my motion to dismiss, which I still believe should have been granted, of course. And all of the subsequent motions, including the motion to suppress the statements and the evidence that was found. And I would renew all those motions at this time.

THE COURT: Any response? Any further argument, Ms. Mulkey?

MS. MULKEY: No. We would just renew our previous arguments and ask that you deny the motion.

State vs. Elliott Judon, Jr.
Renewal of Motions by Ms. Gay
March 18, 2015

1 THE COURT: All right. Based upon everything
2 that I have heard, there's no reason for me to change
3 my original ruling, and I stand by the rulings as
4 made.

5 Anything further, Ms. Gay?

6 MS. GAY: No, ma'am.

7 THE COURT: We will be at ease.

8 [Whereupon, a recess is taken from 10:35 a.m. to
9 10:49 a.m.]

10 [Whereupon, the evidence goes to the jury at
11 10:35 a.m.]

12 [Whereupon, Court's Exhibit Number 2 is marked
13 by the court reporter]

14 THE COURT: We have a note, Court's Exhibit
15 Number 2: do we consider illegal search; what are we
16 supposed to be focusing on; what are we supposed to be
17 disregarding.

18 MR. KIDD: Your Honor, which kind of comes back
19 to why I asked for the charge in U.S. v. Steele. I
20 think it's appropriate for them to be told that the
21 search is not proper consideration for them in their
22 deliberations and that they are only to consider their
23 own --

24 THE COURT: Ms. Gay?

25 MS. GAY: I think the jury is allowed to

State vs. Elliott Judon, Jr.

Verdict

March 18, 2015

VERDICT

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

THE BAILIFF: Yes, Your Honor.

[Whereupon, the jury enters the courtroom at
1:12 p.m.]

THE BAILIFF: All jurors present, Your Honor.

THE COURT: Thank you. Please be seated.

I understand you have reached a verdict.

Please be seated.

I understand you have reached a verdict. If you
will fold the verdict form and hand it to the bailiff.
I need to make sure that it is in order.

[Whereupon, the foreperson proffers documents to
the bailiff. The bailiff proffers documents to the
Court]

[Whereupon, the Court reviews documents]

THE CLERK OF COURT: Please have the defendant
stand.

[Whereupon, Mr. Judon complies]

THE CLERK OF COURT: The verdict form in the
matter of The State of South Carolina versus Elliott
Judon, Jr., we, the jury, find the defendant, Elliott
Judon, Jr., guilty of trafficking cocaine base ten
grams to twenty-eight grams. Signed by the foreperson
of the jury on March 18, 2015.

State vs. Elliott Judon, Jr.
Sentencing
March 18, 2015

1 THE COURT: I want your presentation, please.

2 MS. MULKEY: Your Honor, the defendant's record
3 includes a 1997 possession of crack; 1998 driving
4 under suspension, driving under the influence, three
5 convictions for possession of stolen motor vehicle,
6 unlawful possession of a pistol, soliciting for
7 prostitution, and a possession of crack second; in
8 1999 there's a distribution of crack, failure to stop
9 for a blue light, possession of crack, and assault of
10 a high and aggravated nature; in 2003, convictions for
11 interference of officers and driving under suspension;
12 2004, resisting arrest, driving under suspension;
13 2005, distribution of crack second, driving under
14 suspension, possession of a stolen motor vehicle, a
15 false claim for insurance payment, possession of crack
16 second, and possession with intent to distribute crack
17 second; in 2011, a driving under suspension; and in
18 2013, a reckless driving, Your Honor.

19 THE COURT: And --

20 MS. MULKEY: There is -- I'm sorry, Your Honor.

21 There is also another pending charge for
22 trafficking cocaine base third.

23 THE COURT: When did that offense occur?

24 MS. MULKEY: That was on May 22nd, 2014. After
25 this offense.

State vs. Elliott Judon, Jr.
Sentencing
March 18, 2015

1 THE COURT: While he was out on bond?

2 MS. MULKEY: Yes, Your Honor.

3 THE COURT: And the State has served notice of
4 life without the possibility of parole; is that
5 correct?

6 MS. MULKEY: Yes, Your Honor.

7 THE COURT: When did you file that?

8 MS. MULKEY: The Court's indulgence, Your Honor.

9 THE COURT: Ms. Gay, you agree that you have
10 been properly served --

11 MS. GAY: Yes, we have been --

12 THE COURT: -- with that notice?

13 MS. GAY: -- properly served with life without
14 parole.

15 THE COURT: All right. Thank you.

16 MS. MULKEY: Your Honor, that was filed on
17 February 18th of this year, served on the defendant
18 February 17th.

19 THE COURT: All right. Thank you. Anything
20 further?

21 MS. MULKEY: Nothing from the State, Your Honor.

22 THE COURT: Ms. Gay, I will be happy to hear
23 from you, your client, your client's mother who has
24 been present throughout the trial, or anyone else.

25 MS. GAY: Well, Your Honor, my client, as he

State vs. Elliott Judon, Jr.
Sentencing
March 18, 2015

1 guilty, but there was also a guilty charge in both
2 cases. But I just let the Lord handle the rest of it.
3 I thank you.

4 THE COURT: Thank you, Ms. Judon.

5 MS. GAY: The one thing I would like to say,
6 Your Honor -- I know Mr. Judon may want to represent
7 you -- to discuss with you, also. Mr. Judon has a
8 significant drug problem. He has tried to find
9 programs that would be something he could participate
10 in and we took those programs and those alternatives
11 to the solicitor and asked for consideration, and we
12 got a life without parole notice.

13 You know, his drug -- he's never killed anybody.
14 All the things that happened in his life have to do
15 with drugs. And, you know, based on our law,
16 obviously he was eligible for life without parole and
17 he's now going to get it.

18 But he was somebody who was -- he's been in
19 prison before. And he has -- knows that the prison
20 system doesn't have anything to offer addicts. They
21 don't have any assistance that they can really give.

22 He asked you at one point in this trial, Your
23 Honor, that when you're sentencing him to please put
24 whatever you can in place that he may be able to
25 participate in because he considered himself a person

State vs. Elliott Judon, Jr.
Sentencing
March 18, 2015

1 MS. GAY: No, ma'am.

2 THE COURT: Mr. Judon, this is not the first
3 time that you have stood in front of a circuit judge
4 and been sentenced on a particular drug crime. And
5 the fact that you were rearrested within several
6 months after this particular trafficking charge
7 indicates to me that you do not -- that you do not
8 take this seriously, that your intention is to
9 continue to use drugs.

