

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Honorable Clifton Newman, Circuit Court Judge

**RECEIVED**  
AUG 24 2016  
SC Court of Appeals

THE CITY OF COLUMBIA,

RESPONDENT,

V.

CEDRIC XAVIER HEYWARD,

APPELLANT

APPELLATE CASE NO.

2016-000295

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
CITY'S EXHIBIT 1 (CD OF TRAFFIC STOP) AND CITY'S EXHIBIT 2 (CHAIN OF  
CUSTODY)<sup>1</sup>**

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<sup>1</sup> Pursuant to Rule 210(f), SCACR, transportation is being requested for the designated photograph exhibits because they could not be accurately reproduced by copying into the Record on Appeal.

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1           **THE COURT:** SO THE MATTER WE MAY HAVE FOR TRIAL IS MR.  
2 HEYWARD, IS THAT CORRECT?

3           **MS. MANGUM:** YES, YOUR HONOR.

4           **THE COURT:** AND WHAT KIND OF – I'LL TELL YOU WHAT. WHY  
5 DON'T Y'ALL COME BACK AND TALK WITH ME.

6           (CHAMBERS DISCUSSION)

7           (CASE RESUMED)

8           **THE COURT:** ... INDICATED A HARDSHIP ON MONDAY, FINANCIAL  
9 HARDSHIP, BECAUSE OF WHERE SHE WORKS. I THINK MS. MANGUM WOULD BE  
10 WILLING TO EXCUSE HER OR WILLING FOR ME TO EXCUSE HER BECAUSE OF  
11 THAT WHICH WOULD LEAVE US WITH NINETEEN JURORS WHICH GIVES ENOUGH  
12 FOR EACH OF YOU TO HAVE YOUR NORMAL AMOUNT OF STRIKES. ARE WE  
13 COMFORTABLE WITH DOING THAT?

14           **MS. MANGUM:** I AM, YOUR HONOR.

15           **MR. COMISH:** I AM AS WELL.

16           **THE COURT:** ALL RIGHT. MS. WILLIAMS, WOULD YOU GO AND  
17 BRING THE JURY DOWN AND LET MS. ROBERTS KNOW THAT SHE CAN BE  
18 EXCUSED FOR TODAY. ON THE SPECIALIZED QUESTIONS IT MIGHT BE – I'LL ASK  
19 YOUR THOUGHTS ON THIS – WOULD YOU WANT ME TO ASK THOSE OF THE  
20 PANEL AS A WHOLE AND TAKE THEIR RESPONSES OR WOULD YOU LIKE THEM TO  
21 RAISE THEIR HANDS AND HAVE A PRIVATE CONVERSATION WITH THEIR  
22 RESPONSE? I'M TALKING ABOUT THE SPECIALIZED QUESTIONS WITH REGARD  
23 TO MARIJUANA AND ...

24           **MR. COMISH:** I WOULD PREFER A PRIVATE CONVERSATION, YOUR  
25 HONOR.

1           **MS. MANGUM:** I'M FINE WITH THAT, YOUR HONOR.

2           **THE COURT:** -ALL RIGHT. WE'LL ASK THEM TO RAISE THEIR  
3 HANDS IF IT APPLIES TO THEM AND THEN WE CAN HAVE A SIDEBAR OVER HERE.

4           **MR. COMISH:** JUST SO I'M CLEAR. MY RENEWAL OF MY BRADY  
5 RIDDLE AND RULE MOTIONS AND MY RULE 5 MOTION WILL BE HEARD BEFORE  
6 TRIAL AND THE OTHER MOTIONS WILL BE HEARD AS APPROPRIATE DURING THE  
7 TRIAL?

8           **THE COURT:** I THOUGHT WE SAID AS IT CAME APPROPRIATELY  
9 WITHIN THE TRIAL.

10          **MR. COMISH:** RIGHT. SO THOSE FIRST TWO WOULD BE MOST  
11 APPROPRIATE BEFORE THE TRIAL STARTS. I MEAN THEY ARE, YOU KNOW,  
12 THIRTY SECOND MOTIONS.

13          **THE COURT:** DO YOU HAVE ANY OBJECTION?

14          **MS. MANGUM:** FINE, IF HE WANTS TO MAKE IT. WAS IT A BRADY  
15 MOTION I THOUGHT YOU SAID?

16          **MR. COMISH:** BRADY, RIDDLE. JUST RENEWING THOSE MOTIONS  
17 AND THEN MAKING MY RULE 5 MOTION. I'M SORRY, NOT RULE 5. SPEEDY TRIAL  
18 MOTION.

19          **THE COURT:** THE MOTION FOR A SPEEDY TRIAL WOULD BE TO  
20 DISMISS BECAUSE IT'S BEEN A LONG TIME?

21          **MR. COMISH:** THAT'S CORRECT, YOUR HONOR.

22          **THE COURT:** THAT'S THE NATURE OF YOUR MOTION?

23          **MR. COMISH:** YES. PER THE U.S. SUPREME COURT, YES, MA'AM.

24          **THE COURT:** OKAY.

25          **MR. COMISH:** I HAVE THE CASE LAW HERE SHOULD YOU WISH A

1 COPY.

2 **THE COURT:** OKAY. DO YOU WANT TO HAND IT UP?

3 **MR. COMISH:** I HAVE MY ANNOTATED COPY OF WITH RELEVANT  
4 HIGHLIGHTS OR THE BLANK CASE, WHICHEVER YOU PREFER.

5 **THE COURT:** WHICHEVER YOU WANT TO GIVE ME.

6 **MR. COMISH:** JUST FOR THE EASE OF READING IF YOU WANT THE  
7 HIGHLIGHTED.

8 **THE COURT:** OKAY.

9 (JURY VENIRE ENTERS THE COURTROOM)

10 **THE COURT:** ARE WE READY?

11 **MR. COMISH:** WE ARE, YOUR HONOR.

12 **MS. MANGUM:** YES, YOUR HONOR.

13 **THE COURT:** ALL RIGHT. GOOD MORNING. THANK YOU FOR  
14 BEING PATIENT WITH US BY RESPONDING TO OUR REQUEST TO REPORT TODAY.  
15 WE DO HAVE A MATTER THAT WE NEED TO TAKE UP IN THE FORM OF A TRIAL BY  
16 JURY SO I REALLY APPRECIATE YOU RESPONDING TO OUR REQUEST TO COME IN.  
17 THE DEFENDANT IN THIS CASE IS MR. CEDRIC HEYWARD AND HE HAS ENTERED  
18 A PLEA OF NOT GUILTY TO THE CHARGE OF SIMPLE POSSESSION OF MARIJUANA  
19 AND HE'S RAISED ISSUES OF FACT THAT NEED TO BE TRIED BY A JURY. IN OUR  
20 COURT WE SELECT SIX JURORS. SOMETIMES WE PICK AN ALTERNATE. TODAY  
21 WE ARE JUST GOING TO SELECT SIX OF YOU AS OPPOSED TO THE TWELVE THAT  
22 YOU NORMALLY SEE IN CIRCUIT COURT OR IN FEDERAL COURT. WE ARE GOING  
23 TO PICK THOSE SIX JURORS FROM AMONG YOU. THE PROSECUTION IN THE CASE  
24 WILL BE THE CITY OF COLUMBIA AND THE PERSON CHARGED WITH THE  
25 OFFENSE IS THE DEFENDANT, MR. HEYWARD. NOW, THE REMARKS THAT I'M

1 ABOUT TO MAKE ARE NOT THE LAW OF THE CASE. AT THE END OF THE TRIAL I  
2 WILL CHARGE YOU ON THE LAW, BUT I WANT TO TELL YOU A LITTLE BIT ABOUT  
3 OUR PROCEDURE SO YOU'LL BE IN TUNE WITH WHAT'S GOING ON HERE. AS YOU  
4 KNOW, UNDER THE UNITED STATES CONSTITUTION AND THE SOUTH CAROLINA  
5 CONSTITUTION A PERSON ACCUSED OF A CRIME IS ENTITLED TO A TRIAL BY  
6 FAIR AND IMPARTIAL JURORS. THAT'S A FUNDAMENTAL RIGHT THAT WE ALL  
7 ENJOY TO BE TRIED BY A JURY, BY AN IMPARTIAL JURY. AND AS THE TRIAL  
8 JUDGE I HAVE A DUTY TO ASSURE MYSELF THAT THE JURORS THAT ARE  
9 SELECTED ARE UNBIASED AND FAIR AND CAN BE IMPARTIAL. NOW, ALL OF US  
10 HAVE LIFE EXPERIENCES THAT HAVE HELPED SHAPE OUR BELIEFS AND OUR  
11 FEELINGS AND OPINIONS ABOUT VARIOUS TOPICS AND WE DON'T EASILY  
12 ACQUIRE THOSE OPINIONS, NOR DO WE EASILY SET ASIDE THOSE OPINIONS. THE  
13 COURT NEITHER CONDONES NOR CONDEMNS ANY BELIEFS THAT YOU MIGHT  
14 HAVE. HOWEVER, I'VE GOT A DUTY TO ASK YOU SOME QUESTIONS REGARDING  
15 YOUR FEELINGS AND YOUR BELIEFS THAT MIGHT BE INVOLVED IN THE CASE.  
16 AND THAT PROCESS HAS A LATIN NAME CALLED VOIR DIRE. IT'S A TERM THAT  
17 MEANS TO SPEAK THE TRUTH. IT'S VERY IMPORTANT TO SELECT JURORS THAT  
18 LISTEN CAREFULLY TO ALL OF THE EVIDENCE OFFERED BY BOTH SIDES AND  
19 JURORS THAT CAN DECIDE A CASE FAIRLY. JURORS HAVE TO DECIDE CASES  
20 WITHOUT BIAS OR ANY PRECONCEIVED IDEAS ABOUT HOW A PARTICULAR TYPE  
21 OF CASE SHOULD BE DECIDED. SOMETIMES, HOWEVER, YOUR OWN PERSONAL  
22 FEELINGS OR YOUR VIEWS ARE SO STRONG THAT YOU SIMPLY CANNOT BE FAIR.  
23 SO IT WOULD BE A VIOLATION OF YOUR OATH ON A JURY IF YOU HAD ANY PRE-  
24 EXISTING BELIEF OR OPINION THAT WOULD IMPROPERLY INFLUENCE YOUR  
25 DELIBERATION OR TEND TO MAKE YOU BIASED FOR OR AGAINST EITHER SIDE.

1 SO WE ARE GOING TO ASK YOU SOME QUESTIONS. I'LL ASK YOU TO BE  
2 COMPLETELY HONEST IN ANSWERING THE QUESTIONS, DISCLOSE ANY MATTERS  
3 THAT MIGHT TEND TO MAKE IT DIFFICULT FOR YOU TO SERVE ON THE JURY.  
4 THE WAY WE ARE GOING TO DO THIS IS THAT AFTER GENERAL QUESTIONS  
5 INITIALLY AS A PANEL AS A WHOLE AND WE'LL ASK YOU TO RAISE YOUR HAND  
6 IF THE ANSWER - IF THE QUESTION APPLIES TO YOU. SOME OF THE QUESTIONS  
7 WE MAY ASK YOU TO JUST HOLD YOUR RESPONSE AND COME DOWN HERE ON  
8 THE SIDE AND TALK TO US PRIVATELY ABOUT YOUR RESPONSE. SO WE'LL  
9 START WITH THE DEFENDANT. I'LL ASK THE DEFENDANT AND HIS ATTORNEY IF  
10 THEY WILL INTRODUCE THEMSELVES.

11 **MR. COMISH:** GOOD MORNING. MY NAME IS JONATHAN COMISH  
12 AND I REPRESENT MR. CEDRIC HEYWARD, THE DEFENDANT IN THIS CASE.

13 **THE COURT:** IS THERE ANY MEMBER OF THE JURY OR ANY  
14 MEMBER OF YOUR FAMILY PERSONALLY ACQUAINTED WITH OR RELATED BY  
15 BLOOD OR MARRIAGE TO MR. HEYWARD, THE DEFENDANT? ANYBODY OR ANY  
16 FAMILY MEMBER PERSONALLY ACQUAINTED WITH OR RELATED?

17 (NO RESPONSE)

18 **THE COURT:** I SEE NO HANDS. IS THERE ANY MEMBER OF THE  
19 PANEL OR ARE YOU OR ANY MEMBER OF YOUR FAMILY PERSONALLY  
20 ACQUAINTED WITH OR HAVE YOU EVER BEEN REPRESENTED BY MR. COMISH?  
21 ANYBODY EVER HAD ANY DEALINGS WITH MR. COMISH?

22 (NO RESPONSE)

23 **THE COURT:** I'LL ASK THE CITY ATTORNEY IF SHE'LL INTRODUCE  
24 HERSELF AGAIN AND ALSO IDENTIFY HER WITNESSES.

25 **MS. MANGUM:** GOOD MORNING. AGAIN, I AM JESS MANGUM. I

1 AM ASSISTANT CITY ATTORNEY WITH THE CITY OF COLUMBIA. I HAVE WITH ME  
2 OFFICER ARNOLD, SGT. WEBB, OFFICER POTASH AND BEHIND ME IS SGT.  
3 WILLIAMS.

4 THE COURT: IS ANY MEMBER OF THE JURY PANEL OR ANY  
5 FAMILY MEMBER PERSONALLY ACQUAINTED WITH OR HAVE YOU EVER BEEN  
6 REPRESENTED BY MS. MANGUM?

7 (NO RESPONSE)

8 THE COURT: IS ANY MEMBER OF THE JURY PANEL OR ANY  
9 FAMILY MEMBER PERSONALLY ACQUAINTED WITH OR RELATED, HAD AN  
10 OCCASION TO HAVE ANY INTERACTION WITH ANY OF THE OFFICERS INVOLVED  
11 IN THE CASE? A COUPLE OF HANDS. HOW ABOUT COME DOWN AND LET'S SEE IF  
12 YOU WILL AND IF I CAN ASK THE ATTORNEYS TO COME OVER.

13 (BENCH CONFERENCE OFF THE RECORD)

14 THE COURT: ALL RIGHT. HAVE ANY OF YOU HEARD ANYTHING  
15 ABOUT THIS CASE BEFORE YOU CAME TO COURT TODAY?

16 (NO RESPONSE)

17 THE COURT: I SEE NO HANDS. HAS THIS MATTER BEEN DISCUSSED  
18 WITH YOU OR DISCUSSED IN YOUR PRESENCE?

19 (NO RESPONSE)

20 THE COURT: I SEE NO HANDS. ALL RIGHT. HAVE YOU OR ANY  
21 MEMBER OF YOUR FAMILY EVER BEEN EMPLOYED AS A LAW ENFORCEMENT  
22 OFFICER OR WORKED IN A LAW ENFORCEMENT ORGANIZATION? ALL RIGHT.  
23 YES, SIR. COME ON DOWN AND TALK WITH US.

24 (BENCH CONFERENCE OFF THE RECORD)

25 THE COURT: I CAN ASK QUESTIONS RIGHT HERE. MIGHT AS WELL

1 JUST STAY RIGHT HERE. IF THERE IS AN ANSWER TO THIS, PLEASE RAISE YOUR  
2 HAND. IS THERE ANY MEMBER OF THIS JURY PANEL WHO HAS EVER BEEN  
3 CHARGED OR ARRESTED FOR POSSESSION OF A CONTROLLED SUBSTANCE TO  
4 INCLUDE MARIJUANA OR ANY OTHER DRUG? AND THERE'S A FOLLOW-UP TO  
5 THAT. IS THERE ANY MEMBER OF THIS JURY PANEL WHO HAS A FAMILY  
6 MEMBER OR A CLOSE FRIEND WHO HAS BEEN CHARGED OR ARRESTED FOR  
7 POSSESSION OF A CONTROLLED SUBSTANCE TO INCLUDE MARIJUANA OR ANY  
8 OTHER DRUG? PLEASE SOME DOWN.

9 (BENCH CONFERENCE OFF THE RECORD)

10 **THE COURT:** OKAY. IS THERE ANY MEMBER OF THE JURY PANEL  
11 THAT HAS HAD CONTACT WITH THE POLICE THAT INVOLVED THE OFFICER USE  
12 OF K-9 OR A POLICE DOG? ANY MEMBER OF THE JURY PANEL.

13 (NO RESPONSE)

14 **THE COURT:** I SEE NO HANDS. IS THERE ANY MEMBER OF THE  
15 JURY PANEL THAT HARBORS RESENTMENT, MALICE OR DISTRUST TOWARD  
16 POLICE OR LAW ENFORCEMENT?

17 (NO RESPONSE)

18 **THE COURT:** A SERIOUS QUESTION. I SEE NO HANDS. HAS ANY  
19 MEMBER OF THE JURY PANEL OR A MEMBER OF THEIR FAMILY EVER MADE A  
20 CLAIM OF ANY SORT AGAINST THE CITY OF COLUMBIA OR BEEN INVOLVED IN  
21 ANY OTHER TYPE OF DISPUTE WITH THE CITY?

22 (NO RESPONSE)

23 **THE COURT:** I SEE NO HANDS. DOES ANY MEMBER OF THIS JURY  
24 BELIEVE THAT POSSESSION OF MARIJUANA SHOULD BE LEGAL IN SOUTH  
25 CAROLINA?

1 (NO RESPONSE)

2 **THE COURT:** I SEE NO HANDS. ALL RIGHT. ANY OTHER REQUESTS  
3 FOR VOIR DIRE?

4 **MS. MANGUM:** NO, YOUR HONOR.

5 **MR. COMISH:** I HAVE NOTHING.

6 **THE COURT:** ALL RIGHT. AS WE CALL YOUR NAME, WE ARE  
7 GOING TO ASK YOU TO COME DOWN, TURN AROUND AND FACE YOUR FELLOW  
8 JURORS AND THE CITY HAS SIX STRIKES, THE DEFENSE HAS SIX STRIKES: THEY  
9 CAN EXERCISE THOSE STRIKES WITHIN THE BOUNDS OF LAW. DON'T TAKE IT  
10 PERSONALLY IF YOU ARE STRICKEN FROM THE JURY. SO WE'LL GO THROUGH  
11 THIS PROCESS AS QUICKLY AS WE CAN. THOSE WHO ARE SELECTED, PLEASE  
12 COME AROUND AND HAVE A SEAT IN THE JURY BOX. BRING ALL YOUR  
13 BELONGINGS WITH YOU. PAUL L. ROBINSON, JR. MR. ROBINSON, IF YOU'LL TELL  
14 US WHAT YOU DO FOR A LIVING AND WHAT YOUR SPOUSE DOES.

15 **MR. ROBINSON:** I WORK WITH THE CITY OF COLUMBIA, WATER  
16 DEPARTMENT, WATER DISTRIBUTION. MY WIFE, SHE IS A (INAUDIBLE) AT  
17 PARKRIDGE HOSPITAL.

18 **THE COURT:** OKAY. IF YOU'LL TURN AROUND AND FACE YOUR  
19 FELLOW JURORS. WHAT SAYS THE CITY WITH REGARD TO MR. ROBINSON.

20 **MS. MANGUM:** YOUR HONOR, PLEASE SEAT, MR. ROBINSON.

21 **MR. COMISH:** PLEASE SEAT, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. MR. ROBINSON, PLEASE COME AROUND  
23 AND HAVE A SEAT IN THE JURY BOX. BARBARA DAVIS. MS. DAVIS, WHAT DO  
24 YOU DO AND WHAT DOES YOUR SPOUSE DO?

25 **MS. DAVIS:** ME AND MY HUSBAND SEPARATED THIRTEEN YEARS.

1 HE'S RETIRED. I WORK FOR BABCOCK AND THE D.S.P., DIRECT SUPPORT FOR  
2 CLIENTS.

3 **THE COURT:** OKAY. DIRECT SUPPORT FOR CLIENTS AT BABCOCK.  
4 WHAT SAYS THE CITY?

5 **MS. MANGUM:** YOUR HONOR, PLEASE EXCUSE THIS JUROR.

6 **THE COURT:** ALL RIGHT. THANK YOU, MS. DAVIS, YOU ARE  
7 EXCUSED. HALEY ALLEN. ALL RIGHT. TELL US WHAT YOU DO AND WHAT YOUR  
8 SPOUSE DOES.

9 **MS. ALLEN:** I AM AN ACCOUNT EXECUTIVE. I (INAUDIBLE) IN A  
10 PROPERTY MANAGEMENT FIRM AND MY HUSBAND IS A LAW SCHOOL STUDENT  
11 GRADUATING IN MAY.

12 **THE COURT:** WHAT SAYS THE CITY?

13 **MS. MANGUM:** PLEASE SEAT THIS JUROR.

14 **THE COURT:** WHAT SAYS THE DEFENSE?

15 **MR. COMISH:** PLEASE SEAT THE JUROR.

16 **THE COURT:** ALL RIGHT. PLEASE COME AROUND. I'M AWARE OF  
17 YOUR SITUATION AND WE'LL TAKE THAT INTO CONSIDERATION. WE MIGHT  
18 NEED A FEW FREQUENT BREAKS, RIGHT? TOMETRA JONES

19 **MS. JONES:** HELLO. I AM TOMETRA JONES. I HAVE TWO JOBS. I  
20 WORK FOR A GROUP (INAUDIBLE) NURSING HOME AND FOR RICHLAND SCHOOL  
21 DISTRICT ONE AS A CAFETERIA WORKER.

22 **THE COURT:** WHAT SAYS THE CITY?

23 **MS. MANGUM:** YOUR HONOR, PLEASE EXCUSE THIS JUROR.

24 **THE COURT:** THANK YOU, MS. JONES. YOU ARE EXCUSED.  
25 JENNIFER – IS IT LASOVAGE?

1           **MS. LASOVAGE:** LASOVAGE.

2           **THE COURT:** I CAN'T GET IT RIGHT. I'M SORRY, MS. LASOVAGE.