10 There is absolutely no reason that you could not
11 have received drug treatment either while you were
12 incarcerated or while you were out. There is
13 absolutely no reason. There are plenty of programs
14 that are free to the public that you could have
15 availed yourself.

16 What I think that you are doing, you don't feel
17 that justice is done, you don't like the outcome. And
18 when you make choices and consistently have been
19 making choices since you were seventeen years old, as
20 you told the jury, that -- and then you wonder what
21 has happened to you.

22 You have created this situation for yourself,
23 Mr. Judon. Ms. Gay didn't create it for you, the
24 State didn't create it for you, the jury didn't create
25 it for you. You did. You had a nine-year-old and a

State vs. Elliott Judon, Jr.
Sentencing
March 18, 2015

1 ten-year-old when you were riding around with
2 trafficking quantity crack cocaine in May and in
3 August of last year. What kind of role model is that
4 for your children? What kind of guidance is that,
5 Mr. Judon?

6 You say that your life is over. I hope that you
7 take the time that you have remaining in the
8 department of corrections so that you can have some
9 guidance with the people in the department of
10 corrections. Your life isn't over. It's just
11 changed. It's just changed, Mr. Judon. I wish you
12 the best.

13 It's the order of the Court on 2013-GS-10-7257
14 that you be committed to the State Department of
15 Corrections for a term of life without the possibility
16 of parole.

17 Good luck to you, sir.

18 Ladies and gentlemen, that completes your
19 service to this case. If you will please return to
20 your jury room, I'll be in there in just a few moments
21 to thank you for your service to this case.

22 Please rise for the jury.

23 [Whereupon, the jury exits the courtroom at
24 1:27 p.m.]

25 THE COURT: We will need Mr. Judon back for the

State vs. Elliott Judon, Jr.
Sentencing
March 18, 2015

1 post-trial motions.

2 Thank you. You may be seated.

3 [Off the record momentarily]

4 MS. GAY: We can sit?

5 THE COURT: I'm sorry?

6 MS. GAY: We can be seated?

7 THE COURT: You can be seated. We're just
8 waiting --

9 [Whereupon, Mr. Judon enters the courtroom]

10 THE COURT: This is his third offense; right?
11 Trafficking third?

12 MS. MULKEY: Yes, Your Honor.

13 THE COURT: I just want to make sure the
14 sentencing sheet is correct.

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State vs. Elliott Judon, Jr.
Post-Trial Motions
March 18, 2015

POST-TRIAL MOTIONS

THE COURT: Ms. Gay, I'll be happy to hear from you regarding any post-trial motions.

MS. GAY: Your Honor, I would renew all my motions, primarily the motion to dismiss which I think would have been dispositive of this situation because I do believe that there was failure to preserve evidence that were important in this case, and I believe that we met the test of United States vs. Youngblood, Arizona vs. Youngblood, and South Carolina law. Also, based on my motion to suppress, under Tindle and Sullivan and all the rest of the things, under the motion to suppress statements under Jackson v. Denno and Sullivan and all -- the fact that I had believed that Mr. Judon needed to be psychologically evaluated for competency before this trial started, during his time for this trial, even now, for that matter, because I believe that he somehow thought that there was some possibilities in his own head that were delusional that -- about the possibilities of what would happen in this case and how the case would go forth, and any other motions and/or objections and such that I made, I would make a motion for a new trial on behalf of my client.

THE COURT: Thank you. Anything from the State?

State vs. Elliott Judon, Jr.
Post-Trial Motions
March 18, 2015

1 MS. MULKEY: Other than resubmitting our
2 arguments previously, no, Your Honor.

3 THE COURT: Mr. Judon, you may have a seat.

4 THE COURT: Ms. Gay, I just -- there has been
5 nothing that I have heard that would make me
6 reconsider again. I know you were preserving them for
7 the record. But Mr. Judon has, throughout this trial,
8 been more than appropriate. My observation of him
9 throughout this trial is that he has been competent.
10 He has been able to assist you more than effectively
11 throughout this case. I think the consistent theme
12 that I hear from Mr. Judon is he just doesn't like
13 what he got. And that's not the basis for a new
14 trial, it's not the basis for a competency evaluation,
15 it's just he doesn't like what he got. And he has
16 found himself in this position because of the choices
17 that he made. And I think it's even more tragic that
18 he's lost family members in prison. He, of all people
19 in this courtroom, should have known what the outcome
20 could be and have done everything within his power to
21 not do those things.

22 Ms. Gay, I've known you a long time. I've never
23 seen you represent anybody with more zeal and
24 intelligence and articulate nature than you have
25 throughout this trial. You've done your research

State vs. Elliott Judon, Jr.
Post-Trial Motions
March 18, 2015

1 above and beyond. So Mr. Judon has received justice
2 in this case. He just doesn't like the outcome. And
3 so I appreciate your steadfastness staying with Mr.
4 Judon. I know at times it was not easy for you to
5 communicate with him just because he doesn't -- he
6 knew that -- I think he knew, ultimately, this was
7 going to be where he was and he just didn't want to
8 face that reality. You have zealously represented him
9 throughout this past week and in pretrial motions, so
10 thank you for your professional courtesy and for your
11 contribution to this case.

12 So all your motions stand to -- with my original
13 rulings.

14 Ms. Mulkey, Mr. Kidd, thank you again for your
15 courtesy and professionalism and attempting to work
16 with Mr. Judon at the very last minute, against office
17 policy, as I understand it, to re-offer the offer.
18 It's unfortunate that we find ourselves here in this
19 situation, but I think that based upon Mr. Judon's
20 record and the way the law is written, this is what
21 has -- this is the outcome. So thank you.

22 MS. MULKEY: Thank you.

23 THE COURT: Thank you, Officer Stott.

24 MR. KIDD: Thank you, Your Honor.

25 [JURY TRIAL CONCLUDES AT 1:32 P.M.]

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If you have insurance, you need to try this

If you drive less than 55 miles/day OR have no

Drafts (148)

Fwd: Car #230 between 7/2013 - 9/2013

Friday, March 10, 2015 9:50 AM

S

Sent

From: "Kaiser, Joseph" <jkaiser@northcharleston.org>

To: "Melissa Gay" <mgaylaw@yahoo.com>

Spam (68)

[Empty]

Trash (1)

[Empty]

My Folders

[Edit]

Fulfillment of subpoena

Bill_Pymis

Joseph Kaiser

Prosecutor

Case Law (8)

Sent from my iPhone

CHRISTINE MATL...