3           **MS. LASOVAGE:** I'M JENNIFER LASOVAGE. I WORK AS A  
4 PARALEGAL AND OFFICE MANAGER FOR THE LYDON (INAUDIBLE) INSURANCE  
5 DEFENSE FIRM IN LEXINGTON, SOUTH CAROLINA. AND MY HUSBAND IS THE  
6 OPERATING PARTNER AT LIBERTY TAP ROOM.

7           **THE COURT:** WHAT SAYS THE CITY?

8           **MS. MANGUM:** PLEASE SEAT THIS JUROR.

9           **MR. COMISH:** PLEASE SEAT THE JUROR, YOUR HONOR.

10          **THE COURT:** COME AROUND. KATIBETH MOL.

11          **MS. MOL:** I'M A PHYSICAL THERAPIST OVER AT DRAYER PHYSICAL  
12 THERAPY AND I'M SINGLE.

13          **MS. MANGUM:** PLEASE SEAT THIS JUROR.

14          **MR. COMISH:** PLEASE EXCUSE THIS JUROR.

15          **THE COURT:** THANK YOU, MS. MOL. YOU ARE EXCUSED. THOMAS  
16 ALLISON.

17          **MR. ALLISON:** MY NAME IS THOMAS ALLISON AND I WORK FOR  
18 MICHELIN TIRE CORPORATION. MY WIFE IS AN E.M.T. WITH RICHLAND COUNTY  
19 E.M.S.

20          **THE COURT:** WHAT SAYS THE CITY?

21          **MS. MANGUM:** PLEASE SEAT THIS JUROR.

22          **MR. COMISH:** PLEASE EXCUSE THIS JUROR.

23          **THE COURT:** THANK YOU, MR. ALLISON. YOU ARE EXCUSED.  
24 ONESHIA DIAMOND-GREEN.

25          **MS. DIAMOND-GREEN:** HELLO. MY NAME IS ONESHIA DIAMOND-

1 GREEN. I'M A PARALEGAL AT ROGERS, THOMPSON AND THOMAS IN THE  
2 FORECLOSURE DEPARTMENT AND I'M DIVORCED

3 THE COURT: WHAT SAYS THE CITY?

4 MS. MANGUM: PLEASE SEAT THIS JUROR.

5 MR. COMISH: PLEASE SEAT THIS JUROR.

6 THE COURT: PLEASE COME AROUND. KAREN WEINKLE.

7 MS. WEINKLE: I'M KAREN WEINKLE AND I WORK AS A TRAINER  
8 AT AGFIRST FARM CREDIT BANK AND I'M SINGLE.

9 THE COURT: WHAT SAYS THE CITY?

10 MS. MANGUM: PLEASE SEAT THIS JUROR.

11 MR. COMISH: PLEASE EXCUSE THIS JUROR.

12 THE COURT: THANK YOU, MA'AM. YOU ARE EXCUSED.  
13 TERRAINIO CUNNINGHAM.

14 MR. CUNNINGHAM: GOOD MORNING. MY NAME IS TERRAINIO  
15 CUNNINGHAM. I'M A HAIR STYLIST AND WHAT ELSE?

16 THE COURT: DO YOU HAVE A SPOUSE?

17 MR. CUNNINGHAM: OH, NO, I'M SINGLE.

18 THE COURT: WHAT SAYS THE CITY?

19 MS. MANGUM: PLEASE EXCUSE THIS JUROR.

20 THE COURT: THANK YOU. YOU ARE EXCUSED. SUSANN  
21 HAIRSTON-HUNT.

22 MS. HAIRSTON-HUNT: HI. MY NAME IS SUSANN HAIRSTON-HUNT.  
23 I'M RETIRED MILIARY AND I WORK AT AMAZON AND MY HUSBAND WORKS AT  
24 STAPLES.

25 MS. MANGUM: PLEASE SEAT THIS JUROR.

1           **MR. COMISH:** PLEASE EXCUSE THIS JUROR.

2           **THE COURT:** THANK YOU, MA'AM. YOU ARE EXCUSED. STEVEN  
3 MOORE.

4           **MR. MOORE:** MY NAME IS STEVEN MOORE. I AM A CORRECTION  
5 OFFICER AT KIRKLAND INSTITUTION. ALSO, I'M IN THE NATIONAL GUARD.  
6 DIVORCED BUT FATHER OF FOUR.

7           **MS. MANGUM:** PLEASE SEAT THIS JUROR.

8           **MR. COMISH:** PLEASE EXCUSE, YOUR HONOR.

9           **THE COURT:** THANK YOU. YOU ARE EXCUSED. JANICE DICKSON.

10          **MS. DICKSON:** I WAS A PARALEGAL AT McDOUGAL AND SELF  
11 FAMILY LAW FIRM. I RECENTLY HAD TO TURN IN MY RESIGNATION BECAUSE I  
12 AM GOING TO CARE FOR MY MOTHER WHO HAS ALZHEIMER'S.

13          **THE COURT:** AND ARE YOU MARRIED?

14          **MS. DICKSON:** I'M DIVORCED.

15          **MS. MANGUM:** PLEASE SEAT THIS JUROR.

16          **MR. COMISH:** PLEASE SEAT, YOUR HONOR.

17          **THE COURT:** ALL RIGHT. PLEASE COME AROUND. SHIRLEY  
18 BRAGGS.

19          **MS. BRAGGS:** MY NAME IS SHIRLEY BRAGGS AND I WORK FOR THE  
20 BABCOCK CENTER AND I TAKE CARE OF MY PARENTS AT HOME. AND I'M  
21 DIVORCED.

22          **MS. MANGUM:** PLEASE EXCUSE THIS JUROR.

23          **THE COURT:** THANK YOU, MS. BRAGGS. YOU ARE EXCUSED.  
24 TIFFANY KAY.

25          **MS. KAY:** I'M TIFFANY KAY. I'M A SPEECH LANGUAGE PATHOL-

1 OGIST AND I WORK AT PALMETTO HEALTH RICHLAND. MY HUSBAND IS IN  
2 SALES IN THE CONSTRUCTION INDUSTRY.

3 MS. MANGUM: PLEASE SEAT THIS JUROR.

4 MR. COMISH: PLEASE SEAT THIS JUROR.

5 THE COURT: PLEASE COME AROUND. ANY OBJECTIONS TO THE  
6 QUALIFICATION OF THE JURY?

7 MS. MANGUM: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT. AND WE ARE IN AGREEMENT THAT WE  
9 ARE WAIVING AN ALTERNATE, IS THAT CORRECT?

10 MS. MANGUM: YES, YOUR HONOR.

11 MR. COMISH: YES, YOUR HONOR.

12 THE COURT: OKAY. SO THE REST OF YOU THANK YOU FOR  
13 COMING.

14 (BALANCE OF VENIRE EXCUSED)

15 THE COURT: DO WE HAVE MATTERS WE NEED TO TAKE UP  
16 BEFORE WE SWEAR THE JURY?

17 MR. COMISH: YES, YOUR HONOR. THE MATTER THAT WE  
18 DISCUSSED BEFORE YOU PULLED THE JURY.

19 THE COURT: OKAY. IF Y'ALL WOULD RETIRE BACK HERE TO THE  
20 JURY ROOM FOR US FOR JUST A FEW MINUTES. WE HAVE SOME MATTERS WE  
21 NEED TO PUT ON THE RECORD. I DON'T THINK IT WILL BE LONG. MS. WILLIAMS  
22 YOU CAN TAKE UP THE CELL PHONES.

23 (JURY LEAVES THE JURY BOX)

24 THE COURT: MR. COMISH.

25 MR. COMISH: YES, YOUR HONOR. I'D LIKE TO BEGIN BY RENEW--

1     ING ALL BRADY AND RIDDLE MOTIONS AND THEN I'D LIKE TO MOVE INTO MY  
2     MOTION TO DISMISS BASED ON THE 6<sup>TH</sup> AMENDMENT SPEEDY TRIAL CLAUSE.

3             THE COURT: OKAY. WHAT WAS THE NATURE OF YOUR BRADY  
4     MOTION?

5             MR. COMISH: I WOULD LIKE TO GET STATEMENTS. I DON'T HAVE  
6     ANY STATEMENTS FROM OFFICER ARNOLD. HIS NAME IS NOWHERE IN MY  
7     DISCOVERY AND THE STATE IS CALLING HIM AS A WITNESS. I HAVE NO IDEA  
8     WHAT HE'S PLANNING TO SAY AND NO IDEA WHAT EVIDENCE HE IS GOING TO  
9     PRESENT.

10            THE COURT: ALL RIGHT. MS. MANGUM, ANYTHING YOU'D LIKE  
11    TO PRESENT?

12            MS. MANGUM: I WOULD JUST POINT OUT, YOUR HONOR, HE'S IN  
13    THE INCIDENT REPORT WHICH WE PROVIDED TO DEFENSE COUNSEL.

14            MR. COMISH: ONE MENTIONED OFFICER ARNOLD. I'M ENTITLED I  
15    BELIEVE TO ANY STATEMENTS THAT HE MADE.

16            MS. MANGUM: I HAVE NO WRITTEN STATEMENTS IF THAT'S WHAT  
17    HE'S ASKING FOR.

18            MR. COMISH: SHE HAS HAD DISCUSSIONS WITH HIM. I SAW HER  
19    HAVE ONE EARLIER IN THE COURTROOM SO SHE KNOWS THINGS THAT I DON'T.

20            THE COURT: WELL, I DON'T THINK SHE HAS TO TELL YOU WHAT  
21    HER DISCUSSIONS ARE WITH THE WITNESS. NOW IF SHE HAS A WRITTEN  
22    STATEMENT I THINK SHE'S GOT TO GIVE IT TO YOU BUT -

23            MS. MANGUM: I HAVE NO WRITTEN STATEMENTS, YOUR HONOR.

24            THE COURT: ALL RIGHT. SO THAT MOTION IS DENIED. YOUR  
25    NEXT MOTION?

1           **MR. COMISH:** THE VIOLATION OF A SPEEDY TRIAL, THE 6<sup>TH</sup>  
2 AMENDMENT, YOUR HONOR, PER DOGGETT VS. U.S. THE SUPREME COURT SET A  
3 (INAUDIBLE) OF SEVENTEEN MONTHS AS BEING A REASONABLE TIME FRAME  
4 FOR A CRIMINAL PROSECUTION. THIS CASE IS NOW FORTY-FIVE MONTHS OLD.  
5 IN STATE V. DOGGETT THE CASE WAS EIGHT AND A HALF YEARS OLD AND THE  
6 SUPREME COURT DISMISSED IT OUTRIGHT. SO PER THAT STANDARD I BELIEVE  
7 THAT THIS CASE QUALIFIES FOR A DISMISSAL.

8           **THE COURT:** OKAY. JUST BECAUSE IT'S BEEN A LONG TIME ON,  
9 THE DOCKET.

10           **MR. COMISH:** FORTY-FIVE MONTHS, YES, YOUR HONOR. AND I  
11 BELIEVE THE SUPREME COURT RULED THAT THERE IS A PER SE PREJUDICE TO  
12 THE DEFENDANT ONCE A CERTAIN TIME FRAME HAS BEEN REACHED.

13           **THE COURT:** OKAY. AND THE TIME FRAME FOR THAT WOULD BE  
14 WHAT?

15           **MR. COMISH:** THERE'S NO BRIGHT LINE. THEIR RULING WAS  
16 OBVIOUSLY EIGHT AND A HALF YEARS IS TOO LONG. SEVENTEEN MONTHS IS  
17 THE STANDARD TO TRIGGER JUDICIAL REVIEW AS TO WHY THE CASE HAS NOT  
18 BEEN CALLED. SO BETWEEN THE SEVENTEEN MONTHS AND THE EIGHT AND A  
19 HALF YEARS THERE'S NO BRIGHT LINE, BUT I WOULD ARGUE THAT THIS FALLS  
20 IN THE LATTER HALF OF THAT TIME FRAME AND THEREFORE SHOULD BE  
21 CONSIDERED AS HAVING PREJUDICED MY DEFENDANT, MY CLIENT.

22           **THE COURT:** ALL RIGHT. MS. MANGUM.

23           **MS. MANGUM:** YOUR HONOR, JUST TO BORROW A PHASE THAT I  
24 TELL MY SON ALL THE TIME YOU CAN'T PUT YOUR HAND IN THE DOGHOUSE  
25 AND THEN COMPLAIN THAT YOU GET BITTEN. SO THE DEFENDANT WAS

1 ARRESTED IN MAY OF 2011. HE REQUESTED A JURY TRIAL IN NOVEMBER OF  
2 THAT YEAR. HE WAITED UNTIL FEBRUARY OF 2012 TO REQUEST A PUBLIC  
3 DEFENDER WHICH THEN PROLONGED THE CASE SOME MORE. THIS CASE CAME  
4 BACK ON THE DOCKET IN JULY OF 2014. THE CITY WAS PREPARED TO GO  
5 FORWARD THAT DAY. THE PUBLIC DEFENDER'S OFFICE ASKED FOR A  
6 CONTINUANCE ON THAT DATE. THIS CASE CAME ON A JURY TRIAL DOCKET IN  
7 FEBRUARY. I ATTEMPTED TO SCHEDULE A JURY TRIAL AT THAT TIME. THE  
8 PUBLIC DEFENDER WAS NOT AVAILABLE AND IT WAS, THEREFORE, SET FOR A  
9 DAY CERTAIN TODAY. SO THE ONLY REASON THAT IT HASN'T GONE FORWARD  
10 IS BECAUSE OF THE DEFENDANT.

11 MR. COMISH: IN RESPONSE I WOULD ARGUE THAT BETWEEN MAY  
12 OF 2011 AND FEBRUARY, 2012, IS ONLY A SEVEN MONTH DELAY GIVING THE  
13 STATE NEARLY A YEAR TO FULFILL ITS RESPONSIBILITIES. I KNOW NOTHING  
14 ABOUT WHY THE CASE WAS CONTINUED IN 2014. HOWEVER, 2014 IS AWFULLY  
15 CLOSE TO BEING A PREJUDICIAL DELAY. I HAVE NO CLUE. I KNOW THAT IT WAS  
16 CALLED FOR TRIAL AND THAT WE ARGUED MOTIONS THAT DAY. AS TO WHY IT  
17 WAS CONTINUED I HAVE ABSOLUTELY NO IDEA BUT EVEN IF IT WAS CONTINUED  
18 THEY COULD HAVE CALLED IT VERY QUICKLY INSTEAD OF DELAYING ANOTHER  
19 NEARLY EIGHT MONTHS

20 MS. MANGUM: YOUR HONOR, IF I MAY. WE ONLY CALL A CASE  
21 ONCE IT'S PLACED ON A JURY TRIAL DOCKET. WE HAVE NO CONTROL OVER  
22 WHEN THAT HAPPENS AND THAT'S NOT THE CITY'S RESEPNOSIBILITY NOR  
23 FAULT. SO IT WOULD BE UNFAIR TO PENALIZE US BECAUSE IT DIDN'T APPEAR  
24 ON THE JURY TRIAL DOCKET. EVERY TIME IT HAS APPEARED ON THE DOCKET  
25 WE HAVE ATTEMPTED TO GO FORWARD.

1           **MR. COMISH:** PER THE SUPREME COURT, IT IS THE CITY'S  
2 RESPONSIBILITY, YOUR HONOR.

3           **MS. MANGUM:** AND, YOUR HONOR, I WOULD JUST SAY I BELIEVE  
4 THAT'S ABSOLUTELY INCORRECT.

5           **MR. COMISH:** I OFFERED HER THE CASE LAW AND SHE REFUSED  
6 TO READ IT AND SO I'M NOT SURE THAT SHE'S QUALIFIED TO OFFER AN OPINION  
7 ON THE RULING U.S. V. DOGGETT.

8           **THE COURT:** OKAY. I THINK I AM.

9           **MR. COMISH:** YES, YOUR HONOR.

10          **THE COURT:** I THINK IT'S NOT. I THINK IT'S THE COURT'S  
11 RESPONSIBILITY TO SCHEDULE MATTERS ON THE DOCKET IN THE MUNICIPAL  
12 COURT. IN THE GENERAL SESSIONS COURT IT IS CLEARLY THE RESPONSIBILITY  
13 OF THE SOLICITOR BUT IN OUR COURT THE SOLICITOR DOES NOT CONTROL THE  
14 DOCKET, THE CITY DOESN'T CONTROL THE DOCKET. THE CITY CAN DECIDE  
15 WHETHER THEY ARE PREPARED TO PROSECUTE BUT THE COURT CONTROLS THE  
16 DOCKET. SO IT APPEARS TO ME THAT THERE ISN'T ANY PREJUDICE TO THE  
17 DEFENDANT SO I AM GOING TO DENY YOUR MOTION.

18          **MR. COMISH:** THANK YOU, YOUR HONOR.

19          **THE COURT:** DO WE HAVE OTHER MOTIONS WE NEED TO TAKE UP  
20 BEFORE WE BRING IN THE JURY?

21          **MR. COMISH:** I BELIEVE THESE ARE ALL OF THE PRETRIAL, YOUR  
22 HONOR. THESE ARE ALL OF THE PRETRIAL, YES.

23          **THE COURT:** ALL RIGHT.

24          **MS. MANGUM:** YOUR HONOR, I JUST WANTED TO PUT ON THE  
25 RECORD - I KNOW WE DISCUSSED IT IN CHAMBERS BUT I JUST WANTED TO BE

1 CLEAR THAT THE LAST TIME THIS CASE DID APPEAR ON THE DOCKET IN  
2 FEBRUARY SGT. WEBB WAS ACTING AS THE PROSECUTOR AT THAT POINT IN  
3 THIS CASE AND HE DID MAKE AN OFFER TO THE DEFENDANT FOR TIME SERVED  
4 ON A GUILTY PLEA. THE DEFENDANT IS NOT INTERESTED IN THAT OFFER. I AM  
5 NOW INVOLVED IN THE CASE. I'VE DONE EXTENSIVE WORK ON THE CASE AND  
6 THE CASE FILE AND IN LOOKING AT THE DEFENDANT'S RAP SHEET AND THE  
7 SPECIFIC FACTS OF THIS CASE I JUST WANT TO BE CLEAR THAT SHOULD WE GET  
8 A GUILTY VERDICT I WILL BE ASKING THE COURT FOR THE FULL THIRTY DAYS  
9 IN THIS CASE.

10 MR. COMISH: I HAVE INFORMED MY CLIENT OF MS. MANGUM'S  
11 POSITION, YOUR HONOR, AND HE STILL WISHES TO GO FORWARD WITH THE  
12 TRIAL.

13 THE COURT: OKAY. THAT'S YOUR WISH TO GO FORWARD WITH  
14 THE TRIAL?

15 DEFENDANT HEYWARD: YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU SO MUCH.

17 (JURY RETURNS TO THE JURY BOX)

18 THE COURT: TELL ME YOUR NAME. MS. KAY?

19 MS. KAY: YES.

20 THE COURT: ALL RIGHT. MS. KAY, I AM GOING TO MAKE YOU THE  
21 FOREPERSON OF THE JURY. YOU'LL HAVE SOME ADDITIONAL RESPONSIBILITIES  
22 BEYOND THE OTHER JURORS. IF I CAN IF I COULD GET Y'ALL TO STAND WITH ME  
23 AND IF YOU'LL RAISE YOUR RIGHT HAND AND YOUR RESPONSE TO THIS WOULD  
24 BE I WILL.

25 (JURY IS DULY SWORN BY THE COURT)

1                   **THE COURT:** LADIES AND GENTLEMEN, THE STATE ALLEGES OR  
2 THE CITY ALLEGES THAT THE DEFENDANT, MR HEYWARD, COMMITTED THE  
3 CRIME OF SIMPLE POSSESSION OF MARIJUANA. THE DEFENDANT HAS PLED NOT  
4 GUILTY AND THAT IS WHAT THIS CASE IS ALL ABOUT. YOU'VE BEEN SELECTED  
5 AS FAIR AND IMPARTIAL JURORS FOR THE PURPOSES TO FIND AND DETERMINE  
6 THE FACTS. YOU ARE THE SOLE JUDGES OF THE FACTS. IF AT ANY TIME I MAKE  
7 A COMMENT ABOUT THE FACTS, YOU MUST DISREGARD IT. YOU ARE TO  
8 DETERMINE THE FACTS FROM THE TESTIMONY YOU HEAR AND OTHER  
9 EVIDENCE THAT IS PRESENTED. YOU SHOULD NOT BE INFLUENCED BY ANY  
10 OPINIONS OR STATEMENTS YOU MAY HAVE HEARD OUTSIDE THIS COURTROOM.  
11 IT IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR DUTIES DILIGENTLY  
12 AND CONSCIENTIOUSLY BECAUSE ORDINARILY THERE'S NO WAY TO CORRECT  
13 AN ERRONEOUS DETERMINATION OF FACT BY A JURY. WHEN YOU COMPLY  
14 WITH YOUR OATH TO IMPARTIALLY DETERMINE THE FACTS OF THIS CASE, YOU  
15 WILL HAVE FULFILLED YOUR DUTY AS JURORS AND NO ONE WILL HAVE A RIGHT  
16 TO CRITICIZE YOUR VERDICT. ON THE OTHER HAND, THE SAME LAW THAT  
17 MAKES YOU THE JUDGES OF THE FACTS MAKES ME THE JUDGE OF THE LAW. THE  
18 LAW AS GIVEN TO YOU BY THE COURT IS THE ONLY LAW YOU MAY CONSIDER.  
19 YOU MUST ACCEPT AND FOLLOW IT EVEN THOUGH YOU MIGHT DISAGREE WITH  
20 IT OR DISAGREE WITH ME ABOUT WHAT THE LAW SHOULD BE. YOUR JOB IS TO  
21 TAKE THE LAW AS I GIVE IT TO YOU AND APPLY IT TO THE FACTS AS YOU FIND  
22 THEM FROM THE TESTIMONY OF THE WITNESSES AND ANY OTHER EVIDENCE  
23 THAT IS PRESENTED. AFTER DOING THAT YOU WILL RENDER YOUR VERDICT, A  
24 TRUE AND JUST VERDICT UNDER THE SOLEMN OATH THAT YOU JUST TOOK AS  
25 JURORS. UNTIL I TELL YOU TO BEGIN DELIBERATING, YOU MUST NOT DISCUSS

1 THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW JURORS, FRIENDS, FAMILY  
2 MEMBERS AND ANYONE INVOLVED IN THE CASE. AFTER THE CASE IS  
3 SUBMITTED TO YOU, YOU MUST DISCUSS IT ONLY IN THE JURY ROOM WITH  
4 YOUR FELLOW JURORS. THE ATTORNEYS AND THE PARTIES IN THIS CASE KNOW  
5 THEY CANNOT TALK WITH YOU AT ALL SO IF YOU SEE ANYONE INVOLVED IN  
6 THE CASE AND THEY DON'T SPEAK TO YOU, THEY ARE NOT BEING UNFRIENDLY.  
7 THEY ARE JUST FOLLOWING THE LAW AND MY INSTRUCTIONS.

8 NOW IN JUST A FEW MINUTES THE CITY ATTORNEY IS GOING TO  
9 MAKE WHAT IS CALLED AN OPENING STATEMENT AND THE ATTORNEY WILL  
10 EXPLAIN TO YOU THE ISSUES IN THIS CASE OR AT LEAST WHAT SHE THINKS THE  
11 ISSUES ARE IN THIS CASE. THE ATTORNEY FOR THE DEFENDANT WILL ALSO  
12 MAKE AN OPENING STATEMENT. WHAT THE ATTORNEYS TELL YOU IN THEIR  
13 OPENING STATEMENTS IS NOT EVIDENCE. IT IS ONLY THEIR CONTENTION AS TO  
14 WHAT THE ISSUES ARE. THE EVIDENCE IN THIS CASE WILL BE PRESENTED TO  
15 YOU BY TESTIMONY FROM SWORN WITNESSES FROM THE WITNESS STAND AND  
16 PERHAPS BY EXHIBITS THAT MAY BE INTRODUCED INTO EVIDENCE. IN  
17 DETERMINING WHAT THE FACTS ARE IN THE CASE, YOU MUST DECIDE WHETHER  
18 OR NOT THE TESTIMONY OF THE WITNESS IS BELIEVABLE. IT WILL BE MY  
19 RESPONSIBILITY TO RULE AS A MATTER OF LAW AS TO WHETHER CERTAIN  
20 TESTIMONY IS ADMISSIBLE AT ALL, BUT ONCE THE TESTIMONY IS ADMITTED  
21 YOU MUST DETERMINE WHETHER OR NOT YOU BELIEVE IT. IN DECIDING  
22 WHETHER TO BELIEVE A WITNESS, YOU HAVE A RIGHT TO CONSIDER WHETHER  
23 THE WITNESS HAS AN INTEREST IN THE RESULT OF THE TRIAL, WHETHER THE  
24 WITNESS IS PREJUDICED FOR EITHER THE CITY OR THE DEFENDANT, THE  
25 OPPORTUNITY FOR THE WITNESS TO HAVE SEEN MATTERS AND THINGS ABOUT

1 WHICH THE WITNESS MAY TESTIFY AND THE WAY THE WITNESS ACTS ON THE  
2 WITNESS STAND. YOU HAVE THE RIGHT TO CONSIDER ANYTHING THAT'S IN THE  
3 RECORD THAT WILL HELP YOU EVALUATE THE TESTIMONY OF THE WITNESSES.  
4 THAT MEANS IT'S YOUR DUTY TO PAY CLOSE ATTENTION TO THE WITNESSES, TO  
5 OBSERVE WITNESSES, TO LISTEN TO THE WITNESSES AND TO PAY CLOSE  
6 ATTENTION TO THE ATTORNEYS AND TO THE COURT. DON'T LET YOUR  
7 THOUGHTS WANDER BUT PAY ATTENTION TO THE TESTIMONY SO THAT AT THE  
8 END OF THE TRIAL YOU'LL BE ABLE TO DETERMINE WHAT THE TRUE FACTS ARE,  
9 TO APPLY THE LAW TO THOSE FACTS AND TO RENDER A TRUE AND JUST  
10 VERDICT.

11 NOW IT'S YOUR ADDED DUTY, MS. KAY, TO PRESIDE IN THE JURY  
12 ROOM AND BE THE JURY SPOKESPERSON HERE IN THE COURTROOM.

13 ALL RIGHT. ANY OBJECTIONS FROM EITHER SIDE?

14 MS. MANGUM: NONE, YOUR HONOR.

15 MR. COMISH: NONE, YOUR HONOR.

16 THE COURT: NOW IF YOU NEED A BREAK, JUST GIVE ME A SIGNAL.  
17 OKAY. SO WE'LL DO OPENING STATEMENTS AND THEN SEE WHERE WE ARE AND  
18 MIGHT TAKE A BREAK THEN.

19 MS. MANGUM: GOOD MORNING OR GOOD AFTERNOONISH - SORT  
20 OF IN BETWEEN. WE HAVE A SIMPLE CASE FOR YOU TODAY AND IT'S BASED ON  
21 SOME SIMPLE FACTS. YOU ARE GOING TO HEAR FROM OFFICERS TODAY WHO  
22 ARE PART OF A VERY SPECIAL UNIT WITH COLUMBIA POLICE DEPARTMENT.  
23 THEY ARE PART OF THE - OR WERE AT THE TIME -- PART OF THE DRUG  
24 SUPPRESSION TEAM. AND THEY RECEIVED A TIP THAT THERE WAS AN  
25 APARTMENT THAT DRUGS WERE BEING SOLD OUT OF AND SO BASED ON THAT

1 INFORMATION OFFICER ARNOLD - AND I INTRODUCED HIM EARLIER - WENT OUT  
2 TO THE APARTMENT AND DID SOME SURVEILLANCE. HE WAS IN AN UNMARKED  
3 POLICE CAR AND COMING OUT OF THE APARTMENT MATCHING THE  
4 DESCRIPTION THAT THEY WERE GIVEN WAS THAT DEFENDANT. WHEN HE SAW  
5 THAT DEFENDANT LEAVE THE APARTMENT HE RADIOED ANOTHER OFFICER  
6 WHO WAS IN A COLUMBIA POLICE DEPARTMENT CAR ALSO WORKING DRUG  
7 SUPPRESSION. THAT OFFICER LOCATED THAT DEFENDANT DRIVING HIS  
8 VEHICLE AND SAW HIM COMMIT TWO TRAFFIC VIOLATIONS. BASED ON THOSE  
9 VIOLATIONS, OFFICER WEBB - I'M SORRY, SGT. WEBB - PULLED THE DEFENDANT  
10 OVER. HE MADE A LAWFUL STOP AND DURING THAT LAWFUL STOP SGT. WEBB --  
11 WHO IS IN THE BACK AND I INTRODUCED HIM EARLIER ALSO - ALSO A MEMBER  
12 OF THAT DRUG SUPPRESSION TEAM, ARRIVED WITH HIS K-9, WITH HIS DOG, WITH  
13 HIS POLICE DOG. THAT DOG DID A CHECK ON THE CAR, MADE A HIT FOR  
14 NARCOTICS. AND IN THE EXACT SPOT WHERE THAT DOG MADE THAT HIT SGT.  
15 WEBB AND SGT. WILLIAMS FOUND A PILL BOTTLE AND IN THAT PILL BOTTLE  
16 THEY FOUND MARIJUANA. AND YOU ARE ALSO GOING TO HEAR TODAY FROM  
17 OFFICER POTASH WHO TESTED THAT MARIJUANA, WHO PROVED CONCLUSIVELY  
18 THAT WHAT WAS FOUND IN THE VEHICLE WITH THAT DEFENDANT THAT DAY  
19 WAS MARIJUANA. AND SO AFTER YOU HEAR ALL OF THOSE FACTS WE ARE  
20 GOING TO ASK YOU TO COME BACK AND FIND THIS DEFENDANT GUILTY OF  
21 SIMPLE POSSESSION OF MARIJUANA. THANK YOU.

22 MR. COMISH: MAY IT PLEASE THE COURT. GOOD MORNING  
23 OR GOOD AFTERNOON AGAIN. I'M JONATHAN COMISH. I REPRESENT THE  
24 DEFENDANT, MR. CEDRIC HEYWARD, IN THIS TRIAL. NOW THE CITY HAS  
25 CHARGED MR. HEYWARD WITH SIMPLE POSSESSION OF MARIJUANA AND WHAT

1 THAT MEANS IS THE STATE HAS THE BURDEN TO PROVE TO YOU THE ELEMENTS  
2 OF THAT CRIME. THERE ARE THREE ELEMENTS OF THAT CRIME. THE STATE  
3 MUST PROVE THAT HE KNOWINGLY OR INTENTIONALLY POSSESSED  
4 MARIJUANA. THEY MUST PROVE TO YOU EACH AND EVERY ELEMENT OF THE  
5 CRIME IN ORDER FOR YOU TO BE ABLE TO FIND HIM GUILTY. NOW, I AS THE  
6 DEFENSE DON'T HAVE TO PROVE ANYTHING TO YOU. I DON'T HAVE TO EVEN  
7 PUT ON A CASE SO WHAT I'M GOING TO DO IS JUST DISCUSS THE STATE'S CASE  
8 FOR JUST A BRIEF SECOND. I'M GOING TO TELL YOU WHAT THEY CAN SHOW  
9 YOU AND WHAT THEY CAN'T. HERE'S WHAT THEY CAN SHOW YOU. THEY WERE  
10 SURVEILLING ONE APARTMENT. MY DEFENDANT, MR. HEYWARD, WALKED OUT  
11 OF A DIFFERENT APARTMENT. THEY DID TRAIL HIM AS HE WAS DRIVING HIS  
12 SISTER'S CAR. HE WAS DRIVING HIS SISTER'S CAR TO HIS SISTER'S SHOP TO PICK  
13 HIS SISTER UP. AFTER STOPPING THE CAR, THEY ASKED HIM TO LEAVE. THEY  
14 BROUGHT THE K-9. THE K-9 FOUND A GREEN LEAFY SUBSTANCE HIDDEN IN THE  
15 DASHBOARD OF THE CAR THAT DOES NOT EVEN BELONG TO MY CLIENT, AND  
16 THEN THEY ARRESTED HIM. THAT'S WHAT THEY CAN SHOW YOU. HERE'S WHAT  
17 THEY CAN'T SHOW YOU. OKAY? THEY CAN'T SHOW YOU THAT HE EVER  
18 TOUCHED THE WEED - EXCUSE ME, THE SUBSTANCE. THEY CAN'T SHOW YOU  
19 THAT HE EVER SAW THE SUBSTANCE UNTIL THE POLICE OFFICER PULLED IT OUT  
20 OF THE HIDING SPOT BEHIND THE DASH. AND I SUBMIT TO YOU, LADIES AND  
21 GENTLEMEN, THAT THEY CANNOT PROVE THAT HE EVER HAD ANY KNOWLEDGE  
22 OF THAT SUBSTANCE BEING HIDDEN IN A COMPARTMENT BEHIND THE  
23 DASHBOARD OF THE CAR THAT DID NOT EVEN BELONG TO MY CLIENT.  
24 THEREFORE, AT THE END OF THIS TRIAL WHEN WE DO CLOSING ARGUMENTS  
25 I WILL COME BACK TO YOU AND ASK THAT YOU RETURN A VERDICT OF NOT

1 GUILTY. THANK YOU VERY MUCH.

2 THE COURT: THANK YOU.

3 MS. MANGUM: YOUR HONOR, THE CITY CALLS OFFICER ARNOLD.

4 RONNIE G. ARNOLD, AFTER BEING DULY SWORN BY THE COURT,

5 TESTIFIES AS FOLLOWS:

6 DIRECT EXAMINATION BY

7 MS. MANGUM:

8 Q. CAN YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

9 A. RONNIE ARNOLD.

10 Q. AND, OFFICER ARNOLD, WHAT'S YOUR OCCUPATION?

11 A. I'M AN OFFICER ASSIGNED TO THE NARCOTICS UNIT HERE WITH THE CITY  
12 COLUMBIA.

13 Q. AND CURRENTLY WHAT DO YOU DO FOR THE CITY OF COLUMBIA POLICE  
14 DEPARTMENT?

15 A. I'M A TASK FORCE OFFICER FOR THE LAST TWO YEARS ASSIGNED TO THE  
16 DRUG ENFORCEMENT ADMINISTRATION.

17 Q. SO DAY-TO-DAY WHAT DOES YOUR JOB ENTAIL?

18 A. I INVESTIGATE PRESCRIPTION PILL CASES, THE ABUSE OF PRESCRIPTION  
19 PILL CASES ACROSS THE ENTIRE STATE OF SOUTH CAROLINA.

20 Q. AND PRIOR TO DOING THAT, WHAT DID YOU DO WITH C.P.D.?

21 A. I WAS ASSIGNED TO THE DRUG SUPPRESSION TEAM UNIT.

22 Q. AND WHAT DID THE DRUG SUPPRESSION TEAM DO?

23 A. WE TOOK COMMUNITY COMPLAINTS, LOWER TIER COMPLAINTS THAT  
24 WASN'T NECESSARILY LONG TERM INVESTIGATIONS, THEY WERE JUST  
25 COMMUNITY COMPLAINTS. AND SGT. WILLIAMS WOULD RECEIVE THE COM-

1 PLANTS AND WE'D GO OUT AND INVESTIGATE THOSE COMPLAINTS.

2 Q. AND YOU WERE A MEMBER OF THE TEAM THAT DID THAT?

3 A. FOR TWO YEARS, YES, MA'AM.

4 Q. AND PRIOR TO THAT, WHAT DID YOU DO?

5 A. I WORKED AT RICHLAND COUNTY SHERIFF'S DEPARTMENT FOR SEVEN  
6 YEARS AND THREE OUT OF THE SEVEN YEARS I WAS ASSIGNED WITH RICHLAND  
7 COUNTY AS A DRUG SUPPRESSION TEAM MEMBER.

8 Q. AND WHY DID YOU MAKE THE SWITCH FROM RICHLAND COUNTY TO THE  
9 COLUMBIA POLICE DEPARTMENT?

10 A. AT THAT TIME, THE STAFF THAT WAS IN CHARGE HERE AT THE CITY HAD  
11 ASKED ME WOULD I BE INTERESTED IN COMING OVER TO ASSIST STARTING UP A  
12 A DRUG SUPPRESSION TEAM UNIT.

13 Q. SO IS IT FAIR TO SAY YOU HAVE SIGNIFICANT EXPERIENCE WORKING  
14 WITH NARCOTICS AND THE POLICE DEPARTMENT?

15 A. YES.

16 Q. AND PRIOR TO RICHLAND COUNTY WERE YOU ALSO IN LAW  
17 ENFORCEMENT?

18 A. UH-HUH. FOUR AND A HALF YEARS AT FAIRFIELD COUNTY SHERIFF'S  
19 DEPARTMENT.

20 Q. WHEN YOU WORKED THE DRUG SUPPRESSION TEAM WITH THE CITY OF  
21 COLUMBIA, WHO ELSE WORKED ON THAT TEAM WITH YOU?

22 A. SGT. WILLIAMS, SGT. WEBB, OFFICER CARRIZALES, OFFICER PAUL MYERS,  
23 AND OFFICER MAYS.

24 Q. IS IT FAIR TO SAY IT WAS A SMALL TEAM?

25 A. OH, YEAH. YES, MA'AM.

1    Q.     AND IN MAY, 2011, WHAT WERE YOUR DUTIES WITH C.P.D.?

2    A.     I WAS ASSIGNED TO THE DRUG SUPPRESSION TEAM TO HANDLE, LIKE I  
3    SAID, THE COMPLAINTS THAT WE WOULD RECEIVE TO GO OUT AND ADDRESS  
4    THOSE COMPLAINTS.

5    Q.     AND AT THAT TIME AND AS A MEMBER OF THE DRUG SUPPRESSION TEAM  
6    WHO WAS YOUR SUPERVISOR?

7    A.     SGT. REYNOLDS.

8    Q.     ON MAY - I'M GOING TO ASK YOU SPECIFICALLY ABOUT THE DATE OF  
9    MAY 27<sup>TH</sup>, 2011. WHAT WERE YOU DOING THAT DAY?

10   A.     I WAS CONDUCTING SURVEILLANCE OF A COMPLAINT, COMMUNITY  
11   COMPLAINT THAT WE HAD RECEIVED ABOUT DRUGS BEING SOLD IN AN  
12   APARTMENT COMPLEX. AND SO I WENT OUT TO DETERMINE THE VALIDITY TO  
13   SEE, YOU KNOW, IF EVERYTHING MATCHED UP WITH THE TIP WE WERE  
14   RECEIVING.

15   Q.     WERE YOU THERE WITH PERMISSION FROM ANYBODY TO BE AT THE  
16   APARTMENT COMPLEX?

17   A.     WELL, WE HAVE JURISDICTIONAL RIGHTS AT THAT APARTMENT, THAT  
18   PARTICULAR APARTMENT COMPLEX, TO BE ON THE PROPERTY.

19   Q.     AND WHAT DOES JURISDICTIONAL RIGHTS MEAN?

20   A.     THE MANAGEMENT COMPANY, IF YOU WILL, WILL SIGN OVER  
21   JURISDICTIONAL RIGHTS AUTHORIZING THE POLICE COME IN ANY TIME  
22   UNWARRANTED IF YOU WILL TO DO THE NECESSARY JOB WITHOUT SOMEONE  
23   HAVING TO CALL NINE, ONE, ONE ASKING FOR THE POLICE. WE COULD COME IN  
24   TO DO OUR JOBS.

25   Q.     AND WHY WOULD - WELL, WHAT WAS THE NAME OF THIS APARTMENT

1 COMPLEX? DO YOU RECALL?

2 A. (INAUDIBLE).

3 Q. WHY WOULD THE MANAGEMENT THERE GIVE YOU JURISDICTIONAL  
4 RIGHTS?

5 A. IT'S NOTORIOUS FOR CRIME.

6 Q. IS THERE ANY KIND OF PARTICULAR CRIME THAT IT'S NOTORIOUS FOR?

7 A. SAD TO SAY IN THESE NEIGHBORHOODS DRUGS BEING A DOMINANT  
8 CRIME. FAST MONEY AND SEEMS TO PREY ON MORE OF THE POOR.

9 Q. SO YOU WERE THERE WITH PERMISSION OF THE MANAGEMENT LOOKING  
10 FOR DRUG SALES IN WHAT KIND OF VEHICLE?

11 A. I WAS IN A WHITE PICKUP TRUCK IF I RECALL.

12 Q. AND WHILE YOU WERE IN THAT WHITE PICKUP TRUCK ON THAT TIP WITH  
13 PERMISSION TO BE THERE, WHAT DID YOU OBSERVE?

14 A. THE COMPLAINT GAVE A DESCRIPTION OF A SUBJECT, SELLING  
15 NARCOTICS OUT OF AN APARTMENT. I SAW A SUBJECT LEAVE THAT MORNING  
16 MATCHING THAT DESCRIPTION IN THAT AREA AND SO WHEN I FOLLOWED IT  
17 OUT OF THE APARTMENT COMPLEX I CALLED FOR A MARKED UNIT SINCE THE  
18 VEHICLE I WAS IN IS NOT EQUIPPED WITH A RADIO, FLASHING LIGHT OR SIREN.

19 Q. WHY WOULD THAT BE A PROBLEM?

20 A. YOU KNOW, IF YOU GO TO STOP SOMEONE YOU WANT TO MAKE SURE  
21 THAT THEY KNOW IT'S THE POLICE.

22 Q. SO YOU MENTIONED THAT YOU CALLED A MARKED UNIT TO RESPOND?

23 A. YES, MA'AM.

24 Q. WHO RESPONDED TO THAT CALL?

25 A. SGT. WEBB.

1 Q. AND AT THAT POINT DID YOU HAVE ANY FURTHER INTERACTION IN  
2 TERMS OF THE STOP THAT TOOK PLACE?

3 A. NO. IT - I JUST GAVE THE DIRECTION THAT THE VEHICLE WAS HEADED IN,  
4 POSSIBLY A PERSON OF INTEREST, AT WHICH TIME SGT. WEBB FELL IN BEHIND  
5 THE VEHICLE.

6 Q. THE MAN THAT YOU SAW LEAVING THAT APARTMENT, TODAY IS HE IN  
7 THE COURTROOM?

8 A. YES.

9 Q. CAN YOU POINT HIM OUT?

10 A. YES. MR. HEYWARD.

11 MS. MANGUM: I HAVE NO FURTHER QUESTIONS.

12 THE COURT: MR. COMISH.

13 MR. COMISH: MAY IT PLEASE THE COURT.

14 CROSS EXAMINATION BY

15 MR. COMISH:

16 Q. GOOD MORNING, OFFICER ARNOLD.

17 A. GOOD MORNING.

18 Q. I JUST HAVE A FEW QUICK QUESTIONS FOR YOU. COULD YOU GO OVER  
19 THE TIP AGAIN FOR ME REAL QUICK? WAS THE TIP ABOUT A PERSON OR A  
20 PLACE?

21 A. BOTH.

22 Q. IT WAS ABOUT BOTH BECAUSE IN THE INCIDENT REPORT WHICH I'M SURE  
23 YOU'RE WELL AWARE ALL I SEE IS A COMPLAINT THAT DRUGS WERE SOLD  
24 FROM THIS APARTMENT.

25 MS. MANGUM: YOUR HONOR, OBJECTION. THERE'S NO QUESTION

1 THERE.

2 **THE COURT:** YEAH. IS THERE A QUESTION THERE OR IS THAT A  
3 STATEMENT?

4 **MR. COMISH:** THAT IS A QUESTION.