Begin forwarded message:

Drafts

From: "Ankrom, Tami" <mazal@northcharleston.org>

Funny

Date: March 12, 2015, 4:54:25 PM EDT

July

To: "Kaiser, Joseph" <jkaiser@northcharleston.org>

Kulzar Randall

Subject: RE: Car #230 between 7/2013 - 9/2013

Kim DeLillo

There are no records for reported camera issues in the vehicle file for unit 230, which is where they would be if I handled the repair. It is possible that Kenny Williamson or Sgt. Hille handled the repair of malfunctioning equipment.

Larry Lewis ca... (1)

Tami L. Ankrom

Lewis, Larry

Budget Coordinator- NCPD Support Services Division

maddox,obrian ...

PO Box 62559, North Charleston, SC 29419-2559

Monica and Gan...

2500 City Hall Lane, North Charleston, SC 29405

MWG Personal

843/740-2894 phone 843/745-1009 fax

Notes

mazal@northcharleston.org

Orders and Reg...

From: Kaiser, Joseph

Personal

Sent: Thursday, March 12, 2015 4:12 PM

Real

To: Ankrom, Tami

Resumes

Subject: Car #230 between 7/2013 - 9/2013

Rivers, Troy E...

Do you have the records on any and all repairs on this vehicle during the above listed time frame?

RW LYNCH (5)

Also, any information specific to car #230 on 8/26/13?

Sample Documen...

Thanks for your help. I'm trying to fill a subpoena.

Sheriff Law Fl...

Joseph

Synced Message... (108)

Joseph Kaiser

Terminated Cas...

Prosecutor

U.S. v Prince...

City of North Charleston

U.S. v Gonzales

2500 City Hall Lane

USA v Dantizler

North Charleston, SC 29405

USA v Pasoquen

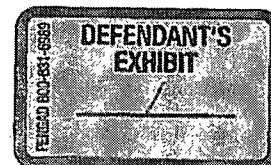
Tel: 843.740.2554

USA V. Shackles...

Fax: 843.740.1082

Vendor

www.northcharleston.org



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[Case Law \(6\)](#)

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[July](#)

[Ketzar Randall](#)

[Kim DeLillo](#)

[Larry Lewis ca... \(1\)](#)

[Lewis, Larry](#)

[maddox,obrian...](#)

[Monica and Gan...](#)

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[RW LYNCH \(5\)](#)

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[U.S. v Princib...](#)

[US v Gonzalez](#)

[USA v Dantzier](#)

[USA v Pasquen](#)

[USA V. Shackle...](#)

[Vendor](#)

North Charleston Radar Service

Friday, March 13, 2015 11:26 AM

From: "jsikes@netrockets.com" <jsikes@netrockets.com>

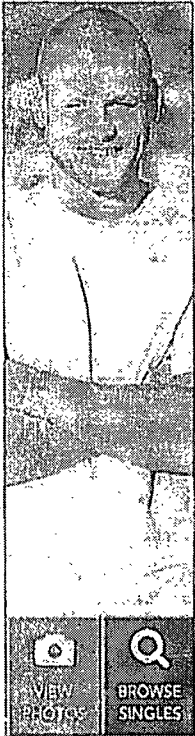
To: mgaylaw@yahoo.com

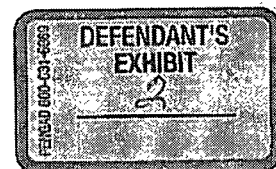
Full Headers Printable View

Our company, Sikes Radio Company, at 4112 Dorchester Road in North Charleston, has been servicing in-car cameras and other electronic equipment for the City of North Police Department for at least the last ten years or more.

Our records are based on the serial number of each unit we service and date of service, and they reference vehicle numbers. We show no record of any work having been performed on in-car video systems in vehicles 230 or 505 during the time frame including the month of August, 2013. We do show, however, that the radar unit in car 230 was serviced on October 31 of 2013.

John L. Sikes, President
Sikes Radio Co., Inc.
4112 Dorchester Road
Charleston, SC
Cel: 843-864-6624





SIKES RADIO COMPANY, INC.
4112 DORCHESTER ROAD
CHARLESTON, SC 29405

(843) 744-2551 Fax (843) 747-6082

March 12, 2015

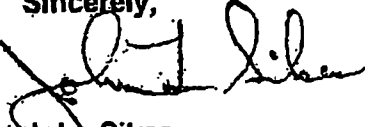
Re: Subpoena for case number 2013

To: Melissa Gay Law Firm

As we discussed on the phone, our company has no records of having performed any service work on in-car cameras in either of the two referenced vehicles during the time frame mentioned in August of 2013.

Due to the short notice of this subpoena and a very busy schedule in our business, we will be unable to appear on 3-13-15 and trust that the statement above will suffice.

Sincerely,


John Sikes
President

**SIKES
RADIO
CO., INC.**

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2015 MAR 12 PM 1:59
STATE OF SOUTH CAROLINA)
JULIE A. ANDERSON)
v.)
ELLIOTT JUDON, JR.)
Defendant)
INDICTMENT #: 2013-GS-100-7257
CHARGE: Trafficking Cocaine Base

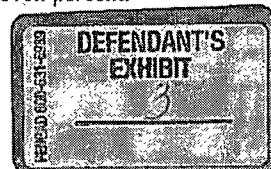
**STATE'S MOTION IN OPPOSITION
TO DISMISSAL**

The above-captioned defendant, by and through his attorney, has filed a Motion to Dismiss the charge of Trafficking Cocaine Base stemming from the defendant's arrest on August 26, 2013. The State opposes this Motion on several grounds as set forth below and respectfully requests the Court's denial of said Motion.

STATEMENT OF THE FACTS

On August 26, 2013, Officers Stott and Kirk of the North Charleston Police Department (NCPD) conducted a traffic stop on the defendant's vehicle for an equipment violation pursuant to S.C. Code Ann. §56-5-5015(c).¹ The defendant was the driver and sole occupant who gave consent to search his vehicle where Officers located a digital scale, utility knife with white powder residue, and minute amounts of white powder in and surrounding the driver compartment. The substance tested presumptive for cocaine base and the defendant was placed under arrest. A subsequent search of the defendant's person resulted in the discovery of a trafficking weight of cocaine base (approx. 11.5 g) and the defendant's charge was amended to Trafficking Cocaine Base.

¹ S.C. Code Ann. § 56-5-5015(C), "the combined light transmission of the sun screening device with the factory or manufacturer installed sun-screening material must not be less than twenty-seven percent."



The Officer's vehicle during this stop was equipped with a video recording device which is believed to have been operational during the stop. NCPD had been experiencing difficulties with some of the in-car videos requiring a manual shut down. A copy of the video from this incident was not downloaded from the server prior to the system doing a routine purge and is now unable to be retrieved.

Assistant Solicitor Mulkey received this case on April 3, 2014 after the prior Assistant Solicitor left the office. Prior to Ms. Gay's substitution as counsel, there were several discussions and negotiations with the defendant's former attorney, Luke Malloy. These included discussion of previous offers, the possibility of the defendant working for narcotics, and – when the defendant failed to follow through on his cooperation with NCPD – the discussion of a new offer. At no point during any of these discussions does the State recall the issue or existence of a video being discussed.

The defendant was then re-arrested for Trafficking Cocaine Base and plea negotiations on the first charge were placed on hold. By way of discovery, Ms. Gay received a copy of the same file I inherited from the former Assistant Solicitor. After it was determined that a global offer for the two pending charges would be made, both cases were again reviewed in their entirety. In late October 2014, the State made a request to NCPD for any possible video from this stop. The State was advised that it had been purged from the server during routine maintenance. This information was relayed to Ms. Gay in a conversation. On December 3, 2014, Ms. Gay sent an email advising she could not remember if there was video in this case and was again advised there was no video (copy of email included in defense motion). The defendant then appeared on two subsequent plea dockets after this.

At the status conference on March 4, 2015, Ms. Gay again inquired about the possibility of a video before the Court and further inquiry was made to NCPD to determine the exact date and manner in which the video would have been purged from the server. This information had previously been confirmed and provided in an email to Ms. Gay on March 3, 2015.

I. BRADY VIOLATION

a. There was no Brady violation.

Defense claims the State failed to provide the in-car video in this incident and that such failure constitutes a Brady² violation.

"A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment."³

Taking the aforementioned factors in order; first, the defense has failed to prove the video in question was, in fact, favorable to the defendant. Second, there are no notes in the case file indicating that the video was ever known to the former Assistant Solicitor. It appears from conversations with defense counsel that the defendant claims he knew about the video at the time of his arrest and failed to raise the issue until the morning before one of his plea dates in December 2014. The prior defense counsel received discovery and no motions or complaints were made in reference to this video or the file in general. Third, the video was not suppressed by the prosecution. The prosecution must have possession or knowledge of the video in order to suppress it. And finally, the defense has not provided information as to how the video is material to guilt or punishment. The video is not the only evidence of the stop. The State will provide testimony from the arresting Officer as to what occurred. While the video could certainly be used to corroborate his testimony, it is not the only evidence of the incident nor is it material.

² Brady v. Maryland, 373 U.S. 83 (1963).

³ Gibson v. State, 334 S.C. 515, 524 (S.C. 1999).

"Evidence is material under Brady if there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different."⁴ There has been no proceeding before this Court which has resulted in the adjudication of the defendant.

Defense further argues that the tape is material and cites State v. Jackson⁵ for support. In Jackson, while the Court found that the videotape from the DUI stop to be material and therefore its destruction constituted a Brady violation, it based its decision on the "peculiar facts of this case."⁶ These "peculiar facts" included the Assistant Solicitor agreeing to dismiss the charges against the defendant, advising the arresting agency of same and *ordering the destruction* of the video, then a reinstatement of the charges, and – in the interim – loss of the original Breathalyzer report. The Court emphasized the "conscious decision" by the Solicitors Office to dismiss the charge and order the video to be erased. We simply do not have these extreme facts in the defendant's case.

b. There was no additional prosecutorial misconduct.

A Brady violation is one type of prosecutorial misconduct. The defense mischaracterizes Gibson⁷ as "broadening the concept of bad faith." In Gibson, our State Supreme Court addressed the issue of a Brady violation and prosecutorial misconduct in a PCR application where the prosecution failed to advise the defense of a change in an eyewitness' testimony, as well as a trip to the crime scene with prosecutors, which ultimately rendered her account of events implausible. The Court determined that the prosecution's failure to disclose the change in the witness' testimony was, in fact, a Brady violation. While the Court acknowledged that "it does not matter whether the prosecutor's misconduct in failing to reveal

⁴ State v. Proctor, 358 S.C. 424, 429 (S.C. 2004).

⁵ State v. Jackson, 302 S.C. 313 (1990)

⁶ Id. at 316.

⁷ See *supra*, note 2.

Brady evidence is due to negligence or an intentional act because a Court may find a Brady violation irrespective of the good faith or bad faith of a prosecutor,” the basis for this opinion lies in the fact the Court found that a Brady violation had occurred.⁸ As stated above, the defense cannot prove the required elements for a Brady violation and they provide no evidence for their allegation that the tape was “destroyed pursuant to the Solicitor.” The State did not order, request, or participate in any destruction of this tape.

II. BAD FAITH

a. There was no bad faith on behalf of NCPD.

NCPD Policy and Procedure Manual # 0-10 does not mandate that every in-car video recording be placed into Evidence.⁹ “Vehicle video tapes that *may* be of value for case prosecution will be secured by the Officer as Evidence . . .”¹⁰ In its disclosure to the State, NCPD did not provide a copy of the video, as it was not listed in Evidence.

The video is stored on a server that tracks from the date of arrest. For the first 90 days after the arrest, the video can be accessed by either the Officer or Supervisor. Beginning with the 91st day through the 180th day, the video remains visible on the server but cannot be accessed by the Officer or Supervisor. On the 181st day, the video is purged from the server automatically because of limited storage. The timeline for this incident would be as follows:

First 90 days: 8/26/13 (Arrest) – 11/24/13

Next 90 days: 11/25/13 – 2/22/14

Purged from server: 2/23/14

NCPD’s server has a limit of 180 days for the storage of these videos. While we find distinct factual dissimilarities between the two cases, the State agrees with the holding in

⁸ See supra, note 2 at 528.

⁹ Attached hereto as Exhibit One.

¹⁰ See Exhibit One, III. (N)(1)(j) (*emphasis added*).

Arizona v. Youngblood that “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.”¹¹ In Youngblood, clothing from a sexual assault Victim was not preserved and the defense argued that said evidence would have been material because it could have contained DNA which could have exonerated their client. Even acknowledging the potential for specific results in DNA testing, the Court refused to impose on police “an undifferentiated and absolute duty to retain and preserve all material that might be of conceivable evidentiary significance in a particular prosecution.”¹²

b. There was no bad faith on behalf of the State.