5 **Q.** (BY MR. COMISH) IS THIS CORRECT?

6 **A.** WELL, YOU'VE GOT THE REPORT.

7 **Q.** WOULD YOU LIKE (INAUDIBLE) TO REFRESH YOUR MEMORY?

8 **A.** I'VE SEEN THE REPORT.

9 **Q.** OKAY. WOULD YOU SAY THAT YOUR UNIT IS A VERY SPECIALIZED ELITE  
10 UNIT THAT YOU WERE IN, THE DRUG SUPPRESSION TEAM?

11 **A.** I LIKE TO THINK SO.

12 **Q.** YOU LIKE TO THINK SO. SO DO YOU RECALL WHAT SPECIFIC APARTMENT  
13 THE COMPLAINT WAS ABOUT?

14 **A.** NO. WE WERE JUST GIVEN THE APARTMENT BUILDING.

15 **Q.** SO I HAVE A TRANSCRIPT HERE OF THE CONVERSATION - I BELIEVE THIS  
16 IS YOU - YOU HAD WITH OFFICER WEBB?

17 **MS. MANGUM:** YOUR HONOR, OBJECTION.

18 **MR. COMISH:** HE SAYS HE DOESN'T REMEMBER AND I HAVE A  
19 STATEMENT. I'M JUST ASKING TO REFRESH HIS MEMORY AS TO WHETHER HE  
20 KNEW - I MEAN I HAVEN'T EVEN ASKED MY QUESTION AND SHE'S OBJECTING.

21 **MS. MANGUM:** THERE IS NO FOUNDATION FOR A TRANSCRIPT.

22 **THE COURT:** WHERE DID THIS -

23 **MR. COMISH:** THIS IS A VIDEO - THE STATE'S VIDEO WHICH I  
24 ASSUME THEY ARE GOING TO INTRODUCE.

25 **THE COURT:** LET'S HAVE A SIDEBAR.

1 (BENCH CONFERENCE OFF THE RECORD)

2 THE COURT: ALL RIGHT. THE JURY WILL DISREGARD ANY  
3 REFERENCE TO ANY KIND OF TRANSCRIPT.

4 Q. (BY MR. COMISH) DO YOU RECALL A CONVERSATION WITH OFFICER  
5 WEBB?

6 A. NO.

7 Q. YOU DON'T RECALL ANY CONVERSATION WITH OFFICER WEBB?

8 A. IT'S LIKE FOUR YEARS, THREE YEARS AGO.

9 Q. I UNDERSTAND. BUT YOU SPOKE VERY CLEARLY THAT YOU REMEMBER  
10 MY CLIENT, IS THAT RIGHT? THAT YOU REMEMBER VERY WELL THE  
11 CIRCUMSTANCES OF THAT DAY?

12 A. YES. AS FAR AS SPECIFICS, NO, I DON'T RECALL.

13 Q. SO YOU DON'T RECALL HAVING ANY CONVERSATIONS WITH OFFICER  
14 WEBB THAT DAY?

15 A. NO.

16 MR. COMISH: OKAY. THANK YOU. NO FURTHER QUESTIONS.

17 THE COURT: ANY ON REDIRECT?

18 MS. MANGUM: YOUR HONOR, I'VE GOT JUST ONE POINT TO  
19 CLARIFY.

20 REDIRECT EXAMINATION BY

21 MS. MANGUM:

22 Q. THE REPORT THAT WAS REFERENCED EARLIER, IS THAT YOUR REPORT?

23 A. NO.

24 Q. DID YOU WRITE A REPORT THAT DAY?

25 A. NO, THAT'S SGT. WEBB'S REPORT.

1 Q. WERE YOU THE ARRESTING OFFICER THAT DAY?

2 A. NO, MA'AM.

3 MS. MANGUM: THANK YOU. THAT'S ALL.

4 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

5 (WITNESS TO THE SIDE)

6 THE COURT: MAY WE EXCUSE THIS OFFICER?

7 MS. MANGUM: YOUR HONOR, I'M FINE TO EXCUSE HIM.

8 MR. COMISH: I'M GOOD WITH EXCUSING HIM, YOUR HONOR.

9 THE COURT: THANK YOU.

10 MS. MANGUM: YOUR HONOR, AT THIS TIME WE'LL CALL SGT.

11 WEBB.

12 ROBERT B. WEBB, AFTER BEING DULY SWORN BY THE COURT,

13 TESTIFIES AS FOLLOWS:

14 DIRECT EXAMINATION BY

15 MS. MANGUM:

16 Q. SGT. WEBB, CAN YOU STATE YOUR NAME FOR THE RECORD.

17 A. BOYD WEBB.

18 Q. AND WHAT'S YOUR OCCUPATION?

19 A. I'M A SERGEANT WITH THE COLUMBIA POLICE DEPARTMENT IN THE WEST

20 REGION DIVISION.

21 Q. AND HOW LONG HAVE YOU BEEN WITH C.P.D.?

22 A. I'VE BEEN WITH THE COLUMBIA POLICE DEPARTMENT FOR TEN AND A

23 HALF YEARS.

24 Q. AND I THINK YOU SAID CURRENTLY YOU ARE - WHERE ARE YOU

25 ASSIGNED?

1    A.     TO THE WEST REGION.

2    Q.     WHAT DOES THAT MEAN, WEST REGION?

3    A.     WE'VE GOT FIVE DIFFERENT REGIONS. WEST REGION IS OUT IN THE  
4    HARBISON AREA. WE'VE GOT NORTH REGION WHICH IS THE EAU CLAIRE AREA.  
5    SOUTH REGION WHICH IS ROSEWOOD. METRO IS BASICALLY DOWNTOWN AND  
6    EAST REGION WHICH IS OUT AT SANDHILLS.

7    Q.     AND AS A SERGEANT THERE WHAT DO YOU DO ON A DAY-TO-DAY BASIS?

8    A.     DAY-TO-DAY BASIS IS I ARRIVE, MAKE SURE ALL MY OFFICERS ARE  
9    INFORMED OF NEW E-MAILS THAT CAME OUT, ANY CHANGES IN POLICY AND  
10   PROCEDURES AND SO FORTH. MAKE SURE THROUGHOUT THE DAY THAT THEY  
11   ARE DOING WHAT THEY ARE SUPPOSED TO DO TAKING CALLS AND SO FORTH  
12   AND ANSWERING ANY QUESTIONS THEY MAY HAVE.

13   Q.     SO FOR THOSE OF US THAT MIGHT BE UNFAMILIAR WITH RANKING, WHAT  
14   DOES IT MEAN TO BE A SERGEANT?

15   A.     A SERGEANT IS BASICALLY THE PERSON WHO RUNS THE SQUADS OUT  
16   HERE WHICH IS "A" SQUAD IS A GROUP OF INDIVIDUALS THAT ARE OFFICERS  
17   THAT ARE IN CHARGE OF TAKING CALLS IN THE AREA.

18   Q.     AND WHEN AN OFFICER STARTS AT C.P.D. AS A NEW OFFICER, WHAT IS  
19   THEIR RANK THERE?

20   A.     WELL, THEY ARE JUST - WELL, I SHOULDN'T SAY JUST PATROLMEN BUT  
21   THEY COME IN AS A PATROLMAN, THEN THEY CAN BE PROMOTED TO A MASTR  
22   PATROLMAN. SEVERAL YEARS DOWN THE ROAD IF THEY ARE - I WON'T SAY  
23   LUCKY BUT IF THEY WORK HARD ENOUGH THEY CAN BE PROMOTED TO A  
24   CORPORAL AND THEN YOU'VE GOT THE RANK OF SERGEANT.

25   Q.     AND IS IT FAIR TO SAY THAT NOT EVERYBODY BECOMES A SERGEANT

1 JUST BECAUSE OF TIME SPENT IN THE OFFICE?

2 A. NO.

3 Q. PRIOR TO BEING A SERGEANT IN YOUR REGION, WHAT DID YOU DO FOR  
4 C.P.D.?

5 A. PRIOR THAT, I WAS A CORPORAL. ACTUALLY, I JUST GOT MOVED OUT TO  
6 THE WEST REGION. I WAS A SERGEANT IN THE SOUTH REGION FOR ABOUT TWO  
7 AND A HALF YEARS. THEN I WAS A CORPORAL IN THE METRO REGION. PRIOR TO  
8 THAT I WAS ON THE DRUG SUPPRESSION TEAM AND BEFORE THAT MYSELF AND  
9 SGT. WILLIAMS, WE WERE ON AN INTERSTATE DRUG TEAM WHERE BASICALLY  
10 THE MAJORITY OF THE TIME WE WORKED JUST THE INTERSTATE. AND THEN  
11 THAT TRANSITIONED INTO A DRUG SUPPRESSION TEAM.

12 Q. SO IT IS FAIR TO SAY THAT YOU HAVE AN EXTENSIVE AMOUNT OF  
13 EXPERIENCE NOT JUST IN LAW ENFORCEMENT, BUT WITH DRUG ENFORCEMENT?

14 A. ABSOLUTELY.

15 Q. IN MAY, 2011, WHAT WAS YOUR ASSIGNMENT?

16 A. I WAS ACTUALLY A MASTER PATROLMAN ON THE DRUG SUPPRESSION  
17 TEAM.

18 Q. AND HOW DID YOU COME INTO CONTACT WITH THAT DEFENDANT THAT  
19 DAY?

20 A. I REMEMBER THAT OFFICER ARNOLD WAS ACTING AS OUR UNDERCOVER  
21 OFFICER. A LOT OF TIMES WE WOULD TRADE OFF BUT IT WAS HIS DAY TO  
22 WORK UNDERCOVER AND HE RADIOED THAT AN INDIVIDUAL HAD JUST LEFT  
23 THE BUILDING THAT HE WAS WATCHING.

24 Q. AND SO WHAT DID YOU DO?

25 A. I GOT IN - I FOUND THE VEHICLE AFTER GETTING A DESCRIPTION FROM

1 OFFICER ARNOLD. I THEN FOLLOWED THE VEHICLE UNTIL HE MADE A TRAFFIC  
2 VIOLATION.

3 Q. AND WHEN YOU SAY HE MADE A TRAFFIC VIOLATION, WHAT  
4 SPECIFICALLY DID YOU SEE THE DEFENDANT DOING WHILE DRIVING HIS  
5 VEHICLE?

6 A. WELL, ON FAIRFIELD ROAD COMING UP TO MAIN STREET THERE'S A LOT  
7 OF CONSTRUCTION GOING ON. HE ACTUALLY MADE A - AND JUST SO YOU'LL  
8 KNOW WHEN YOU ARE GOING DOWN THE STREET IF THERE'S A TWO-LANE ROAD  
9 BOTH LANES WOULD BE NUMBER ONE BUT IF IT'S TWO LANES ON BOTH SIDES  
10 THE FIRST LANE IS GOING TO BE NUMBER ONE LANE, THE SECOND ONE - THE  
11 OUTER LANE IS GOING TO BE NUMBER TWO AND SO FORTH. HE WAS ACTUALLY  
12 DRIVING IN THE NUMBER TWO LANE WHICH IS THE OUTSIDE LANE. HE MADE A  
13 LANE CHANGE BEHIND ANOTHER VEHICLE ENTIRELY TOO CLOSE WHICH IS A  
14 HUGE ISSUE FOR US IN THE CITY OF COLUMBIA AS FAR AS WRECKS ARE  
15 CONCERNED. AND NOT ONLY THAT, IN THE DISTANCE I WAS FOLLOWING HIM I  
16 COULD NOT SEE A TURN SIGNAL BEING USED EITHER.

17 Q. SO WHEN YOU SAW HIM COMMIT THOSE TWO VIOLATIONS WHAT DID YOU  
18 DO NEXT?

19 A. I WAITED UNTIL WE GOT PAST THE CONSTRUCTION BECAUSE IT WENT  
20 FROM TWO TO ONE LANE. YOU HAVE A LOT OF DIRT AND SO FORTH THERE SO I  
21 THEN, FROM MY TRAFFIC DAYS, WE WAIT UNTIL WE GET TO A SAFE LOCATION  
22 AND WE THEN INITIATE A TRAFFIC STOP.

23 Q. AND WHAT HAPPENED AFTER YOU INITIATED THAT TRAFFIC STOP? WHAT  
24 DID YOU DO FIRST?

25 A. WELL, FIRST OF ALL, I MADE CONTACT WITH MR. HEYWARD WHICH WAS

1 THE DRIVER AND SOLE OCCUPANT IN THAT VEHICLE. I REQUESTED HIS  
2 DRIVER'S LICENSE, REGISTRATION AND PROOF OF INSURANCE.

3 Q. AND DID HE GIVE YOU A DRIVER'S LICENSE?

4 A. I BELIEVE HE DID. I MEAN IT'S BEEN A WHILE AS FAR AS WHAT -  
5 SPECIFICALLY WHAT OCCURRED BUT, YES, I BELIEVE HE DID.

6 Q. AND SO ONCE YOU GOT THAT INFORMATION FROM HIM, WHAT DID YOU  
7 DO NEXT?

8 A. RIGHT AFTER I GOT THE INFORMATION, I THINK WE TALKED ABOUT THE  
9 VIOLATION THAT I STOPPED HIM FOR. HE TURNED ON HIS TURN SIGNAL, I  
10 CHECKED IT AGAIN. IT DID APPEAR IT WAS WORKING (INAUDIBLE) BUT I'M  
11 ONLY A FEW FEET AWAY FROM IT AT THAT POINT IN TIME. THEN I MADE  
12 CONTACT WITH HIM AGAIN. I ADVISED HIM THAT I DID SEE IT WORKING AT  
13 THAT TIME. THEN I BELIEVE I WENT BACK TO MY VEHICLE AND RETRIEVED MY  
14 WARNING TICKET BOOK.

15 Q. AT ANY TIME DURING THAT VERY INITIAL PART OF THE STOP DID THE  
16 DEFENDANT INDICATE TO YOU THAT IT WAS NOT HIS VEHICLE?

17 A. NOT AT ALL.

18 Q. SO WHEN YOU ASKED HIM ABOUT THE SPECIFIC TRAFFIC VIOLATIONS,  
19 WHEN YOU ASKED HIM ABOUT HIS TURN SIGNAL, AT THAT POINT DID HE SAY TO  
20 YOU THIS IS NOT MY CAR?

21 A. NO. I DO REMEMBER ALSO DURING THE TRAFFIC STOP HE TALKED ABOUT  
22 GETTING A REPLACEMENT LENS FOR THE DRIVER'S SIDE BECAUSE THERE WAS A  
23 HOLE IN IT AND HE WAS USING THE RED TAPE WHICH IS LEGAL AND I TOLD HIM  
24 THAT. I SAID THERE'S NOTHING WRONG WITH THE TAPE AS LONG AS YOU DON'T  
25 SEE THE WHITE LIGHT SHOWING. BUT IT APPEARED FROM TALKING TO HIM

1 THAT THAT VEHICLE WAS HIS, THAT HE DROVE IT ON A REGULAR BASIS AND  
2 THIS IS A COMMON THING.

3 Q. AFTER YOU GOT HIS DRIVER'S LICENSE, GOT HIS INSURANCE WHAT DID  
4 YOU DO NEXT?

5 A. I ASKED HIM TO STEP OUT OF THE VEHICLE. WE DO DRUG WORK, THAT'S  
6 WHAT WE ARE THERE FOR. YOU KNOW, WE GO THROUGHOUT THE ENTIRE CITY.  
7 I HAD NEVER MET MR. HEYWARD, DIDN'T KNOW HIM BEFORE, NO CONNECTION  
8 WHATSOEVER. YOU KNOW, WHEN WE MAKE TRAFFIC STOPS FOR - AS A DRUG  
9 UNIT WE TAKE OUR TIME, WE TRY TO MAKE SURE WE DO A FULL TRAFFIC STOP.  
10 WHAT I MEAN BY THAT IS NOT ONLY ARE WE WRITING THE CITATION, WE ARE  
11 CHECKING THEIR DRIVER'S LICENSE, MAKING SURE EVERYTHING IS CLEAR  
12 THERE. WE ARE CHECKING THE LICENSE PLATE OF THE VEHICLE, MAKING SURE  
13 IT'S CLEAR. WE CHECK EVERYONE IN THE VEHICLE, MAKE SURE NO ONE IS  
14 WANTED AND SO FORTH AND GOING THROUGH ALL THE CHECKS AND  
15 BALANCES. IT'S NOT A RACE. IF WE GET IN TOO BIG OF A HURRY WE ARE GOING  
16 TO MISS SOMETHING.

17 Q. SO AFTER DISCUSSING THOSE VIOLATIONS WITH THE DEFENDANT, WHAT  
18 DID YOU DO NEXT?

19 A. I ASKED HIM TO STEP OUT OF THE VEHICLE. PART OF THE PROCESS AND  
20 THE REASON FOR DOING THAT IS IT TAKES THEM A LITTLE BIT OUT OF THEIR  
21 COMFORT ZONE. YOU CAN SEE WHEN PEOPLE GET NERVOUS AND SO FORTH  
22 WHEN THEY ARE STANDING THERE IN FRONT OF YOU VERSUS SITTING IN A  
23 VEHICLE. IT'S MUCH EASIER TO CALM YOURSELF AND SO FORTH WHEN YOU  
24 ARE SITTING DOWN AND BEING ABLE TO HOLD ON TO SOMETHING OR FIDDLE  
25 WITH SOMETHING. BUT WHEN YOU ARE DOING DRUG WORK YOU WANT TO

1 PULL THEM OUT OF THAT COMFORT ZONE AND YOU TRY TO CALM THEM DOWN.  
2 YOU TRY TO MAKE THEM AT EASE. AND THE REASON WHY YOU DO THAT IS A  
3 NORMAL PERSON THAT'S NOT DOING ANYTHING WRONG WILL CALM DOWN IN  
4 MOST CIRCUMSTANCES. AND IF SOMEONE IS DOING SOMETHING THEY  
5 SHOULDN'T BE DOING OR HIDING SOMETHING THEY SHOULDN'T BE HIDING  
6 THEN IT'S VERY HARD TO CALM THAT PERSON DOWN. THEY WILL SHOW THEIR  
7 TENDENCIES, THEY WILL SHOW THAT THEY ARE NERVOUS AND THAT'S WHAT  
8 WE ARE LOOKING FOR. WE ARE LOOKING FOR THOSE TENDENCIES THAT THE  
9 AVERAGE PERSON DOESN'T SHOW.

10 Q. AND BASED ON YOUR EXPERIENCE AND BASED ON WHAT YOU SAW AT  
11 THE STOP THAT DAY, WAS THERE ANYTHING THAT CAME TO YOUR ATTENTION?

12 A. YES. AFTER HE GOT OUT THE VEHICLE, I'M SITITNG THERE TALKING TO  
13 HIM. YOU KNOW, I'M NOT STANDING RIGHT UP ON HIM. I'M SEVERAL FEET  
14 AWAY FROM HIM. I'M WRITING SO I'M NOT STANDING DOWN OR ANYTHING  
15 LIKE THAT. YOU'LL NOTICE THAT HE WAS VERY AGREEABLE WITH ME. YOU  
16 KNOW, YOU GET THAT WITH SOME PEOPLE BUT WITH EVERYTHING YOU  
17 MENTION, EVERYTHING YOU ARE TALKING ABOUT AND THEY ARE CONSTANTLY  
18 YES, YES. YOU KNOW, THAT'S SOMEONE THAT'S JUST TRYING TO GET US -

19 MR. COMISH: OBJECTION. OPINION.

20 MS. MANGUM: YOUR HONOR, HE'S ENTITLED TO GIVE IS OPINION  
21 AS A DRUG SUPPRESSION EXPERT.

22 MR. COMISH: HE HAS NOT YET BEEN QUALIFIED AS AN EXPERT,  
23 YOUR HONOR.

24 THE COURT: I DON'T THINK HE HAS TO BE QUALIFIED AS AN  
25 EXPERT TO GIVE HIS OPINION ON THAT PARTICULAR --

1                   MR. COMISH: THIS IS A PROFESSIONAL OPINION ABOUT HIS JOB. I  
2 MEAN IT SOUNDS LIKE HE'S PLAYING A ROLE AS PSYCHOLOGIST HERE.

3                   THE COURT: IF HE GOES THAT FAR, WE'LL STOP HIM BUT I'M  
4 GOING TO LET IT GO A LITTLE BIT FARTHER. THANK YOU.

5   A.       WHAT WE ARE TRYING TO DO IS BASICALLY – WELL, LET ME BACK UP.  
6 I'M TRYING TO GET BACK WHERE I WAS.

7   Q.       (BY MS. MANGUM) SURE.

8   A.       BUT HE WAS JUST REALLY AGREEING WITH EVERYTHING I WAS  
9 REFERRING TO. THAT'S WHEN WE STARTED TALKING ABOUT THE TAIL LIGHT  
10 AND SO FORTH. I THEN ASKED FOR PERMISSION TO SEARCH HIS VEHICLE.

11   Q.       AND WHAT DID YOU NOTICE AT THE POINT THAT YOU ASKED FOR  
12 PERMISSION TO SEARCH HIS VEHICLE? WHAT DID YOU NOTICE THAT WAS  
13 DIFFERENT ABOUT THE DEFENDANT WHEN YOU ASKED THAT QUESTION?

14   A.       YOU COULD TELL HIS BODY LANGUAGE CHANGED AND CHANGED A LOT.

15   Q.       HOW DID HIS BODY LANGUAGE CHANGE?

16   A.       HE IMMEDIATELY WENT AND SAT ON HIS TRUNK. AND I ASKED HIM JUST  
17 TO MOVE HIS FOOT. HE THEN GETS OFF THE VEHICLE AND SITS ON THE BUMPER.  
18 HE SLUMPS OVER. AND I EVEN TOLD HIM, I SAID I JUST NEED TO GET THE TAG  
19 NUMBER BECAUSE HIS FEET WERE RIGHT – I MEAN BLOCKING MY WAY OF THE  
20 TAG. SHORTLY LATER YOU'LL SEE HIM STAND UP. HE STARTS WALKING  
21 AROUND WHICH –

22   Q.       WERE THOSE ALL INDICATORS?

23   A.       THEY ARE.

24   Q.       AND WHILE YOU ARE WRITING THOSE TICKETS WHAT HAPPENS? WHO  
25 ELSE ARRIVES ON THE SCENE?

1    A.     SGT. WILLIAMS. AT THE TIME I BELIEVE HE WAS CORPORAL AT THE TIME  
2    ARRIVES WITH HIS K-9, HIS DRUG K-9. AND YOU CAN TELL THAT MR.  
3    HEYWARD'S BEHAVIOR JUST CONTINUES AND (INAUDIBLE). AS A MATTER OF  
4    FACT, WHEN THE DOG WAS WALKING AROUND HE THEN PUTS HIS ARMS BEHIND  
5    HIS BACK. AFTER THE DOG ALERTS ON THE CAR AND SGT. WILLIAMS MAKES  
6    THE COMMENT THAT THE DRUGS ARE IN THE DASH, HE THEN WALKS OVER TO  
7    HIM, PUTS HIS HANDS BEHIND HIS BACK WITHOUT ME EVEN ASKING. HE JUST  
8    DID IT.

9    Q.     WAS THERE ANY POINT AFTER YOU HAD ASKED TO SEARCH THE CAR OR  
10   WHILE THE DRUG DOG WAS THERE THAT YOU HAD CONCERNS ABOUT THE  
11   DEFENDANT FLEEING THE SCENE?

12   A.     WELL, WHEN HE WAS WALKING AROUND, HE WALKED AS IF HE WERE  
13   ABOUT TO START RUNNING. WE HAVE NUMEROUS PEOPLE RUN FROM US. I  
14   MEAN WE ARE CONSTANTLY HAVING TO CHASE PEOPLE ON FOOT. AND HE  
15   WALKED PROBABLY A GOOD TEN, TWELVE FEET AS IF HE WERE - AND ANOTHER  
16   OFFICER THAT JUST HAPPENED TO BE THERE STANDBY AS AN OFFICER SAFETY  
17   ISSUE, CARRIZALES, HE WAS - HE HAD TO MOVE HIS BODY POSITION JUST TO  
18   MAKE SURE THAT HE WASN'T GOING TO FLEE THE SCENE.

19   Q.     BASED ON WHAT HAPPENED THAT DAY WITH SGT. WILLIAMS AND THE  
20   DRUG DOG, WHAT DID YOU ULTIMATELY DO?

21   A.     WHAT'S THAT NOW?

22   Q.     BASED ON WHAT WAS FOUND IN THE VEHICLE, WHAT DID YOU  
23   ULTIMATELY DO WITH THE DEFENDANT?

24   A.     HE WAS ARRESTED FOR NARCOTICS.

25   Q.     SPECIFICALLY WHAT WAS HE ARRESTED FOR?

1    A.     FOR POSSESSION OF MARIJUANA.

2    Q.     AT THE TIME THAT YOU MADE THIS STOP, WAS YOUR POLICE VEHICLE  
3    EQUIPPED WITH A CAMERA?

4    A.     IT WAS.

5    Q.     AND WAS THAT CAMERA OPERATING? DID YOU TURN THAT CAMERA ON?

6    A.     IT WAS OPERATING – IT TURNS ON WHEN YOU TURN THE BLUE LIGHTS ON.

7    Q.     AND SO YOU HAVE VIDEOTAPE FROM THIS INCIDENT?

8    A.     I DO.

9    Q.     AND IS THIS A COPY OF THE VIDEO FROM YOUR CAR THAT DAY?

10   A.     IT APPEARS SO.

11                MS. MANGUM: YOUR HONOR, AT THIS TIME WE WOULD MOVE TO  
12   PLACE THIS INTO EVIDENCE AND PUBLISH TO THE JURY.

13                THE COURT: ANY OBJECTION?

14                MR. COMISH: NONE, YOUR HONOR.

15                (VIDEOTAPE IS RECEIVE INTO EVIDENCE AS CITY'S EXHIBIT #1)

16                THE COURT: THAT WILL TAKE A MNUTE TO SET UP SO IT MIGHT  
17   BE A GOOD TIME TO TAKE A QUICK BREAK. IF YOU WILL, RETIRE TO THE JURY  
18   ROOM FOR JUST A FEW MINUTES. YOU CAN LEAVE YOUR STUFF, THERE'S  
19   NOBODY IN OR OUT.

20                (JURY LEAVES THE JURY BOX)

21                THE COURT: HOW LONG IS THIS VIDEO?

22                MS. MANGUM: PROBABLY FIFTEEN MINUTES.

23                THE COURT: I HAVE THIS ONE JUROR WHO WE NEED TO MAKE  
24   SURE WE ACCOMMODATE SO WE WANT TO MAKE SURE THAT WE HAVE A LUNCH  
25   BREAK. WEHAVE TO TAKE A LUNCH BREAK.

1           **MR. COMISH:** I WAS GOING TO ASK YOU ABOUT THAT. I'M  
2 DIABETIC, YOUR HONOR. I'M GOING TO NEED LUNCH RELATIVELY SHORTLY.

3           **THE COURT:** SHE IS, TOO. WE ARE GOING TO NEED TO TAKE A  
4 LUNCH BREAK.

5           **MS. MANGUM:** DO YOU WANT TO TAKE A BREAK NOW? WE CAN  
6 SHOW THE VIDEO WHEN WE GET BACK.

7           **MR. COMISH:** I'M GOING TO WANT TO SHOW THE REST OF THE  
8 VIDEO ON CROSS. THOE WHOLE VIDEO IS FORTY-THREE MINUTES LONG AND  
9 THE END OF IT CONTAINS SEVERAL CONVERSATIONS.

10          **MS. MANGUM:** NOT RELATED. WE CAN ARGUE THAT.

11          **MR. COMISH:** BETWEEN -

12          **THE COURT:** SO DO WE WANT TO TAKE THE BREAK NOW AND GO  
13 HAVE THE LUNCH BREAK NOW? IS AN HOUR LONG ENOUGH?

14          **UNIDENTIFIED:** GIVEN THE TRAFFIC AND EVERYTHING, YOUR  
15 HONOR, I THINK PROBABLY ABOUT AN HOUR AND A HALF. THERE'S  
16 CONSIDERABLE CONSTRUCTION DOWNTOWN AND LIMITED PARKING SO  
17 THEY'LL HAVE TO WALK.

18          **MS. MANGUM:** HOW ABOUT AN HOUR AND FIFTEEN MINUTES?

19          **THE COURT:** ALL RIGHT. LET ME JUST LET THEM GO.

20                   (JURY RETURNS TO THE JURY BOX)

21          **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, THE VIDEO  
22 THAT WE ARE ABOUT TO SHOW IS ABOUT FIFTEEN MINUTES AND THEN THE  
23 PUBLIC DEFENDER HAS SOME OTHER PARTS OF THE VIDEO HE'D LIKE TO SHOW  
24 SO IT MIGHT BE A GREAT TIME TO TAKE A LUNCH BREAK, SO WE ARE GOING TO  
25 DO THAT. WE'LL ASK YOU (INAUDIBLE). YOU CAN HAVE YOUR PHONES DURING

1 LUNCH. JUST REMEMBER NO LOOKING UP ANYTHING ABOUT THE LAW, NO  
2 DISCUSSING ANYTHING ABOUT THE CASE BECAUSE WE ARE RIGHT IN THE  
3 MIDDLE OF IT AND I HAVEN'T CHARGED YOU ON THE LAW. THANK YOU SO  
4 MUCH. WE'LL SEE YOU BACK HERE IN A LITTLE WHILE.

5 (JURY LEAVES THE JURY BOX)

6 MR. COMISH: DID YOU WANT TO TAKE UP –

7 THE COURT: WAIT. (PAUSE) ALL RIGHT, WHAT MATTERS DID YOU  
8 WANT TO TAKE UP?

9 MR. COMISH: I WAS JUST WONDERING WHETHER YOU PREFERRED  
10 TO TAKE UP THE ISSUE OF THE REMAINDER OF THE VIDEO WHICH I UNDERSTAND  
11 MS. MANGUM IS GOING TO OBJECT TO.

12 THE COURT: OKAY. AND THE REASON YOU WANT TO PLAY THE  
13 REMAINDER OF THE VIDEO AFTER THE STOP IS BECAUSE IT CONTAINS –

14 MR. COMISH: IT CONTAINS A CONVERSATION ABOUT THE  
15 SPECIFIC TIP AND PERTINENT TO WHETHER MR. HEYWARD ACTUALLY EXITED  
16 THE APARTMENT THEY WERE SURVEILLING.

17 MS. MANGUM: IT HAS NOTHING TO DO, YOUR HONOR, WITH THE  
18 CHARGE. IT'S NOT RELATED.

19 MR. COMISH: IT REBUTS OFFICER ARNOLD'S TESTIMONY.

20 THE COURT: WELL, OFFICER ARNOLD DID TESTIFY THAT HE  
21 OBSERVED THE PERSON LEAVING. OF COURSE, I DON'T KNOW WHAT'S  
22 CONTAINED IN THE VIDEO BUT – YOUR OBJECTION IS THAT IT JUST IS  
23 IRRELEVANT?

24 MS. MANGUM: IT IS COMPLETELY IRRELEVANT. MR. HEYWARD  
25 WAS CHARGED WITH SIMPLE POSSESSION BASED ON A LAWFUL TRAFFIC STOP.

1   WHATEVER OCCURS AFTER HE WAS ARRESTED – I MEAN THEY ARE ON THE  
2   SCENE FOR QUITE A BIT. HONESTLY, YOUR HONOR, IT'S THE DRUG SUPPRESSION  
3   TEAM AND THERE'S A LOT OF DISCUSSION THERE THAT I DON'T THINK IS  
4   RELATED TO THIS CASE AND NOT NECESSARILY PERTINENT FOR OUR JURY TO  
5   HEAR IN TERMS OF WHAT THEY'VE DONE AND HOW THEY'VE DONE IT.

6               **THE COURT:** IS THERE A WAY TO –

7               **MS. MANGUM:** I THINK THAT'S THE EXACT INFORMATION THAT HE  
8   WANTS IN.

9               **MR. COMISH:** YOUR HONOR, MS. MANGUM PAINTED MY CLIENT  
10   SPECIFICALLY AS A PERSON ABOUT WHOM THEY RECEIVED A TIP. THIS  
11   CONVERSATION REBUTS THAT IN THAT THEY WERE SURVEILLING NOT HIS  
12   APARTMENT, BUT THE APARTMENT NEXT DOOR. SEVERAL OFFICERS WILL  
13   TESTIFY TO THAT.

14              **THE COURT:** SO IS IT POSSIBLE TO PLAY JUST THAT PORTION OF  
15   THE VIDEO AND NOT PLAY THE REMAINDER OF THE VIDEO?

16              **MR. COMISH:** THIS PORTION IS ONLY TWO AND A HALF MINUTES  
17   LONG.

18              **THE COURT:** AND IS THAT THE VERY END? DO YOU KNOW WHERE  
19   IT IS IN THE VIDEO?

20              **MR. COMISH:** YES, YOUR HONOR. I HAVE IT TIME STAMPED HERE.  
21   THE ISSUE OF THE AUDIO ON THIS WAS FUZZY AND MY CLERK HAD TO ADJUST  
22   AUDIO SETTINGS TO MAKE IT COMPERHENSIBLE SO I MIGHT NEED A FEW  
23   MINUTES.

24              **MS. MANGUM:** YOUR HONOR, ALSO IF WE ARE TALKING ABOUT  
25   THE SAME PART THERE IS NO VIDEO. THESE OFFICERS ARE NOT ON VIDEO SO

1 HOW THEY DETERMINED WHO SAID WHAT I'M NOT SURE HOW THAT'S -

2 MR. COMISH: WE STILL HAVE WHAT WAS SAID. I MEAN IT'S PART  
3 OF THE VIDEO.

4 MS. MANGUM: THERE'S - I DON'T KNOW, SIX OFFICERS ON THE  
5 SCENE THAT DAY, YOUR HONOR. THERE'S MANY OFFICERS THAT ARE NOT EVEN  
6 TESTIFYING.

7 MR. COMISH: DO YOU WISH TO TAKE A LOOK AT THE  
8 TRANSCRIPTS IF THAT WOULD HELP YOU?

9 THE COURT: I'M HAPPY FOR Y'ALL TO GO TO LUNCH AND WE'LL  
10 COME BACK AND WE'LL TAKE A LOOK AT THAT LITTLE PORTION AND  
11 DETERMINE THE RELEVANCE OR WHETHER IT'S EVEN ADMISSIBLE OR NOT.  
12 HOW ABOUT THAT?

13 MR. COMISH: THANK YOU, YOUR HONOR.

14 THE COURT: SO LET'S TRY TO BE BACK HERE EARLIER.

15 (LUNCHEON RECESS)

16 (CASE RESUMES)

17 THE COURT: I BELIEVE MR. COMISH HAS A POINT HE WOULD LIKE  
18 TO MAKE ON THE RECORD BEFORE WE BRING THE JURY BACK.

19 MR. COMISH: THAT'S CORRECT, YOUR HONOR. I'D JUST LIKE TO  
20 POINT OUT THAT I WOULD PREFER THAT THE ENTIRE VIDEO BE PLAYED FOR THE  
21 PURPOSES OF COMPLETENESS AND THAT THE JURY MAY KNOW THE TOTALITY  
22 OF THE CIRCUMSTANCES SURROUNDING THE VIDEO.

23 THE COURT: OKAY. AND IT'S MY UNDERSTANDING THAT MS.  
24 MANGUM WISHES TO STOP IT AT THE - AFTER THE ARREST?

25 MS. MANGUM: YES, YOUR HONOR.

1           **THE COURT:** OKAY. AND DO YOU OBJECT TO THE PLAYING OF  
2 THE FULL VIDEO?

3           **MS. MANGUM:** I DO, YOUR HONOR. I DON'T THINK AFTER THE  
4 ARREST, ANYTHING THAT HAPPENS AFTER THAT IS RELEVANT. THERE'S - I  
5 DON'T KNOW, THIRTY, FORTY-FIVE MINUTES OF THE OFFICERS SEARCHING THE  
6 VEHICLE, TRANSPORTING THE DEFENDANT, GOING TO HIS APARTMENT. NONE  
7 OF THAT IS RELATED TO THE SIMPLE POSSESSION CHARGE AND SO FOR THAT  
8 REASON I DON'T THINK THAT IT NEEDS TO BE SHOWN TO THE JURY.

9           **THE COURT:** OKAY. AND I BELIEVE SHE HAS AS A RIGHT OF THE  
10 PROSECUTION TO OFFER WHAT EVIDENCE SHE NEEDS TO OFFER TO MEET HER  
11 CASE -

12           **MR. COMISH:** THAT IS CORRECT, YOUR HONOR.

13           **THE COURT:** AND SO I APPRECIATE YOUR MOTION. FOR THE  
14 PURPOSES OF THE RECORD I AM GOING TO DENY IT. YOUR MOTION IS  
15 PRESERVED FOR ANY APPEAL YOU MIGHT WANT TO MAKE.

16           **MR. COMISH:** AND JUST FOR THE RECORD, I UNDERSTAND YOUR  
17 RULING, I'D JUST LIKE TO ASSERT THAT THE END OF THE VIDEO IS DIRECTLY  
18 RELEVANT TO IMPEACHING TESTIMONY THAT WAS ENTERED. AND THAT'S IT.  
19 THANK YOU VERY MUCH, YOUR HONOR.

20           **THE COURT:** ALL RIGHT. THANK YOU.

21           **MS. MANGUM:** THANK YOU, YOUR HONOR.

22           **THE COURT:** LET'S MAKE SURE THIS PLAYS. LET ME SEE IF I CAN  
23 PLAY IT UNDER WATCHGUARD.

24           **MS. MANGUM:** THERE IS NO AUDIO FOR THE FIRST COUPLE OF  
25 MINUTES.

1           **MR. COMISH:** YOUR HONOR, THE VIDEO COMPRESSION MIGHT BE  
2 AN ISSUE OF THE RESOLUTION OF THE PLAYBACK ON P.S.C. BECAUSE THE  
3 SCREEN RESOLUTION IS DIFFERENT FROM THAT OF YOUR LAPTOP. THE VOLUME  
4 DOESN'T START UNTIL THREE MINUTES IN.

5           **THE COURT:** THERE'S NO AUDIO HERE NOW, RIGHT?

6           **MS. MANGUM:** YES. THAT'S FOURTEEN MINUTES. YOU SHOULD  
7 HAVE AUDIO.

8           **THE COURT:** OKAY. SO LET'S GO BACK TO -  
9 (OFF THE RECORD DISCUSSION)

10          **THE COURT:** ARE WE READY FOR THE JURY?  
11 (JURY RETURNS TO THE JURY BOX)

12          **THE COURT:** ALL RIGHT. WE ARE ON THE RECORD.

13          **ROBERT B. WEBB, HAVING BEEN PREVIOUSLY SWORN BY THE**  
14 **COURT, CONTINUES TO TESTIFY AS FOLLOWS:**

15               **DIRECT EXAMINATION BY**

16          **MS. MANGUM:**

17          **Q.** JUST AS A REFRESHER, YOUR CAR THAT DAY DID HAVE A VIDEO CAMERA  
18 THAT WAS WORKING?

19          **A.** IT DID.

20          **Q.** AND THIS IS THE VIDEO FROM YOUR CAR THAT DAY?

21          **A.** YES, IT IS.

22          **MS. MANGUM:** YOUR HONOR, AT THIS TIME WE'D LIKE TO PUBLISH  
23 IT TO THE JURY.

24          **THE COURT:** ALL RIGHT.

25 (VIDEO IS PLAYED FOR THE JURY)

1 Q. SGT. WEBB, THE WHITE THAT WE SEE, IS THAT THE HOOD OF YOUR CAR?

2 A. IT IS.

3 Q. AND THE CAR DIRECTLY IN FRONT OF YOU?

4 A. MR. HEYWARD'S CAR THAT HE WAS DRIVING.

5 (VIDEO CONTINUES)

6 Q. AT THIS POINT, WE DON'T HAVE AUDIO BUT WHAT'S HAPPENING?

7 A. I'M BASICALLY JUST GETTING HIS DRIVER'S LICENSE, REGISTRATION,  
8 PROOF OF INSURANCE AT THIS POINT IN TIME, LET HIM KNOW WHY HE WAS  
9 BEING STOPPED. AND YOU SAW ME BACK UP JUST TO CHECK HIS TURN SIGNAL  
10 TO SEE IF THEY WERE WORKING AT THAT TIME.

11 (VIDEO CONTINUES)

12 Q. AND THE OTHER OFFICERS IN THE FRAME WITH YOU, ARE THOSE ALSO  
13 MEMBERS OF YOUR DRUG SUPPRESSION TEAM?

14 A. AT THE TIME, YES.

15 Q. AND WHAT'S THEIR PRIMARY ROLE AT THIS TIME?

16 A. JUST AS OFFICER SAFETY.

17 (VIDEO CONTINUES)

18 Q. SGT. WEBB, AT THE BEGINNING OF THAT VIDEO WE DIDN'T SEE ANY  
19 TRAFFIC VIOLATIONS. WHY IS THAT?

20 A. BECAUSE THE CAMERA ONLY GOES BACK SO FAR.

21 Q. AND WHAT TRIGGERS YOUR CAMERA TO START RECORDING?

22 A. THE BLUE LIGHTS.

23 Q. AND WHAT TRIGGERS YOU TURNING THOSE BLUE LIGHTS ON?

24 A. ME FLIPPING A SWITCH.

25 Q. AND WHY WOULD YO DO THAT?

1    A.     I WAS WAITING FOR A SAFE LOCATION FOR HIM TO PULL OVER.

2    Q.     SO THE FACT THAT WE DIDN'T SEE THE VIOLATIONS IS JUST A MATTER OF  
3    THE WAY THE EQUIPMENT WORKS?

4    A.     RIGHT. 'CAUSE A LOT OF TIMES IF YOU HIT THE BLUE LIGHTS ON A  
5    SINGLE LANE LIKE THAT THEY WILL JUST STOP AND THEN WE'RE BACKING UP  
6    TRAFFIC UP AT THAT POINT IN TIME.

7    Q.     WHEN YOU INITIALLY PULLED THE DEFENDANT OVER, DID HE EVER TELL  
8    YOU THAT IT WAS NOT HIS VEHICLE?

9    A.     NO, HE DID NOT.

10   Q.     WHEN YOU ASKED HIM OR INFORMED HIM THAT THERE WAS A PROBLEM  
11   WITH THE EQUIPMENT IN THE VEHICLE WITH THE TURN SIGNAL, DID HE INFORM  
12   YOU THAT THE VEHICLE WAS NOT HIS?

13   A.     NO. HE EVEN TALKED ABOUT GETTING PARTS FOR THE VEHICLE AS YOU  
14   CAN TELL WITH THE TAIL LIGHT.

15   Q.     WHEN WAS THE FIRST TIME THAT THE DEFENDANT CLAIMED THAT THE  
16   VEHICLE WAS NOT HIS?

17   A.     ONCE HE WAS ARRESTED.

18   Q.     AND THAT WAS AFTER THE DRUGS WERE LOCATED?

19   A.     THAT'S CORRECT.

20   Q.     WHEN YOU ASKED HIM TO SEARCH THE VEHICLE, DID HE TELL YOU THE  
21   VEHICLE WAS NOT HIS?

22   A.     NO, HE DID NOT.

23   Q.     AFTER YOU FOUND THE PILL BOTTLE THAT WE SEE ON THE SCREEN  
24   THERE AND YOU REMOVED IT FROM THE CAR, WHAT DID YOU DO WITH IT? THE  
25   PILL BOTTLE?