While defense alleges the video was destroyed pursuant to the Solicitor, they provide no proof to substantiate this claim and the State finds the suggestion of such a violation offensive. Additionally, the State had no affirmative duty to seek it out. While there is no dispute that information known to the police can be imputed to the State, these cases generally involve prior convictions or pending charges against a witness.¹³ “The government has no ‘affirmative duty to take action to discover information which it does not possess . . . the prosecutor has no duty to undertake a fishing expedition . . . in an effort to find impeaching evidence.”¹⁴

Further, when the defendant’s case was transferred to the current Assistant Solicitor, the defendant had already been on two plea dockets and rejected each offer, the last one formally on the record. The current Assistant Solicitor received the case on April 3, 2014 and was advised by former defense counsel that the Defendant was interested in working for narcotics to address

¹¹ State v. Youngblood, 488 U.S. 51, 58 (1988).

¹² Id.

¹³ State v. Von Dohlen, 322 S.C. 234, 240-41 (S.C. 1996).

¹⁴ Id.

his charges. NCPD Detectives reported that the defendant met with them, signed up and was given specific instructions. Detectives never heard from the defendant again and calls to the number he provided went unanswered. At that time the defendant was placed on a plea docket for June 2014 but was rearrested in May 2014 for another Trafficking Cocaine Base charge. In late 2014, the State and defense learned there was no video and discussed that it had been purged from the system. On the morning before he was scheduled to plea and fourteen (14) months after his arrest for this offense and ongoing negotiations, the defendant alleged a defense to the video through his counsel.

III. DUE PROCESS

a. The Defense had just as much information as the State.

The Supreme Court has acknowledged “no constitutional requirement that the prosecution makes a complete and detailed accounting to the defense of all police investigatory work on case.”¹⁵ In Youngblood, the Court reasoned that the defense was in possession of Brady materials and had access to the same information as the State, inferring that the defense could have sought out additional information as they so often do using their own investigators. The Court acknowledged good and bad faith are irrelevant when there is a failure to disclose material exculpatory evidence, but they differentiated between a “failure to disclose evidence” and a “failure to preserve evidentiary material” stating that “if respondent is to prevail on federal constitutional grounds, then, it must be because of some constitutional duty over and above that imposed by cases such as Brady and Agurs.”¹⁶ In its holding, the Court recognizes that the

¹⁵ See supra, note 10 at 58.

¹⁶ See supra, note 10 at 56.

failure of police to preserve the evidence can, at worst, be described as negligent but without a showing of bad faith on part of the police, there was no Due Process violation.¹⁷

Here, the State did not fail to disclose any evidence because they were unaware the video existed. The State acknowledges that NCPD could have chosen to preserve the video but their failure to do so was neither bad faith nor a violation of the defendant's due process.

b. There was no spoliation of evidence.

While not alleged specifically in the defense's motion, the State believes the more proper issue before the Court to be one of spoliation. In arguing spoliation, a defendant must show the obvious exculpatory nature of the evidence or bad faith on the part of the State in the destruction of said evidence for it to become a due process violation.

The Supreme Court held in California v. Trombetta¹⁸ that the State's duty to preserve evidence extends only to that material which "possess[es] an exculpatory value that was apparent before the evidence was destroyed."¹⁹ In that particular case, the Court found no bad faith on the part of the State when the destruction of breath samples in a DUI case were destroyed as a matter of standard procedure. This holding came even after a concession from the State on the record that the preservation of the sample was entirely possible. The Court found that "the authorities in this case did not destroy respondents' breath samples in a calculated effort to circumvent the disclosure requirements establish by Brady v. Maryland and its progeny."²⁰ The Supreme Court ultimately found there was no Constitutional violation and the defendant's convictions were upheld.

¹⁷ See *supra*, note 10 at 58.

¹⁸ 467 U.S. 479 (1984).

¹⁹ *Id.* at 489.

²⁰ *Id.* at 488.

Further, applying the standard in Youngblood discussed earlier, our own State Supreme Court in Jackson provided an example of when a defendant has clearly shown enough to prove a Constitutional violation. While referenced above it is important to reiterate the "peculiar facts"²¹ which provided the Court as a basis for their decision: the prosecutor and defense attorney watched the field sobriety test video which resulted in the prosecutor agreeing to dismiss the case. The videotape was subsequently destroyed at the request of the prosecutor and then, for unknown reasons, the prosecutor decided to indict the offense and proceed with prosecution. In the interim, the original Breathalyzer report had been lost. The Supreme Court held that the evidence was clearly exculpatory (because it has served as the basis for the dismissal of the charges) and that the decision to re-prosecute the case after the destruction of the tape was in bad faith (since the existence of the tape obviously led to the earlier belief that the case could not go forward).²²

Finally, in State v. Cheeseboro,²³ the murder weapon was destroyed by police prior to being inspected by the defense. Again, our State Supreme Court held fast to the two prong test requiring defendant to prove (1) bad faith or (2) the exculpatory value of evidence prior to its destruction:

The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant. To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.²⁴

The Court, while acknowledging a lack of care on the part of the Officers, reasoned that

²¹ See supra, note 5.

²² See supra, note 5.

²³ 346 S.C. 526 (S.C. 2001).

²⁴ Id. at 538-39.

destruction of the gun was done through normal procedures and not an intentional destruction.

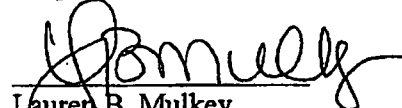
A review of the above cases requires the defendant to prove intentional bad faith in destroying the evidence. As argued above, there was no intentional destruction but a failure to preserve. There was no malicious intent when the video hit its 180 day mark on the server and was purged as a matter of routine. The exculpatory nature of the evidence is somewhat speculative. NCPD had been experiencing difficulties with several in-car camera systems to the point where several had been manually deactivated. While the State has no concrete data to suggest that the particular vehicle Officer Kirk and Stott were operating was one of those vehicles experiencing technical difficulties, we also cannot prove that the camera was in proper working order and would have actually recorded the incident.

IV. CONCLUSION

For the above-mentioned reasons, the State respectfully requests that this Court deny the defendant's Motion to Dismiss the charge against the defendant.