- 1    A.    I CHECKED IT JUST TO MAKE SURE WHAT WAS IN IT.
- 2    Q.    AND THEN AFTER THAT WHAT DID YOU DO WITH IT?
- 3    A.    SAT IT ON THE HOOD. I THEN PUT IT INTO EVIDENCE AND WE TESTED IT.
- 4    Q.    AND IS THIS THAT BOTTLE?
- 5    A.    IT IS.
- 6    Q.    AND COULD YOU EXPLAIN THE PROCESS OF HOW IT WENT FROM THAT
- 7    BOTTLE INTO THAT BAG?
- 8    A.    YES. WHAT WE DID WAS OR WHAT I DID WAS I TOOK IT IN THAT FORM,
- 9    EVERYTHING WAS STILL INSIDE AND WE PUT IT -- INSIDE THIS CLEAR PLASTIC,
- 10   YOU'LL SEE ANOTHER PLASTIC BAG. THAT'S WE CALL INVESTIGATIVE. WE PUT
- 11   IT IN THERE AND WE TURN IT IN TO OUR DRUG LAB AT THE TIME AND THEY TEST
- 12   IT FOR US.
- 13   Q.    AND WHAT DATE DID YOU TURN THAT IN?
- 14   A.    THAT SAME DAY WHICH WAS THE 27<sup>TH</sup> OF MAY.
- 15   Q.    DID YOU FILL OUT ANY PAPERWORK WHEN YOU TURNED THAT IN?
- 16   A.    I DID.
- 17   Q.    LET ME SHOW YOU THIS. DOES THAT LOOK FAMILIAR?
- 18   A.    IT IS.
- 19   Q.    WHAT IS THAT?
- 20   A.    THIS IS A LABORATORY DRUG ANALYSIS REQUEST AND CHAIN OF
- 21   CUSTODY, ALSO.
- 22   Q.    AND IF YOU LOOK ON THIS SHEET RIGHT HERE, WHOSE NAME IS THERE?
- 23   A.    THAT'S MYSELF.
- 24   Q.    AND WHAT DOES THAT INDICATE?
- 25   A.    THAT'S ME PUTTING IT INTO THE EVIDENCE LOCKER ROOM.

1 Q. SO THIS MARIJUANA AND THE CONTAINER THAT IT WAS IN -

2 MR. COMISH: OBJECTION. IT HASN'T BEEN ESTABLISHED WHAT  
3 THE SUBSTANCE IS YET.

4 THE COURT: JUST REPHRASE IT.

5 MS. MANGUM: SURE.

6 Q. (BY MS. MANGUM) THE ALLEGED MARIJUANA AND THE CONTAINER THAT  
7 IT'S IN WENT RIGHT FROM YOUR CUSTODY INTO EVIDENCE?

8 A. THAT'S CORRECT.

9 Q. AND THAT'S WHAT THIS FORM INDICATES?

10 A. THAT'S CORRECT.

11 MR. COMISH: I HAVE TO OBJECT TO THESE FORMS. I DID NOT  
12 RECEIVE THESE UNTIL MONDAY AT 5:00 P.M. IN VIOLATION OF RULE -

13 MS. MANGUM: YOUR HONOR.

14 THE COURT: YES. COME OVER HERE.

15 (BENCH CONFERENCE OFF THE RECORD)

16 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,, WE ARE  
17 GOING TO ASK YOU TO RETIRE BUT BEFORE YOU DO, LET ME ASK YOU TO OR  
18 DIRECT YOU TO DISREGARD ANY STATEMENTS THAT YOU HEARD FROM THE  
19 PUBLIC DEFENDER WITH REGARD TO A VIOLATION OF THE RULES. THERE HAS  
20 BEEN NO VIOLATION OF THE RULE THAT I HAVE DETERMINED AT THIS POINT SO  
21 PLEASE DISREGARD ANYTHING THAT YOU MAY HAVE HEARD ABOUT THAT. LET  
22 US TAKE UP A MATTER REAL BRIEFLY.

23 (JURY LEAVES THE JURY BOX)

24 THE COURT: ALL RIGHT. MR. COMISH, YOU MAY MAKE YOUR  
25 MOTION?

1           **MR. COMISH:** THIS IS A MORE GENERAL MOTION ABOUT CHAIN OF  
2 CUSTODY IF YOU FEEL FIT TO TAKE IT UP AT THIS TIME, NOT SPECIFICALLY  
3 REFERENCING THIS FORM WHICH WAS JUST INTRODUCED.

4           **THE COURT:** OKAY. AND YOUR MOTION IS?

5           **MR. COMISH:** MY MOTION IS TO – IT'S A SUPPRESSION MOTION  
6 BASED ON INCOMPLETE CHAIN OF CUSTODY.

7           **MS. MANGUM:** YOUR HONOR, I WOULD SAY, FIRST OF ALL, THIS IS  
8 NOT THE APPROPRIATE TIME. I HAVE THE RIGHT TO PROVE MY CHAIN  
9 THROUGHOUT MY CASE. I'M TALKING ABOUT THE FIRST PERSON, BUT IF YOU  
10 DO WANT TO TAKE IT UP NOW WHILE THE JURY IS OUT I'M ALSO FINE TO ARGUE  
11 IT BECAUSE I THINK IT'S A NON-ISSUE.

12           **THE COURT:** OKAY. I AGREE WITH YOU THAT IT IS PROBABLY  
13 OUT OF ORDER BUT IT'S A CONVENIENT TIME TO ARGUE IT INSTEAD OF IN AND  
14 OUT, IN AND OUT. SO WHAT DO YOU ALLEGE IS MISSING FROM THE CHAIN OF  
15 CUSTODY?

16           **MR. COMISH:** YES, YOUR HONOR. IF YOU'LL FIND MY COPY OF  
17 THAT REAL QUICK. THERE IS A FOURTEEN-DAY GAP – NOT FOURTEEN. WELL,  
18 THERE WE ARE. ONE D. MARTIN WHO IS NOT PRESENT IN THE COURTROOM  
19 TODAY CHECKED IT OUT ON 5-28-11, THE CHAIN OF CUSTODY IS BLANK UNTIL 6-  
20 8-11 AT 3:25 P.M. WHEN ONE D. MARTIN SUBMITTED THE EVIDENCE TO MR.  
21 POTASH. SO THERE IS A PERIOD OF TIME, ROUGHLY TWELVE DAYS, IN WHICH  
22 THE EVIDENCE WAS NOT IN A LOCKER, WE DON'T KNOW WHERE IT WAS AND  
23 SHE'S NOT HERE TO TESTIFY ABOUT HER HANDLING OF THE EVIDENCE DURING  
24 THAT EXTENDED PERIOD.

25           **THE COURT:** MR. MANGUM.

1           **MS. MANGUM:** YOUR HONOR, IN TERMS OF THAT, DEFENSE  
2 COUNSEL HAS MISINTERPRETED THE CHAIN. WHAT HAPPENS IS – AND I HAVEN'T  
3 SUBMITTED THIS INTO EVIDENCE BUT –

4           **THE COURT:** RIGHT.

5           **MS. MANGUM:** BUT OFFICER WEBB HAD THE DRUGS. HE CHECKED  
6 THEM INTO AN EVIDENCE LOCKER. FROM THE EVIDENCE LOCKER, THE  
7 EVIDENCE ROOM PERSONNEL, WHICH IN THIS CASE IS DONNA MARTIN, TAKES IT  
8 AND LOGS IT INTO EVIDENCE. AND SO FROM 5-28 WHICH IS WHEN SHE  
9 ACTUALLY RECEIVED IT FROM THE EVIDENCE LOCKER UNTIL 6-11 WHICH IS  
10 WHEN OFFICER POTASH TESTED IT, IT WAS STORED IN THE EVIDENCE ROOM.  
11 AND THAT'S WHAT THIS CHAIN OF CUSTODY INDICATES.

12           **MR. COMISH:** IN THAT CASE, I SUBMIT THAT MS. MARTIN SHOULD  
13 BE HERE TO TESTIFY TO THAT.

14           **MS. MANGUM:** YOUR HONOR, THAT'S – THAT EVIDENCE IS KEPT IN  
15 THE STANDARD COURSE OF BUSINESS. SHE IS HERE. SHE IS IN THE EVIDENCE  
16 ROOM. IT'S MY UNDERSTANDING THAT SHE MAY BE THE ONLY PERSON THERE.  
17 IF THEY ARE GOING TO REQUIRE HER TO COME, THE CASE LAW, AND I WOULD BE  
18 GLAD TO CITE SOME CASES, ONLY SAYS THAT WE HAVE TO PROVE THE CHAIN  
19 AS MUCH AS PRACTICABLE AND WE HAVE THE OFFICER WHO FOUND THE  
20 DRUGS, WHO TRANSPORTED IT TO THE EVIDENCE ROOM. IT WAS TAKEN OUT OF  
21 THE EVIDENCE ROOM ONE TIME BY ONE OFFICER WHO IS HERE WHO TESTED IT  
22 AND RE-CHECKED IT BACK INTO THE EVIDENCE ROOM. I CAN'T IMAGINE HOW  
23 HER TESTIMONY IS IMPORTANT.

24           **MR. COMISH:** IN RESPONSE, STATE V. TAYLOR, THE CONCLUSION  
25 OF STATE V. TAYLOR IS CONSEQUENTLY (INAUDIBLE) OF EVIDENCE MUST

1 ESTABLISH THE IDENTITY OF EACH PERSON IN THE CHAIN OF POSSESSION AND  
2 THE MANNER OF HANDLING. AND THAT'S SO THAT ONLY BY INTRODUCING  
3 EVIDENCE OF WHO SHE IS, WHAT HER POSITION WAS, HER MANNER OF  
4 HANDLING, ALL I SEE IS A BLANK SPOT, UNEXPLAINED BLANK SPOT, ON THE  
5 CHAIN OF CUSTODY.

6 THE COURT: WELL, YOU CAN ASK ABOUT THAT WHEN YOU HAVE  
7 THESE OFFICERS ON THE STAND. YOU ARE WELCOME TO ASK ABOUT THAT AND  
8 THEY CAN OFFER WHATEVER EXPLANATION THEY CAN OFFER, BUT MS.  
9 MANGUM IS EXACTLY RIGHT. SHE DOESN'T HAVE TO PRODUCE EVERY SINGLE  
10 PERSON IN THE CHAIN OF CUSTODY.

11 MR. COMISH: I UNDERSTAND THAT BUT IN THIS CASE GIVEN THE  
12 GAP AND HER CENTRAL ROLE, WE HAVE NO EVIDENCE OF HER PARTICULAR  
13 HANDLING OF THE EVIDENCE. AND THAT'S THE CRUX OF MY ISSUE WITH THIS.

14 THE COURT: I CERTAINLY THINK YOU ARE WELCOME TO CROSS  
15 EXAMINE ANY OF THESE OFFICERS WITH REGARD TO THAT IF YOU WOULD LIKE.  
16 YOU HAVE OFFICER POTASH HERE WHO I PRESUME HE'S GOING TO TESTIFY.

17 MS. MANGUM: YES, YOUR HONOR.

18 THE COURT: HE CAN EXPLAIN THE PROCEDURES AND YOU ARE  
19 CERTAINLY WELCOME TO CROSS EXAMINE HIM ABOUT THAT.

20 MR. COMISH: OKAY.

21 THE COURT: ALL RIGHT. SO WE WERE AT THE POINT OF  
22 INTRODUCING THE EVIDENCE. ARE WE READY TO GO FORWARD WITH THAT?

23 MS. MANGUM: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 (JURY RETURNS TO THE JURY BOX)

1           **THE COURT:** ALL RIGHT. I BELIEVE WE ARE BACK ON THE  
2 RECORD.

3           **MS. MANGUM:** YOUR HONOR, I'M NOT SURE IF I MADE A MOTION.  
4 HAVE YOU LOOKED AT THIS?

5           **MR. COMISH:** YES.

6           **MS. MANGUM:** OKAY. YOUR HONOR, AT THIS TIME, I WOULD  
7 PLACE THE CHAIN OF CUSTODY DOCUMENT INTO EVIDENCE.

8           **THE COURT:** ALL RIGHT. SO NOTED.

9           (CHAIN OF CUSTODY DOCUMENT IS RECEIVED INTO EVIDENCE AS  
10 CITY'S EXHIBIT #2.

11           **DIRECT EXAMINATION CONTINUED BY**

12           **MS. MANGUM:**

13   **Q.** SGT. WEBB, WHILE YOU HAD THAT IN YOUR CUSTODY AND CONTROL, DID  
14 YOU ALTER IT OR CHANGE IT IN ANY WAY?

15   **A.** I DID NOT.

16   **Q.** DID YOU TAMPER WITH THAT ITEM AT ALL?

17   **A.** I DID NOT.

18   **Q.** DID YOU MAINTAIN THE INTEGRITY OF THAT ITEM WHILE YOU HAD IT?

19   **A.** I DID.

20           **MS. MANGUM:** THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

21           **THE COURT:** ALL RIGHT. MR. COMISH.

22           **MR. COMISH:** MAY IT PLEASE THE COURT.

23           **CROSS EXAMINATION BY**

24           **MR. COMISH:**

25   **Q.** GOOD AFTERNOON, SGT. WEBB.

1    A.    HOW YOU DOING?

2    Q.    I HAVE FOUR QUICK QUESTIONS FOR YOU. OKAY. YOU DIDN'T ACTUALLY  
3    SEE MR. HEYWARD EVER TOUCH THE SUBSTANCE, DID YOU?

4    A.    NO.

5    Q.    NO. DID YOU SEE MR. HEYWARD BRING THE SUBSTANCE INTO THE  
6    AUTOMOBILE?

7    A.    NO.

8    Q.    DID YOU EVER SEE MR. HEYWARD IN ANY WAY GESTURE TOWARD THE  
9    SUBSTANCE WHEN HE WAS IN THE VEHICLE?

10   A.   NO.

11   Q.    FINAL QUESTION. YOU DID RUN THE REGISTRATION OF THE VEHICLE,  
12   CORRECT?

13   A.    YES.

14   Q.    CAN YOU RECALL THE NAME ON THE REGISTRATION?

15   A.    I REMEMBER HIM TELLING ME IT WAS HIS SISTER.

16                MR. COMISH: NO FURTHER QUESTIONS. THANK YOU.

17                THE COURT: ALL RIGHT. ANYTHING FOR REDIRECT?

18                REDIRECT EXAMINATION BY

19                MS. MANGUM:

20   Q.    SGT. WEBB, BASED ON WHAT YOU KNEW OF THE DRUG SUPPRESSION  
21   TEAM, IS IT COMMON FOR YOU TO SEE VEHICLES THAT PEOPLE ARE DRIVING  
22   AND HAVE CUSTODY AND CONTROL THAT ARE NOT REGISTERED TO THEM?

23   A.    ABSOLUTELY.

24                MR. COMISH: OBJECTION. CUSTODY AND CONTROL? I'M NOT  
25   SURE HOW HE WOULD KNOW CUSTODY AND CONTROL AS A LEGAL MATTER.

1 DOES HE HAVE THE BASIS FOR ISSUING AN OPINION ON THAT?

2 **THE COURT:** I'M NOT SURE WHAT THE BASIS OF YOUR OBJECTION  
3 IS.

4 **MR. COMISH:** SHE'S ASKING HIM TO OFFER AN OPINION BASED ON  
5 A LEGAL DEFINITION OF CUSTODY AND CONTROL.

6 **THE COURT:** I THINK HE CAN ANSWER FACTUALLY FROM HIS  
7 POSITION. I BELIEVE THAT'S A LEGAL QUESTION.

8 **Q.** (BY MS. MANGUM) THE NAME THAT CAME UP WHEN YOU CHECKED THIS  
9 VEHICLE REGISGTRATION, DO YOU RECALL WHAT THE NAME WAS?

10 **A.** I CAN REFER TO MY NOTES. IT'S IN MY ENVELOPE.

11 **Q.** THIS?

12 **A.** YES. CORNELIA KAY HEYWARD I BELIEVE IF I'M PRONOUNCING THAT  
13 CORRECTLY.

14 **Q.** AND BASED ON YOUR CONVERSATION WITH THE DEFENDANT IT'S YOUR  
15 UNDERSTANDING THAT THAT IS HIS SISTER?

16 **A.** CORRECT.

17 **Q.** WHEN YOU CHECKED REGISTRATION ON THAT NAME, HOW MANY  
18 VEHICLES ARE REGISTERED TO THAT ONE PERSON?

19 **A.** TWO.

20 **MS. MANGUM:** NO FURTHER QUESTIONS, YOUR HONOR.

21 **THE COURT:** ANYTHING YOU WANT TO ADD?

22 **MR. COMISH:** NOTHING, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. YOU CAN STEP DOWN.

24 (WITNESS TO THE SIDE)

25 **MS. MANGUM:** YOUR HONOR, THE CITY CALLS SGT. WILLIAMS.

1                   **C. B. WILLIAMS, AFTER BEING DULY SWORN BY THE COURT,**  
2                   **TESTIFIES AS FOLLOWS:**

3                   **MS. MANGUM:** YOUR HONOR, I HAVE A MATTER OF LAW THAT I'D  
4                   LIKE TO TAKE UP OUTSIDE THE PRESENCE OF THE JURY.

5                   **THE COURT:** PLEASE, LADIES AND GENTLEMEN.

6                   (JURY LEAVES THE JURY BOX)

7                   **THE COURT:** MS. MANGUM.

8                   **MS. MANGUM:** YOUR HONOR, THIS IS A LITTLE BIT COMPLICATED  
9                   SO I'M GOING TO TRY TO BACK UP. BASED ON THIS ARREST, THE DEFENDANT  
10                  FILED AN I.A. COMPLAINT ON OFFICER WILLIAMS BASED ON HIS CONDUCT. HE --  
11                  IN THAT I.A. COMPLAINT HE ISSUED A SWORN AFFIDAVIT WHICH I BROUGHT  
12                  TODAY ONLY WITH THE INTENTION OF USING TO IMPEACH THE DEFENDANT IF  
13                  HE TOOK THE STAND. HOWEVER, IN DEFENSE COUNSEL'S OPENING STATEMENT  
14                  HE MADE STATEMENTS THAT THE DEFENDANT - IT WAS NOT THE DEFENDANT'S  
15                  CAR. AND SO AT THIS POINT I WOULD LIKE TO USE THIS THROUGH OFFICER  
16                  WILLIAMS, WHO IS AWARE OF THIS AFFIDAVIT BECAUSE THE COMPLAINT WAS  
17                  FILED AGAINST HIM AND HE WAS GIVEN A COPY OF IT, TO SHOW THAT THE  
18                  DEFENDANT DID ADMIT IN THE AFFIDAVIT THAT THE VEHICLE WAS HIS. I'VE  
19                  NOT PROVIDED IT PREVIOUSLY TO DEFENSE COUNSEL BECAUSE I HAD NO PLANS  
20                  OF USING IT UNTIL I HEARD HIS OPENING TODAY. SO I'M NOT SURE IF YOU  
21                  WANT TO HEAR MORE FROM ME. I'M NOT SURE YOU WANT TO HEAR  
22                  ARGUMENTS.

23                  **MR. COMISH:** YOUR HONOR, OBVIOUSLY I HAVE TO OBJECT. I  
24                  HAVE NO IDEA WHAT THIS STATEMENT IS -

25                  **MS. MANGUM:** I DO HAVE A COPY FOR YOU.

1           **THE COURT:** DO YOU WANT TO TAKE A MINUTE AND LOOK AT IT?

2           **MR. COMISH:** YES, YOUR HONOR. THANK YOU.

3           **MS. MANGUM:** WOULD YOU LIKE A COPY OF THIS, YOUR HONOR?

4           **THE COURT:** NO. LET'S LET Y'ALL. I MIGHT NOT EVEN WANT TO  
5   KNOW WHAT IT SAYS.

6           (PAUSE)

7           **THE COURT:** YOU WANT TO TAKE ABOUT A TEN-MINUTE RECESS  
8   AND LET YOU TAKE A LOOK AT THAT AND TALK TO YOUR CLIENT?

9           **MR. COMISH:** THANK YOU.

10          (RECESS)

11          (AT CONCLUSION OF RECESS)

12          **MR. COMISH:** I WOULD LIKE TO PUT ON THE RECORD THAT I DID  
13   JUST RECEIVE THIS RIGHT NOW.

14          **THE COURT:** RIGHT.

15          **MR. COMISH:** SO I DO HAVE RULE 5 CONCERNS. HOWEVER, I DO  
16   HAVE ONE IN THE FILE AND I DON'T KNOW WHETHER I GOT IT FROM MR.  
17   HEYWARD OR FROM OFFICER ARNOLD. I BELIEVE I GOT IT FROM YOU SO I AM  
18   NOT OBJECTING TO IT ON A RULE 5 BASIS BECAUSE I CAN'T BE CERTAIN THAT  
19   THERE WAS A RULE 5 VIOLATION.

20          **THE COURT:** OKAY.

21          **MR. COMISH:** MY MAIN OBJECTION IS FOUNDATION. I'M NOT  
22   SURE HOW OFFICER WILLIAMS WOULD LAY THE FOUNDATION OR ESTABLISH  
23   THIS STATEMENT'S AUTHENTICITY. I DO NOT SEE THAT HE WAS IN THE ROOM  
24   WHEN THIS WAS WRITTEN OR SWORN. I DON'T KNOW THAT HE HAS ANY DIRECT  
25   PERSONAL KNOWLEDGE THAT THIS WAS IN FACT THE STATEMENT THAT MY

1 DEFENDANT MADE UNDER OATH.

2 THE COURT: OKAY.

3 MR. COMISH: I'M NOT SURE HOW HE AUTHENTICATES IT.

4 THE COURT: ALL RIGHT. MS. MANGUM, YOU SAID EARLIER THAT  
5 YOU DID NOT TURN THIS OVER AS PART OF THE RULE 5 RESPONSE?

6 MS. MANGUM: I DID NOT, YOUR HONOR.

7 THE COURT: OKAY.

8 MS. MANGUM: I JUST FOUND OUT ABOUT THE I.A. COMPLAINT  
9 YESTERDAY. I JUST RECEIVED THE FILE YESTERDAY. WHEN I LOOKED  
10 THROUGH IT, AS I SAID, THE ONLY THING I THOUGHT ABOUT IN TERMS OF HIS  
11 AFFIDAVIT WAS FOR IMPEACHMENT PURPOSES.