FILED
2015 MAR 12 PM 1:59
JULIE J. ANDERSON
CLERK OF COURT
BY _____

Respectfully Submitted,


Lauren B. Mulkey
Assistant Solicitor
Ninth Judicial Circuit

March 12, 2015
Charleston, South Carolina

Cardillo

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA
CLERK OF COURT
BY [Signature]

vs.

Elliott Jerome Judon Jr

Defendant

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Warrant No(s): 2013A1010204714

) Charge(s): Trafficking Crack(10-28 g)-1st

) REQUEST PURSUANT TO SC RULES
) OF CRIMINAL PROCEDURE - RULE 5&6

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests; witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution Agents.

The Defendant hereby asserts his Fifth and Sixth Amendment rights to remain silent and does not wish to be questioned in the absence of counsel, pursuant to Montejo v. Louisiana, 129 S.Ct. 2079(2009), and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

Respectfully Submitted,

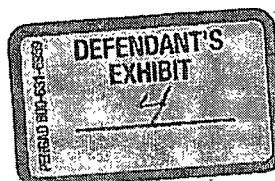
[Signature]
Luke J. Malloy
Attorney for Defendant

Charleston, South Carolina
Dated: 8/28/2013

CERTIFICATE OF SERVICE

I hereby certify that this Rule 5 Motion was served on the Solicitor for the Ninth Judicial Circuit on 8-29-13

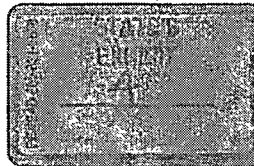
DAL



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

John Stott
North Charleston Police Department
PO Box 62558
North Charleston, SC 29419

DRUG ANALYSIS
October 01, 2013
SLED LAB: L13-11314
Your Case No: 2013029354
Incident Date: 8/26/2013
[S] Elliott Judon

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Sub # 1 On August 30, 2013, items were received in [B228681] from Shawnta Middleton of the North Charleston Police Department.
- Item: 1.1 Evidence bag containing a plastic bag containing rock substance
RESULTS:
Cocaine Base (Crack) (C-II) found, 10.1 grams (155.8 grains).
- Item: 1.2 Evidence bag containing rock substance
RESULTS:
Cocaine Base (Crack) (C-II) found, less than 0.1 grams.



FORM A

**REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)**

I, Lawrence A. Zivkovich, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 7 years and 5 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 20 times. I have received the following training as a Forensic Scientist.

B.S. Chemistry, University of South Carolina, Columbia, SC 1996
 Marijuana Analyst Certification, South Carolina Law Enforcement Division, 2006
 South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2006
 Chemical Analyst Certification, South Carolina Law Enforcement Division, 2007
 Drug Enforcement Administration, Forensic Chemist Seminar, 2008

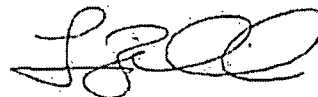
Sub # 1 On August 30, 2013, items were received in B228681 from Shawnta Middleton of the North Charleston Police Department.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☐ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☒ Physical Test
☐ Visual Examination	☐ Published Literature

See Drug Analysis Report L13-11314 for Results.

Forensic Scientist



Lawrence A. Zivkovich

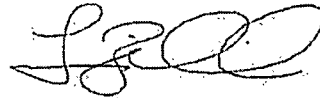
Date: October 01, 2013



October 01, 2013
L13-11314

Page 2

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Lawrence A. Zivkovich
Forensic Scientist



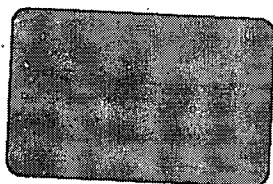


RA H79089802 VEH 01895/1123264
 JUDON, ELLIOT
 RENTED: 08/12/2013 14:12 SCCHN27
 EXCHANGE AT NORTH CHARLESTON HLE
 PH (843) 863-8239

CUSTOMER CASH RECEIPT

08/26/2013 13:25 SCCHN271991

125\$00



STATE 6

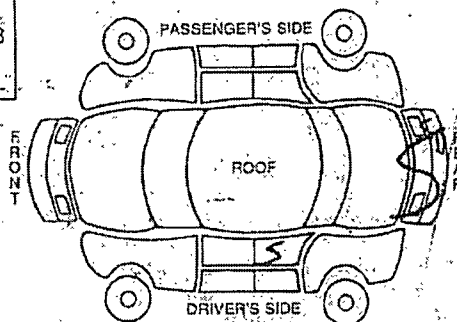
TOTAL

125\$00

HERTZ

Pre-Rental Vehicle Inspection Form 52885031

Optional Alt
 Model Alt
 Own Area 1895
 Mileage 17281
 Tank Level 2 / 8
 Stall # _____

Unit No. 1123264Inspected By 1991

D - Dent

S - Scratch

M - Missing

R - WS Repair

Interior Clean/Acceptable (Initial)

Comment:

N.O. SMOKING

Dear Customer

Per the Terms and Conditions of the Rental Agreement, the renter is generally responsible for any damage to the vehicle - including tires and glass.

The customer should notify a company representative of any discrepancies/inaccuracies on the inspection form before leaving the rental location.

Customer Signature Elliot Judon Date 8/16/13

Damage Collection Form

Upon return of the above described rental vehicle, the following new damage was identified on the vehicle:

Minor Damage Description	Comment	Qty	Sub-total
☐ Requires Incident Report (not subject to instant collection at return)			
☐ Tires (#4521)		x	\$
☐ Windshield (#4661)			\$
☐ Other (#4670)		x	\$
☐ Interior Cleaning (#6657)		x	\$

Total Damage Repair Cost \$

☐ Third Party Involved (Incident Report Required)☐ LDW Accepted? (If Yes, do not charge damage)

Inspected By _____

Damage Acknowledgement

By signing below, I (renter/customer) acknowledge the damage as noted above. I agree to complete an incident report or pay the indicated repair costs as shown. Furthermore, I authorize you to bill my credit card for the total amount indicated above.

Customer Signature _____

Date _____

701017 (8/12)

RETURN COPY

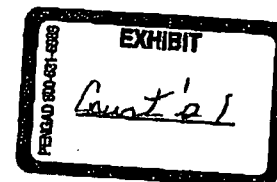
Harrington, Kristi L. Law Clerk (Ramsey S. Easley)

From: Culver Kidd <
Sent: Wednesday, March 18, 2015 8:18 AM
To: Harrington, Kristi L. Law Clerk (Ramsey S. Easley)
Cc: 'Melisa Gay ('; 'Melisa Gay ('); Lauren
Mulkey
Subject: State v. Judon

Sorry for being last minute but the state would have an additional request for charge:

1. The legality of a search and seizure is a question of law and fact which is only proper for the court to decide. It is improper for the jury to make the determination whether or not the search conducted by the police was lawful. Steele v. United States, 267 U.S. 505, 506, 45 S. Ct. 417, 418, 69 L. Ed. 761 (1925). That is a question left solely to the court for determination.