12 THE COURT: OKAY.

13 MS. MANGUM: AND THAT WAS MY PLAN TO USE IT IF THE  
14 DEFENDANT TOOK THE STAND. HOWEVER, ONCE THE PUBLIC DEFENDER  
15 BROUGHT INTO QUESTION WHETHER OR NOT THIS WAS HIS VEHICLE AND I  
16 WENT BACK OVER THE LUNCH BREAK AND READ THAT FIRST LINE WHERE HE  
17 CLEARLY SAYS THAT IT IS.

18 THE COURT: OKAY. I THINK IN THE INTEREST OF JUSTICE IF IT  
19 WASN'T PART OF RULE 5 AND IT WASN'T TURNED OVER THEN, THEN I'M NOT  
20 GOING TO ALLOW YOU TO INTRODUCE IT NOW. NOW CERTAINLY IF THE  
21 DEFENDANT TESTIFIES YOU CAN CERTAINLY USE IT FOR IMPEACHMENT.

22 MS. MANGUM: JUST TO CLARIFY, YOUR HONOR. IN TERMS OF NOT  
23 USING IT, ARE YOU SAYING YOU ARE NOT GOING TO ALLOW ME TO QUESTION  
24 OFFICER WILLIAMS ABOUT HIS KNOWLEDGE BASED ON WHAT HE LEARNED  
25 FROM THIS?

1           **THE COURT:** WELL, I THINK HE CAN TESTIFY ABOUT HIS  
2 KNOWLEDGE BUT I DON'T THINK YOU CAN DO THAT THROUGH -

3           **MS. MANGUM:** JUST NOT INTRODUCE THIS INTO EVIDENCE.

4           **THE COURT:** -- NOT THROUGH THE AFFIDAVIT.

5           **MR. COMISH:** SO HE'LL BE ALLOWED TO TESTIFY THE SPECIFIC  
6 CONTENTS OF THE AFFIDAVIT?

7           **THE COURT:** NO, I DON'T THINK HE CAN. HE CAN TESTIFY FROM  
8 WHAT HE KNEW AT THE SCENE, WHAT HAPPENED AT THE SCENE, WHAT HE  
9 KNOWS ABOUT THE CASE BUT I DON'T THINK HE CAN - I THINK BECAUSE IT  
10 WASN'T PART OF RULE 5 THEN I DON'T THINK -

11           **MS. MANGUM:** HE'S CONSENTED THAT IT'S NOT A RULE 5  
12 VIOLATION SO -

13           **MR. COMISH:** THAT'S NOT WHAT I SAID, YOUR HONOR.

14           **THE COURT:** HE SAID HE DIDN'T KNOW HOW HE GOT IT. AND YOU  
15 SAID THAT YOU KNEW THAT YOU DIDN'T TURN IT OVER AS PART OF RULE 5,  
16 THAT YOU JUST GOT IT, SO I THINK THAT'S THE SAFER COURSE.

17           **MS. MANGUM:** SO HE CAN TESTIFY TO WHAT HE'S LEARNED - I'M  
18 JUST CONFUSED AND I CERTAINLY DON'T WANT TO GO AGAINST YOUR RULING  
19 ONCE I PUT HIM ON THE STAND.

20           **THE COURT:** IF HE LEARNED IT SOLELY FROM THE AFFIDAVIT  
21 THEN HE CAN'T TESTIFY.

22           **MS. MANGUM:** IF HE LEARNED IT FROM THE I.A. INVESTIGATION  
23 CAN HE TESTIFY TO THAT? THE I.A. INVESTIGATION IS DIRECTLY RELATED TO  
24 THIS INCIDENT AND IN THE COMPLAINT THE DEFENDANT SAYS THAT HE WAS  
25 DRIVING THE CAR. IT'S HARD FOR ME TO UNDERSTAND HOW HE CAN'T SAY IN

1 ADDITION TO THE FACT THAT I HAVE SEEN HIM IN THAT VEHICLE OR WHATEVER  
2 ELSE.

3 THE COURT: I THINK YOU ARE GOING FAR AFIELD IF WE GET INTO  
4 THE I.A. INVESTIGATION.

5 MR. COMISH: I DON'T THINK OFFICER WILLIAMS CAN EVEN SAY  
6 HE SAW MY CLIENT IN THE VEHICLE.

7 MS. MANGUM: I UNDERSTAND.

8 THE COURT: ALL RIGHT. ARE WE CLEAR? ALL RIGHT. BRING THE  
9 JURY BACK.

10 (JURY RETURNS TO THE JURY BOX)

11 THE COURT: ALL RIGHT. MS. MANGUM.

12 DIRECT EXAMINATION BY

13 MS. MANGUM:

14 Q. SGT. WILLIAMS, CAN YOU STATE YOUR FULL NAME FOR THE RECORD,  
15 PLEASE?

16 A. CHRIS B. WILLIAMS.

17 Q. AND WHAT IS IT THAT YOU DO?

18 A. I AM - ACTUALLY RIGHT NOW I'M ON TEMPORARY LOAN TO SOUTH  
19 REGION, A STREET SUPERVISOR.

20 Q. AND PRIOR TO THAT, WHAT DID YOU DO FOR C.P.D.?

21 A. PRIOR TO THAT IN 2008 — EXCUSE ME, 2009 WE WERE ON THE  
22 INTERDICTION CRIMINAL ENFORCEMENT TEAM WHICH IS INTERSTATE  
23 ENFORCEMENT OF NARCOTICS AND AFTER THAT WE WERE ON THE DRUG  
24 SUPPRESSION TEAM AND AT THE TIME OF THIS INCIDENT I WAS THE  
25 SUPERVISOR. I BELIEVE I WAS A CORPORAL AT THAT TIME OVER THE DRUG

1 SUPPRESSION TEAM. I'VE ALSO BEEN A K-9 HANDLER SINCE OCTOBER OF 2002.  
2 I'M CURRENTLY ON MY THIRD PATROL DOG, AND WHEN I SAY PATROL I MEAN  
3 NARCOTICS APPREHENSION AND TRAFFIC AND ARTICLE SEARCHES AND THIS IS  
4 MY THIRD DOG NOW. AT THAT TIME, I WAS ON MY SECOND DOG WHICH WAS K-9  
5 ZORO.

6 Q. AND IN ORDER TO OPERATE OR HANDLE A DOG, DO YOU HAVE TO HAVE  
7 SPECIAL CERTIFICATIONS AND TRAINING?

8 A. YES, MA'AM. WE HAVE TO GO THROUGH AN INITIAL BASIC HANDLER  
9 COURSE WHICH IS ANYWHERE FROM ONE MONTH TO THREE MONTHS LONG.  
10 THIS LAST DOG WAS ABOUT A MONTH. IT WAS RATHER SHORT BECAUSE THE  
11 DOG WAS FULLY TRAINED AND DUE TO MY EXPERIENCE, BUT WE HAVE TO GO  
12 THROUGH YEARLY CERTIFICATION AS WELL AS EACH WEEK WE HAVE TO DO A  
13 MINIMUM OF FOUR HOURS HANDS-ON TRAINING WITH THAT DOG. IT EQUALS UP  
14 TO SIXTEEN HOURS A MONTH. THAT IS SET BY THE COURTS AND MOST OF THE  
15 TIME WE COME WAY ABOVE THAT. WE WORK THESE DOGS ALL THE TIME.

16 Q. AND HOW DOES IT WORK WHEN YOU HAVE A DOG? IS THAT DOG WITH  
17 YOU ALL THE TIME? DOES THAT DOG GO HOME WITH YOU?

18 A. YES, MA'AM. THAT DOG ACTUALLY SPENT MORE TIME WITH ME THAN  
19 MOST OF MY FAMILY. HE GOES TO WORK WITH ME AND COMES HOME WITH ME  
20 AND WHEN HE'S IN THE CAR WITH ME - ACTUALLY MY DOG NOW IS IN THE CAR.

21 Q. AND IN TERMS OF THE DOG THAT WE SAW IN THE VIDEO, WHAT WAS  
22 THAT DOG'S NAME?

23 A. K-9 ZORO.

24 Q. AND HOW LONG DID YOU HAVE K-9 ZORO?

25 A. K-9 ZORO WAS RETIRED WHEN HE WAS ELEVEN YEARS OLD. I GOT HIM

1 WHEN HE WAS I BELIEVE THREE. HE WAS DONATED TO THE CITY OF COLUMBIA  
2 FROM THE BAND CALLED WIND BISCUIT. THE DRUMMER HAD TWO OF THEM. HE  
3 DONATED BOTH OF THOSE DOGS TO US IN 2000. I WAS HIS SECOND HANDLER. HE  
4 WAS A FULL SERVICE DOG WHICH MEANS HE DID NARCOTICS, TRACKING,  
5 APPREHENSION, AS WELL AS ARTICLE SEARCHES. AND HE COULD FIND MISSING  
6 PERSONS.

7 Q. AND HOW ARE THOSE DOGS TRAINED?

8 A. THE DOGS TRAINING - IT GETS INTO A LOT OF TECHNICAL TERMS BUT THE  
9 DOGS TRAIN PRETTY MUCH LIKE PLAYING A GAME. THE DOG THINKS THE ITEM  
10 WHICH IS A NARCOTIC ODOR IS THEIR TOY AND THEY ARE TRYING TO FIND  
11 THEIR TOY. THERE'S TWO TYPES OF DOGS. IT'S CALLED PASSIVE DOG WHICH  
12 THE DOG SITS TO BE (INAUDIBLE) OR AGGRESSIVE DOG WHICH MEANS HE BARKS  
13 OR SCRATCHES AT THE ITEM. K-9 ZORO WAS AN AGGRESSIVE ALERT DOG. IN  
14 MY TESTIMONY I'LL COME BACK TO WHAT I MEAN BY THAT. WHEN HE SMELLS  
15 THE NARCOTIC ODOR, THERE'S FOUR BASIC ODORS WHICH IS COCAINE, CRACK;  
16 MARIJUANA; HEROIN AND METHAMPHETAMINE. WE HAVE NOW STARTED -  
17 SINCE WE ARE SEEING A LOT OF IT INTRODUCED IN ECSTASY BUT THOSE ARE  
18 CALLED THE BIG FOUR IS WHAT WE TRAIN ON WITH THOSE NARCOTICS ODORS.  
19 IN ORDER TO PASS CERTIFICATION YEARLY THOSE DOGS HAVE TO BE ABLE TO  
20 FIND THOSE ODORS UNKNOWN IN A ROOM OR VEHICLE OR WHEREVER ELSE WE  
21 GO. ONCE HE FINDS THAT ODOR, HE THINKS HE'S FINDING HIS TOY WHICH HE  
22 STARTS SCRATCHING AND SO WE GIVE HIM THE TOY AND HE ACTUALLY THINKS  
23 THAT HE'S FINDING IT. IN GENERAL LAYMAN'S TERMS, IT IS  
24 NOT ROCKET SCIENTIST.

25 Q. AND AT THE TIME OF THIS INCIDENT IN 2011 WAS K-9 ZORO A CERTIFIED

1 (INAUDIBLE) DOG?

2 A. YES, HE WAS. HE WAS A CERTIFIED - HE WAS CERTIFIED AS A NATCOTICS  
3 DETECTION K-9. HE HAS NUMEROUS FINDS. HE'S BEEN PROVEN IN COURT UP  
4 UNTIL THAT TIME AND, LIKE I SAID, HE WAS PROBABLY TEN YEARS OLD THEN.  
5 HE WAS TOWARD THE END OF HIS CAREER.

6 Q. AND IN MAY OF 2011 WHEN THIS HAPPENED, HOW LONG HAD YOU BEEN  
7 WORKING WITH K-9 ZORO?

8 A. PROBABLY SIX OR SEVEN YEARS PROBABLY IF I'D HAVE TO SAY FOR  
9 SURE.

10 Q. IN MAY OF 2011, WHAT WERE YOU DOING SPECIFICALLY WITH C.P.D.?  
11 WHAT WAS YOUR ...

12 A. I WAS THE SUPERVISOR OVER THE DRUG SUPPRESSION TEAM.

13 Q. AND WE'VE ALREADY TALKED A LITTLE BIT ABOUT THAT DRUG  
14 SUPPRESSION TEAM.

15 A. YES, MA'AM.

16 Q. AT SOME POINT THAT MONTH, HOW DID YOU COME TO KNOW OR COME IN  
17 CONTACT WITH THE DEFENDANT?

18 A. HE WAS AT THE SCENE WHEN I WAS CALLED BY OFFICER WEBB TO COME  
19 - EXCUSE ME. SGT. WEBB AT THE TIME TO RUN AROUND THE VEHICLE WITH MY  
20 DOG AND DO A SCAN OF THE VEHICLE. HE WAS ACTUALLY THE PERSON THERE.  
21 THAT'S HOW I CAME IN CONTACT WITH HIM DURING THAT TIME.

22 Q. AND DID YOU KNOW ANYTHING ABOUT THE DEFENDANT OR THE  
23 APARTMENT IN QUESTION PRIOR TO YOU ARRIVING AT THAT STOP?

24 A. THE ONLY THING THAT WE KNEW ABOUT IS THE BUILDING. FOURTEEN  
25 BUILDING. I THINK THEY GAVE US AN APARTMENT NUMBER. THOSE BUILDINGS

1 ARE - THE ONLY WAY TO GET TO THOSE APARTMENTS IS FROM THE INSIDE AND  
2 WHEN OFFICER ARNOLD - HE WAS IN AN UNDERCOVER VEHICLE BUT I BELIEVE  
3 WAS IN UNIFORM AND, THEREFORE, WE HAD TO GET FURTHER AWAY TO SEE  
4 THE BUILDING. SO WE KNEW THAT THE BUILDING WHICH IS FOURTEEN I  
5 BELIEVE WAS ACTUALLY SELLING NARCOTICS AND THEY GAVE US A GENERAL  
6 DESCRIPTION. I BELIEVE IT WAS A BLACK MALE THAT WAS SELLING NARCOTICS  
7 FROM AN ACTUAL APARTMENT THERE. WE WEREN'T A HUNDRED PERCENT  
8 SURE BUT A LOT OF OUR COMPLAINTS ARE ANONYMOUS, SORT OF LIKE WHEN  
9 PEOPLE SEND E-MAILS OR SO FORTH. WE ARE THE DRUG SUPPRESSION TEAM.  
10 WE TAKE MINOR STUFF. IT'S KIND OF LIKE THE FIRE DEPARTMENT. SOMEBODY  
11 CALLS AND SAYS THERE'S SMOKE COMING FROM THIS LOCATION, YOU EXPECT  
12 THE FIRE DEPARTMENT TO RESPOND. IT'S THE SAME WAY WITH NARCOTICS  
13 COMPLAINTS. IF ANY ONE OF Y'ALL WAS TO CALL AND SAY, HEY, I THINK THESE  
14 PEOPLE ARE SELLING DRUGS, I WANT TO STAY ANONYMOUS, IT'S OUR JOB AND  
15 OUR RESPONSIBILITY TO MAKE SURE THAT CRIMINAL ACTIVITY IS NOT GOING  
16 ON THERE. SO THAT'S HOW WE GO. WE DON'T GO AND KNOCK ON EVERY DOOR  
17 BECAUSE WE WEREN'T SURE WHICH DOOR IT WAS SO, THEREFORE, THAT'S THE  
18 REASON WE PUT DIFFERENT TACTICS AS FAR AS PUTTING THE VEHICLE THERE  
19 AND WATCHING THE LOCATION TO SEE WHAT WAS GOING ON.

20 Q. AND SO THAT DAY WHEN YOU WERE CALLED OUT ONTO THE SCENE  
21 WHERE THE DEFENDANT WAS PULLED OVER, WHAT DID YOU WHEN YOU GOT  
22 THERE?

23 A. WHAT HAPPENS IS WHEN - I DON'T GET INTO LEGAL ISSUES OR ANY-  
24 THING. WHEN SOMEBODY CALLS ME TO RUN THE DOG, I EXPECT THEY HAVE -  
25 ONE, WE ARE SUPPOSED TO BE THERE. LEGAL REASON TO STOP THEM AND SO

1 FORTH SO I JUST GO AND TAKE HIM ON THE CAR. THERE ARE CERTAIN COURT  
2 CASES THAT SAYS THAT DURING A NORMAL TRAFFIC STOP I CAN RUN MY DOG  
3 AROUND ANY PART OF THE CAR. THERE IS NO EXPECTATION OF PRIVACY  
4 AROUND THE CAR. IN THE GENERAL RULE OF THUMB WHEN – IN ORDER NOT TO  
5 MANIPULATE OR TOUCH OR ANYTHING LIKE THAT THE VEHICLE WE DON'T  
6 TOUCH THE VEHICLE. WE DON'T TELL ANYBODY TO DO WHATEVER. WE DON'T  
7 TELL THEM TO CUT THE HEAT ON, WE DON'T TELL THEM TO MANIPULATE THE  
8 CAR. WE LEAVE THE CAR JUST AS IT IS.

9 Q. SO WHEN YOU – I'M SORRY TO INTERRUPT. WHEN YOU ARRIVED ON THE  
10 SCENE THAT DAY, WAS THE CAR DOOR ALREADY OPEN?

11 A. THAT'S WHERE I WAS GOING. THE CAR DOOR WAS ALREADY OPEN DUE  
12 TO THE FACT THAT WHEN MR. HEYWARD GOT OUT OF THE VEHICLE HE LEFT THE  
13 CAR DOOR OPEN. OF COURSE, IF WE WERE IN LIKE CARS COMING BY WE WOULD  
14 DEFINITELY TELL HIM NOT TO – TO SHUT THE DOOR FOR THE REASON WE DON'T  
15 WANT HIM TO GET, YOU KNOW, HIT AND STUFF, BUT IN THAT SITUATION ANY  
16 TIME WE CAN LEAVE THE VEHICLE THE WAY IT IS AND NOT MANIPULATE IT  
17 THEN WE DO. AND THAT'S THE REASON THE CAR DOOR WAS OPEN THAT TIME  
18 WHEN WE RAN THE CAR.

19 Q. WE'VE ALL SEEN THE VIDEO NOW FROM THAT DAY BUT WHEN YOU FIRST  
20 GET ON SCENE IT LOOKS LIKE YOU ARE PLAYING WITH THE DOG OFF ON THE  
21 SIDE. WHAT IS THAT?

22 A. ZORO WAS OLDER. I'M OLDER. IT TAKES A LITTLE BIT MORE THE ENERGY  
23 TO GET UP AND, THEREFORE, WHEN I STARTED PLAYING WITH THE TOY AS I WAS  
24 EXPLAINING EARLIER, WAS PLAYING WITH A TOY TO GET HIM READY TO DO THE  
25 SEARCH. AND, YOU KNOW, THE THING IS EVERY DOG YEAR IS SEVEN YEARS.

1 ZORO WAS TEN, JUST LIKE SEVENTY YEARS OLD. I CAN ONLY IMAGINE WHEN I  
2 GET UP THERE WHAT SOMEBODY WOULD HAVE TO DO TO GET ME READY TO  
3 WORK BUT THAT WAS MAINLY WHAT IT WAS. I WAS PLAYING WITH HIM,  
4 GETTING HIM READY AND PUT THE TOY UP AND I PRESENTED THE CAR TO  
5 SEARCH.