E. Culver Kidd
Assistant Solicitor
O.T. Wallace Building
101 Meeting St.
Charleston, SC 29401
Phone (843) 958-1903
Fax (843) 958-1905



Steele v. U.S., 267 U.S. 505 (1925)

45 S.Ct. 417, 69 L.Ed. 761

45 S.Ct. 417

Supreme Court of the United States.

STEELE

v.

UNITED STATES.

No. 636. | Argued March 11,
1925. | Decided April 13, 1925.

In Error to the District Court of the United States for the Southern District of New York.

John F. Steele was convicted of possessing intoxicating liquor, and he brings error. Affirmed.

See, also, 267 U. S. 498, 45 S. Ct. 414, 69 L. Ed. 757.

Attorneys and Law Firms

****417 *506** Mr. Meyer Kraushaar, of New York City, for plaintiff in error.

Mr. James M. Beck, Sol. Gen., of Washington, D. C., Mrs. Mabel Walker Willebrandt, Asst. Atty. Gen., and Mr. Mahlon D. Kiefer, Sp. Asst. Atty. Gen., for the United States.

Opinion

Mr. Chief Justice TAFT delivered the opinion of the Court.

This is a direct writ of error under section 238 of the Judicial Code (Comp. St. § 1215) to a conviction in the District Court of ****418** John F. Steele on an information in the District Court for unlawfully, willfully, and knowingly possessing a quantity of intoxicating liquor in violation of the National Prohibition Act (Comp. St. Ann. Supp. 1923, § 10138 ¼ et seq.). The prosecution grew out of the seizure of whisky and gin upon a search warrant at 611 West Forty-Sixth street, New York City, the validity of which we have had occasion to examine in the case just preceding. The question here is as to the competency of the evidence of seizure under the search warrant which we there found sufficient. In addition to the grounds urged in the last case, the validity of seizure is attacked because the search warrant was issued to a general prohibition agent, when under section 6 of title 11 of the Espionage Act of June 15, 1917 (40 Stat. 217, 228, c. 30 [Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 10496 ¼ f]), such a warrant must be issued 'to a civil officer of the United

States duly authorized to enforce or assist in enforcing any law thereof.'

The argument is that the prohibition agent is appointed by the Commissioner of Internal Revenue, and therefore is only an employee and not a civil officer of the government in the constitutional sense, because such an officer under article 2, section 2, of the Constitution ***507** can only be appointed either by the President and the Senate, the President alone, the courts of law, or the heads of departments.

[1] It should first be said that Steele is not in a position to raise this question. He might have raised it in the preceding case, but he did not do so, and did not assign error on account of it in his appeal to this court. The refusal to vacate the search warrant and to return the liquor seized was a final decree. The question is therefore res judicata as against him.

[2] [3] But, even if this were not so, we do not think the objection well taken. We think that the expression 'civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof,' as used in the Espionage Act, does not mean an officer in the constitutional sense, that Congress in incorporating the provision in section 26, title 2, of the National Prohibition Act (Comp. St. Ann. Supp. 1923, § 10138 ½ mm) did not so construe it, and had no intention thus to limit persons authorized to receive and serve search warrants. It is quite true that the words 'officer of the United States,' when employed in the statutes of the United States, is to be taken usually to have the limited constitutional meaning. *Burnap v. United States*, 252 U. S. 512, 40 S. Ct. 374, 64 L. Ed. 692; *United States v. Mouat*, 124 U. S. 303, 8 S. Ct. 505, 31 L. Ed. 463; *United States v. Smith*, 124 U. S. 525, 8 S. Ct. 595, 31 L. Ed. 534. But we find that this court, in consideration of the context, has sometimes given it an enlarged meaning, and has found it to include others than those appointed by the President, heads of departments, and courts. *United States v. Hendee*, 124 U. S. 309, 8 S. Ct. 507, 31 L. Ed. 465. The emphasis of the words of description in the Espionage Act is really on the limitations that the person designated shall be a civil and not a military agent of the government, and shall be one 'duly authorized to enforce or assist in enforcing any law of the United States.' It is not to be supposed that Congress wished to exclude from those empowered to receive and execute ***508** search warrants persons usually called officers who are in their duties most widely employed to enforce or assist in enforcing laws. Thus deputy marshals of the United States are appointed by the United States marshal under whom they serve (section 780, Revised Statutes [Comp. St. § 1304]), and he and his deputies have in each state the same power in executing the laws of the

Steele v. U.S., 267 U.S. 505 (1925)

45 S.Ct. 417, 69 L.Ed. 761

United States as the sheriffs and their deputies in such state in executing the laws thereof. The deputy marshal is not in the constitutional sense an officer of the United States, and yet marshals, and deputy marshals are the persons chiefly charged with the enforcement of the peace of the United States, as that is embraced in the enforcement of federal law. In *re Neagle*, 135 U. S. 1, 68, 69, 10 S. Ct. 658, 34 L. Ed. 55. A deputy marshal is engaged in serving all sorts of writs, and is called upon to exercise great responsibility and discretion in the service of some of them, in dealing with the person and property of individuals and in the preservation of their constitutional rights. The same thing may be said of deputy collectors of customs. Under section 2630 (Comp. St. § 5368), a collector of customs, with the approval of the Secretary of the Treasury, may employ within his district such number of proper persons, as deputy collectors of customs as he shall deem necessary, and such deputies are declared to be officers of the customs, and the collector may exercise his powers and perform his duties by deputy. And one of the chief functions of the collector of customs and of the deputy collectors is the seizure of goods which have not paid a tax, as seen by chapter 10 of title 34 of the Revised Statutes (sections 3058-3094 [Comp. St. §§ 5760-5794]). Deputy collectors of internal revenue are to be appointed by the collector of internal revenue. Section 3148, R. S. He may appoint as many as he thinks proper. Each deputy is to have the like authority which by law is vested in the collector himself, and distraint and seizure in the assessment and collection of taxes are authorized by chapter 2, title 35.

*509 The National Prohibition Act, in title 1, section 5 (Comp. St. Ann. Supp. 1923, § 10138 ¼ e), reads:

****419** 'The Commissioner of Internal Revenue, his assistants, agents, and inspectors, and *all other officers of the United States* whose duty it is to enforce criminal laws, shall have all the power for the enforcement of the War Prohibition Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the laws of the United States.'

Title 2, section 28 (Comp. St. Ann. Supp. 1923, § 10138 ½ o) is:

'The Commissioner, his assistants, agents, and inspectors, *and all other officers of the United States*, whose duty it is to enforce criminal laws, shall have all the power * * * in the enforcement of this act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States.'

Section 3462 of the Revised Statutes (Comp. St. § 6364) is one of the laws thus referred to in the foregoing sections, and provides:

'That the several judges of the Circuit and District Courts of the United States, and commissioners of the Circuit Courts, may, within their respective jurisdictions, issue a search warrant, authorizing any internal revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.'

Again, title 2, section 1, of the Prohibition Act (Comp. St. Ann. Supp. 1923, § 10138 ½), reads:

'Any act authorized to be done by the commissioner may be performed by any assistant or agent designated by him for that purpose.'

Again, title 2, section 26 (Comp. St. Ann. Supp. 1923, § 10138 ½ mm), reads:

'When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors *510 in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law.'

Steele v. U.S., 267 U.S. 505 (1925)

45 S.Ct. 417, 69 L.Ed. 761

The foregoing would seem to indicate that lawful seizures were not to be confined to constitutional officers.

Again, in section 6 of the act supplemental to the National Prohibition Act (42 Stat. 223 [Comp. St. Ann. Supp. 1923, § 10184a]), it is provided that any officer, agent or employee of the United States engaged in the enforcement of this act or the National Prohibition Act, or any other law of the United States, who shall search any private dwelling as defined in the National Prohibition Act, without a warrant directing such search, shall be guilty of a misdemeanor.

This justifies an inference that Congress expected searches to be made with search warrants by officers, agents, or employees.

The question whether a prohibition agent has the power and right to serve a search warrant as provided in the Espionage Act, and section 25 of title 2 of the National Prohibition Act, has led to some difference of opinion among the judges of the Circuit Courts of Appeal and also of the District Courts, but the weight of authority as indicated by the decisions is strongly in favor of the broader construction which vests the power and duty to receive and serve a search warrant in prohibition agents appointed by the Commissioner of Internal Revenue. *Raine v. United States*, 299 F. 407 (C. C. A. 9th); *Keehn v. United States*, 300 F. 493 (C. C. A. 1st); *United States v. American Brewing Co.* (D. C.) 296 F. 772; *United*

States v. O'Connor (D. C.) 294 F. 584; *United States v. Syrek* (D. C.) 290 U. S. 820; *United States v. Keller* (D. C.) 288 F. 204.

[4] [5] The second question which is raised here by proper exception and assignment is whether the defendant had the right to have submitted to the jury the issue of fact *511 whether there was probable cause to issue the warrant, with direction that if the jury found that there was not probable cause, it should ignore the evidence resulting from the seizure and acquit the defendant. There are two answers to this assignment of error. One has already been referred to, that the fact of the existence of probable cause in the issue of the search warrant was *res judicata*, made so by the judgment of the court in the case preceding that the property could not be returned to Steele. The second answer is that the question of the competency of the evidence of the whisky by reason of the legality or otherwise of its seizure was a question of fact and law for the court and not for the jury. *Gila Valley Ry Co. v. Hall*, 232 U. S. 94, 103, 34 S. Ct. 229, 58 L. Ed 521; *Bartlett v. Smith*, 11 M. & W. 483; *Doe dem. Jenkins v. Davies*, 10 Ad. & El. N. S. 314; 5 Wigmore, Evidence (2d Ed.) § 2550.

The judgment of the District Court is affirmed.

Parallel Citations

45 S.Ct. 417, 69 L.Ed. 761

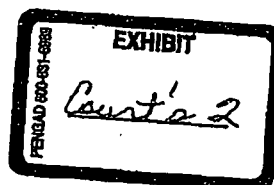
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do we consider illegal search?

What are we supposed to
be focusing on?

What are we supposed to
be disregarding?



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DOCKET NO. 2013GS1007257

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2013029354

COURT OF GENERAL SESSIONS

December Term 2013

ARREST WARRANT NUMBER

2013A1010204714

DATE OF ARREST

August 27, 2013

THE STATE

vs.

ACTION OF GRAND JURY

ELLIOTT JEROME JUDON JR

DOB:

B/M

TRUE BILLForeperson of Grand Jury
Date:

DEC 10 2013

Indictment for

Trafficking in Cocaine Base

VERDICT

Gulley

CASHEN CRIMINAL 3/18/15

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

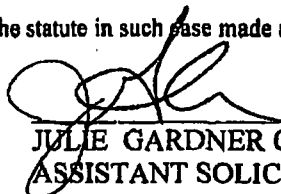
INDICTMENT

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking in Cocaine Base

That in Charleston County, South Carolina, on or about August 26, 2013, the Defendant, ELLIOTT JEROME JUDON JR, knowingly did sell, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine base, in excess of 10 grams; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ELLIOT JEROME JUDON

AKA: Elliot Judon, Elliot JudonRace: Black Sex: M Age: 36

DOB: _____ SS#: _____

Address: _____

City, State, Zip: N Charleston, SC 29405DL# _____ SID# SC01100557*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

INDICTMENT/CASE#: 2013GS1007257A/W: 2013A1010204714Date of Offense: 08/26/2013S.C. Code §: 44-53-0375(C)(1)(a)CDR Code #: 0450

SENTENCE SHEET

In violation of § 44-53-0375(C)(1)(c) of the S.C. Code of Laws, bearing CDR Code # 0452☒ CONVICTED OF or ☐ PLEADS☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Lauren B. Mulkey 77023
Lauren B. Mulkey, Assistant Solicitor SC Bar #

Defendant

63773
Attorney for Defendant SC Bar #

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____

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 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 8.40TOTAL \$ 288.40

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 Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: CallalCourt Reporter: Juan

SCCA/217 (03/2011)

Presiding Judge: JustinJudge Code: 2151Sentence Date: 3/18/15

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."

June 17th, 2016

Susan B. Hackett for

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

RECEIVED

442

JUN 17 2016

CERTIFICATE OF COUNSEL FOR APPELLANT
SC Court of Appeals

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."

June 17th, 2016

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ATTORNEY FOR APPELLANT