6 Q. WHEN YOU SAY YOU PRESENTED THE CAR, CAN YOU JUST WALK US  
7 THROUGH WHAT YOU DO? WHAT YOU DID THAT DAY.

8 A. I HAVE A GENERAL RULE THAT I PRACTICE EVERY DAY. AND THE DOGS  
9 DO WHAT THEY CALL CLASSICAL CONDITIONING. THEY ARE USED TO ONE WAY  
10 SO, THEREFORE, WE DON'T CHANGE ANY WAY UP SO, THEREFORE, WE DON'T  
11 PROMPT ANYTHING. SO I DO A SEARCH THAT I'VE BEEN DOING FOR ALMOST TEN  
12 YEARS NOW ON THE VEHICLE. I START ON THE PASSENGER SIDE POINT WHICH I  
13 CALL THE PIVOT POINT. IT'S THE ONLY TIME I TOUCH THE VEHICLE IS TO  
14 PRESENT IT. COME ON. I GO AROUND THAT CORNER, I COME TO THE BACK OF  
15 THE TRUNK. I HIT THE BACK OF THE TRUNK. I COME BACK AROUND, COME  
16 BACK AROUND TO THE FRONT OF THE VEHICLE, COME ALL THE WAY BACK  
17 AROUND TO HIS TRUNK, GO BACK AROUND TO THE FRONT, BACK TO WHAT I  
18 CALL THE PIVOT POINT AND AT THAT TIME IF THERE'S NO INDICATION OR ALERT  
19 GIVEN DURING THAT THING I PUT THE DOG UP. AT THAT TIME WITH THAT  
20 VEHICLE - AND, OF COURSE, A LOT OF TIMES VEHICLES ARE PARKED DIFFERENT  
21 AND WE HAVE TO CHANGE UP BUT IN A PERFECT SCENARIO WHEN THERE'S  
22 NOTHING AROUND THAT'S THE WAY I DID IT. IN THAT SITUATION, I STARTED AT  
23 THE FRONT OF THAT VEHICLE. I TOUCHED THE FRONT OF THE VEHICLE TO  
24 START A PIVOT POINT TO SHOW ZORO THAT'S WHERE WE STARTED. WHEN WE  
25 CAME AROUND THAT VEHICLE IF YOU NOTICED ON THE VIDEO THE CAR DOOR

1 WAS OPEN. WHEN WE COME AROUND THE CAR DOOR THE FIRST TIME AND  
2 PASSED IT UP. HE DIDN'T SMELL ANY NARCOTIC ODOR COMING FROM THERE.  
3 HE WASN'T PROMPTED OR ANYTHING LIKE THAT. AND INTO THAT TURN IF WE  
4 HAVE TRAINED HIM PROPERLY TO GO INTO THAT VEHICLE, HE WOULD HAVE  
5 WENT INTO THAT VEHICLE IF HE WAS TRAINED THAT LIKE. HE'S NOT. HE'S  
6 TRAINED TO GO ONLY WHERE NARCOTIC ODOR IS AT. WE GET TO THE BACK OF  
7 THE VEHICLE, WE COME BACK AROUND. WHEN WE GET BACK TO THE DOOR IS  
8 WHEN HE CATCHES THE NARCOTIC ODOR AND HE GOES INTO THE VEHICLE BY  
9 HIMSELF. I DIDN'T PROMPT HIM, DIDN'T GIVE HIM ANY COMMANDS OR  
10 ANYTHING LIKE THAT. WHEN HE WENT IN THE VEHICLE THAT'S WHEN HE WENT  
11 STRAIGHT. I CAN TELL BY -- IT'S HARD TO SEE ON THE VIDEO BECAUSE I  
12 BELIEVE SOMEBODY WAS IN IT BUT IF YOU NOTICED HIS TAIL HE STARTED  
13 WAGGING. AND HE WENT UP AND WENT IN THERE. WHEN HE WENT INTO THE  
14 VEHICLE, HE'S IN AGGRESSIVE ALERT. REMEMBER I WAS SAYING EARLIER  
15 ABOUT THE SCRATCHING AND STUFF. HE WAS AGGRESSIVE ALERT. HE WENT  
16 STRAIGHT TO THE DASH, HE DID WHAT WE CALL A NOSE PRESS WHICH MEANS  
17 HE PRESSES UP AGAINST THE CAR. HE STARTED SCRATCHING, BITING AND HE  
18 ACTUALLY GRABBED THE DASH AND PULLED IT OFF AND THAT'S WHERE THE  
19 ITEM WAS FOUND THAT WE FOUND.

20 Q. DID YOU TAKE SOME PICTURES THAT DAY, SGT. WILLIAMS?

21 A. I DID. I THINK I TOOK THREE OR FOUR PICTURES THAT DAY. NORMALLY  
22 WHEN WE DO ANY TYPE OF DEPLOYMENT WE DO A DEPLOYMENT REPORT  
23 WHETHER WE FIND ANYTHING OR NOT, JUST TO SHOW THAT WE USED THE DOG  
24 ON THAT VEHICLE WHETHER HE ALERTED OR NOT.

25 Q. AND WHAT ARE THESE?

1 A. THESE ARE THE PICTURES THAT I'VE TAKEN OF THE - INSIDE THE  
2 VEHICLE.

3 Q. AND YOU TOOK THEM THAT DAY?

4 A. THAT DAY.

5 MS. MANGUM: YOUR HONOR, AT THIS TIME WE'D MOVE TO  
6 INTRODUCE THESE INTO EVIDENCE.

7 THE COURT: WITHOUT OBJECTION.

8 (PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS CITY'S EXHIBIT  
9 #3)

10 Q. (BY MS. MANGUM) AND, SGT WILLIAMS, WHAT'S IN THAT FIRST PICTURE  
11 THAT YOU TOOK?

12 A. ARE WE GOING FROM THE TOP?

13 Q. YES, THAT FIRST PICTURE.

14 A. THE TOP PICTURE IS THE PILL BOTTLE THAT WAS LOCATED BEHIND THE  
15 COMPARTMENT OR THE LITTLE HOLE WHERE ZORO ALERTED.

16 Q. AND WHAT IS THE PICTURE IMMEDIATELY NEXT TO IT?

17 A. THE PICTURE HERE - THERE'S TWO REASONS I TOOK THIS PICTURE. ONE  
18 IT'S A CRUCIFIX HERE, A RELIGIOUS FIGURE, AND THIS IS ACTUALLY THE BACK  
19 SIDE OF THE DASH FROM WHERE THE PILL BOTTLE WAS TAKEN.

20 Q. WHAT WAS THE SIGNIFICANCE OF THE CROSS, THE CRUCIFIX?

21 A. A LOT OF TIMES DURING OUR TRAINING AND EXPERIENCE, I MYSELF  
22 HAVE OVER A HUNDRED HOURS OF INTERDICTION TRAINING. I'VE ALSO FOUND  
23 THAT A LOT OF RELIGIOUS ITEMS ARE ASSOCIATED WITH NARCOTICS. A LOT OF  
24 PEOPLE PUT BIBLES AND SO FORTH AND THAT'S THE REASON I MADE SURE I  
25 TOOK THAT PICTURE BECAUSE THAT WAS IN THERE.

1    Q.     AND THEN THE PICTURE UNDERNEATH OF THAT IS?

2    A.     THE PICTURE UNDERNEATH IT IS ACTUALLY THE DASH. I TOOK THIS  
3    PICTURE FOR TWO REASONS. ONE IS IT'S A PICTURE OF WILLIE NELSON AND  
4    WILLIE NELSON HAS A MARIJUANA LEAF ON THE FRONT OF THE BUS HE HAS  
5    AND THE OTHER PICTURE IS ANOTHER CROSS RIGHT OVER IT. IT GOES BACK TO  
6    OUR TRAINING AND EXPERIENCE THAT A LOT OF PEOPLE PUT RELIGIOUS ITEMS  
7    OVER WHERE THE NARCOTICS IS OR THEY ARE USING.

8    Q.     WERE THOSE ATTACHED TO THE DASH?

9    A.     THE DASH WAS ACTUALLY ATTACHED TO THIS. YOU SEE THESE LITTLE  
10   FOUR HOLES RIGHT HERE? THIS WAS ACTUALLY THERE. I BELIEVE THAT WAS -  
11   I'M NOT A MECHANIC BUT I BELIEVE THAT'S ACTUALLY AN AIR PIN SORT OF  
12   TYPE IS WHERE THAT WAS SITTING OVER IT.

13   Q.     AND IS THAT PICTURE UP THERE A BETTER VERSION OF -

14   A.     THIS PICTURE HERE IS, LIKE MS. MANGUM SAID, IS A BETTER VERSION OF  
15   WHERE THE BOTTLE WAS LOCATED BEHIND THE WILLIE NELSON PICTURE.

16   Q.     AND WHAT IS THE PICTURE IMMEDIATELY BELOW?

17   A.     THESE TWO CLEAR PLASTIC GREEN LEAFY SUBSTANCE WAS INSIDE OF  
18   THIS ORANGE PILL BOTTLE AND THE PILL BOTTLE WAS INSIDE OF THIS RIGHT  
19   HERE RIGHT BEHIND WHERE K-9 ZORO DID HIS FINAL ALERT OR FINAL  
20   INDICATION.

21                MS. MANGUM: YOUR HONOR, I'D LIKE TO PUBLISH THESE TO THE  
22   JURY IF THERE'S NO OBJECTION.

23                MR. COMISH: NO OBJECTION.

24                THE COURT: NO OBJECTION.

25   Q.     (BY MS. MANGUM) SGT. WILLIAMS, WHAT YOU DID THAT DAY WITH K-9

1 ZORO, DID YOU FOLLOW STANDARD PROCEDURE IN YOUR SEARCH?

2 A. YES, MA'AM.

3 Q. AND WHAT DID YOUR DOG FIND THAT DAY?

4 A. HE LOCATED THE SOURCE OF THE ODOR COMING FROM BEHIND THE  
5 DASH I'M SHOWING YOU THERE AND IT WAS TWO CLEAR PLASTIC BAGS OF  
6 GREEN LEAFY TYPE SUBSTANCE THAT FIELD TESTED POSITIVE FOR THE ILLEGAL  
7 DRUG OF MARIJUANA.

8 MS. MANGUM: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

9 CROSS EXAMINATION BY

10 MR. COMISH:

11 Q. GOOD AFTERNOON, SGT. WILLIAMS?

12 A. YES, SIR.

13 Q. HOW ARE YOU?

14 A. I'M GOOD. HOW ARE YOU?

15 Q. I'M DOING WELL, THANK YOU. I JUST HAVE A FEW QUESTIONS FOR YOU.

16 CAN YOU DESCRIBE SORT OF YOUR STANDARD PROCEDURE OF THE PIVOT  
17 POINTS AND THEY GO AROUND THREE QUADRANTS, PIVOT THREE QUADRANTS.

18 IS THE STANDARD PROCEDURE EVER TO LET THE DOG INTO THE VEHICLE  
19 BEFORE THE DOG IS GIVING AN ALERT?

20 A. NO.

21 Q. NO. OKAY. THANK YOU. AND YOU TALKED ABOUT THE PICTURE THAT  
22 YOU FOUND.

23 A. THAT I TOOK?

24 Q. I'M SORRY. THE WILLIE NELSON?

25 A. YEAH.

1 Q. THAT PICTURE. DO YOU HAVE ANY INDICATION OF HOW THAT PICTURE  
2 GOT ON THE DASH?

3 A. NO.

4 Q. NEVER DUSTED IT FOR PRINTS, YOU JUST TOOK IT. THE SAME WITH THE  
5 PILL BOTTLE, WERE THERE ANY PRINTS ON THOSE? DID Y'ALL EVEN LOOK TO  
6 SEE?

7 A. I DON'T KNOW WHETHER WE -

8 Q. YOU DON'T KNOW WHETHER YOU DID OR NOT. OKAY. THANK YOU. AND  
9 THE SAME WITH THE PICTURE, AM I CORRECT ON THAT? YOU ARE NOT SURE,  
10 YOU DON'T CONCLUSIVELY KNOW WHETHER ANY TESTING WAS EVER DONE?

11 A. NO, SIR.

12 Q. SO AS FAR AS WE KNOW, WE HAVE NO KNOWLEDGE OF THAT?

13 A. NO, SIR.

14 Q. THREE MORE QUESTIONS.

15 A. ALL RIGHT.

16 Q. ALL RIGHT. DID YOU EVER SEE MR. HEYWARD PHYSICALLY TOUCH THE  
17 PILL BOTTLE?

18 A. NO.

19 Q. NO. DID YOU SEE HIM BRING THAT INTO THE VEHICLE?

20 A. NO.

21 Q. NO. I JUST HAD TWO. THANK YOU.

22 A. OKAY.

23 THE COURT: REDIRECT?

24 MS. MANGUM: JUST ONE FOLLOW-UP QUESTION.

25 REDIRECT EXAMINATION BY

1       **MS. MANGUM:**

2       **Q.**     IN TERMS OF THE DEFENDANT AND HIS VEHICLE, OTHER THAN THIS  
3       SPECIFIC INSTANCE, HAVE YOU SEEN HIM DRIVE THAT VEHICLE AT OTHER  
4       TIMES?

5       **A.**     YES, MA'AM.

6       **Q.**     APPROXIMATELY HOW MANY OTHER TIMES HAVE YOU SEEN THE  
7       DEFENDANT DRIVING THAT SAME VEHICLE?

8       **A.**     THREE PROBABLY.

9               **MS. MANGUM:** NO FURTHER QUESTIONS, YOUR HONOR.

10              **THE COURT:** ANY YOU WANT TO ASK IN RESPONSE TO THAT?

11              **MR. COMISH:** NO, YOUR HONOR.

12              **THE COURT:** I THINK YOU CAN STEP DOWN.

13              (WITNESS TO THE SIDE)

14              **MS. MANGUM:** YOUR HONOR, THE CITY CALLS OFFICER POTASH.

15              **GEORGE D. POTASH, AFTER BEING DULY SWORN BY THE COURT,**

16              **TESTIFIES AS FOLLOWS:**

17              **DIRECT EXAMINATION BY**

18              **MS. MANGUM:**

19       **Q.**     OFFICER POTASH, CAN YOU STATE YOUR FULL NAME FOR THE RECORD?

20       **A.**     MY NAME IS GEORGE DANIEL POTASH.

21       **Q.**     AND WHAT'S YOUR OCCUPATION?

22       **A.**     I AM A CRIME SCENE INVESTIGATOR WITH THE CITY OF COLUMBIA  
23       POLICE DEPARTMENT.

24       **Q.**     AND IS THAT YOUR CURRENT ASSIGNMENT?

25       **A.**     THAT'S MY CURRENT ASSIGNMENT.

1 Q. HOW LONG HAVE YOU BEEN DOING THAT?

2 A. I HAVE BEEN FORMALLY ASSIGNED TO THE CRIME SCENE UNIT FOR  
3 ABOUT TWO YEARS NOW.

4 Q. AND PRIOR TO THAT, WHAT WERE YOU DOING FOR C.P.D.?

5 A. JUST PRIOR TO THAT I HAD RECEIVED AN INJURY ON THE JOB. I LOST  
6 ABOUT HALF THE USE OF MY LEFT ARM AND WHILE I WAS RECOVERING FROM  
7 THAT I WAS ASSIGNED TO HELP CLEAR THE BACKLOG OF MARIJUANA TESTING  
8 AT THE LAB AS I WAS A CERTIFIED OFFICER.

9 Q. AND SO PRIOR TO DOING ANALYSIS OF MARIJUANA, WHAT DID YOU DO  
10 FOR C.P.D.?

11 A. A LITTLE BIT OF EVERYTHING. I WORKED ON THE ROAD BUT I PROVIDED  
12 FORENSIC SERVICES FOR THE LINE UNITS, AS WELL AS ACT AS FIELD TRAINING  
13 OFFICER WHERE I TRIAN NEW OFFICERS.

14 Q. AND WHAT EDUCATIONAL EXPERIENCE DO YOU HAVE?

15 A. SPECIFICALLY FOR MARIJUANA?

16 Q. JUST POST HIGH SCHOOL. LET'S START THERE.

17 A. AFTER HIGH SCHOOL I OBTAINED A BACHELOR OF SCIENCE IN POLITICAL  
18 SCIENCE, MINORING IN PHILOSOPHY FROM THE UNIVERSITY OF SOUTHERN  
19 MISSISSIPPI. AFTER THAT I COMPLETED MY FIRST YEAR OF LAW SCHOOL AT  
20 (INAUDIBLE) UNIVERSITY WHILE I WAS WAITING ON A JOB WITH THE SHERIFF'S  
21 DEPARTMENT. WHEN THE JOB AT THE SHERIFF'S DEPARTMENT CAME THROUGH,  
22 I QUIT LAW SCHOOL AND WENT TO WORK FOR RICHLAND COUNTY SHERIFF'S  
23 DEPARTMENT. SPENT ABOUT SIX YEARS OR SO THERE AS A PATROL DEPUTY  
24 AND FIELD TRAINING OFFICER, ALSO ASSIGNED TO THE SPECIAL RESPONSE  
25 TEAM. AFTER THAT I QUIT THE SHERIFF'S DEPARTMENT AND OBTAINED A

1 TEACHING CERTIFICATE FOR SOCIAL STUDIES MIDDLE SCHOOL AND HIGH  
2 SCHOOL. DECIDED NOT TO BE A TEACHER AFTER SUBBING FOR A WHILE AND -  
3 YEAH, BEING A COP WAS SAFER. DECIDED TO - I GOT TALKED INTO COMING TO  
4 THE CITY OF COLUMBIA AND I STARTED WORKING PATROL IN THE NORTH  
5 REGION OF COLUMBIA WHICH IS EAU CLAIRE. WORKED THERE FOR, GEE, TEN  
6 YEARS, EIGHT OR TEN YEARS, LOVED IT. A LOT OF GOOD PEOPLE. AND WORKED  
7 AS A FIELD TRAINING OFFICER AND AGAIN, AS I SAID, PROVIDED FORENSIC  
8 SERVICES FOR MY REGION.

9 Q. AND IN TERMS OF FORENSICS AND MARIJUANA ANALYSIS, DO YOU HAVE  
10 ANY SPECIALIZED TRAINING OR LICENSES OR CERTIFICATIONS?

11 A. FOR FORENSICS IN GENERAL I HAVE SUBSTANTIAL TRAINING, INCLUDING  
12 TRAINING FROM THE FEDERAL LAW ENFORCEMENT TRAINING CENTER AT  
13 GLYNCO AND THROUGH THE INTERNATIONAL ASSOCIATION FOR  
14 IDENTIFICATION AND THROUGH VARIOUS OTHER AGENCIES IN THE AREA,  
15 INCLUDING LEXINGTON COUNTY, RICHLAND COUNTY, SOME CITY OF COLUMBIA  
16 AND S.L.E.D, OF COURSE. FOR MARIJUANA I SPECIFICALLY WAS CERTIFIED TO  
17 TEST MARIJUANA INITIALLY IN 2008. AFTER THREE YEARS IT EXPIRES AND YOU  
18 HAVE TO BE RE-CERTIFIED AND UPON EXPIRATION I WAS RE-CERTIFIED.

19 Q. AND DO YOU BELONG TO ANY PROFESSIONAL ASSOCIATIONS?

20 A. YES, I DO. I'M A MEMBER OF THE INTERNATIONAL ASSOCIATION FOR  
21 IDENTIFICATION WHICH IS A PROFESSIONAL ORGANIZATION FOR FORENSIC  
22 SPECIALISTS, FOR FORENSIC OFFICERS, BOTH FIELD AND LAB. AND I AM  
23 CURRENTLY VICE PRESIDENT FOR THE SOUTH CAROLINA CHAPTER OF THE I.A.I.

24 Q. AND JUST REMIND US OF WHAT THE I.A.I. IS?

25 A. INTERNATIONAL ASSOCIATION FOR IDENTIFICATION.

1 Q. AND YOU HIT ON IT BRIEFLY BUT WHAT IS YOUR TEACHING EXPERIENCE?

2 A. WELL, ASIDE FROM OBTAINING A TEACHING CERTIFICATE, I'VE ALSO  
3 LECTURED FOR THE ATTORNEY GENERAL'S OFFICE FOR I GUESS ABOUT FIVE  
4 YEARS ON EVIDENCE AND DOMESTIC VIOLENCE PROSECUTION. I'VE ALSO  
5 LECTURED WITH THE BAR ASSOCIATION AND WITH NUMEROUS VICTIM'S  
6 ASSISTANCE GROUPS AND MULTIJURISDICTIONAL GROUPS, AS WELL AS THE  
7 DEPARTMENT OF MENTAL HEALTH.

8 MS. MANGUM: YOUR HONOR, AT THIS TIME WE WOULD MOVE TO  
9 INTRODUCE OFFICER POTASH AS AN EXPERT IN FORENSICS AND MARIJUANA  
10 ANALYSIS.

11 THE COURT: ANY OBJECTION?

12 MR. COMISH: YES, YOUR HONOR, I OBJECT.

13 THE COURT: TELL ME THE NATURE OF YOUR OBJECTION.

14 (BENCH CONFERENCE OFF THE RECORD)

15 THE COURT: ALL RIGHT. I'LL HAVE TO ASK THE JURY TO RETIRE  
16 FOR JUST A FEW MINUTES. I DON'T THINK WE'LL BE LONG.

17 (JURY LEAVES THE JURY BOX)

18 THE COURT: ALL RIGHT, MS. MANGUM.

19 Q. (BY MS. MANGUM) OFFICER POTASH, IS THERE SOMETHING THAT YOU  
20 WANT TO CLARIFY BEFORE I -

21 A. I WANTED TO MAKE ONE THING CLEAR. IN REGARD TO THE EXPIRATION,  
22 ALL CERTIFICATIONS ON THEIR THIRD YEAR, THEY ALL EXPIRE DECEMBER 31<sup>ST</sup>  
23 OF THAT LAST YEAR SO IF YOU TOOK IT IN APRIL YOU ARE ACTUALLY MORE  
24 THAN THREE YEARS BUT YOU ARE STILL CONSIDERED CERTIFIED.

25 Q. SO AT THE TIME THAT YOU TESTED THIS MARIJUANA IN JUNE OF 2011, DID

1 YOU HAVE AN ACTIVE CERTIFICATION?

2 A. YES, BECAUSE IT WAS NOT DECEMBER 31<sup>ST</sup>.

3 MS. MANGUM: DOES THAT ANSWER ANY –

4 MR. COMISH: YOUR HONOR, MAY I?

5 THE COURT: ABSOLUTELY.

6 CROSS EXAMINATION BY

7 MR. COMISH:

8 Q. OFFICER POTASH, I JUST WANT TO I REFER TO YOU CORRECTLY.

9 A. CALL ME ANYTHING YOU WANT BUT IT'S – THE RANK IS PATROLMAN BUT  
10 (INAUDIBLE) CRIME SCENE INVESTIGATOR.

11 Q. WHAT'S THE BEST ONE FOR ADDRESSING YOU? OFFICER?

12 A. YEAH, THAT WORKS.

13 Q. OKAY. GREAT. SO WHAT SPECIFIC TRAINING HAVE YOU UNDERGONE AT  
14 THE – THIS HAPPENED I BELIEVE IN EARLY JUNE, 2011, IS THAT RIGHT?

15 A. (INAUDIBLE)

16 Q. SO YOU (INAUDIBLE) CERTIFICATION THERE. WHAT SPECIFIC TRAINING  
17 HAVE YOU UNDERGONE IN REGARDS TO LABORATORY PROCEDURES, HANDLING  
18 OF CHEMICALS.

19 A. THE STANDARD TRAINING THAT'S PROVIDED BY S.L.E.D. DEEMED  
20 ADEQUATE FOR CERIFICATION.

21 Q. OKAY. AND COULD YOU GO THROUGH THAT TRAINING FOR ME?

22 A. SURE.

23 Q. JUST, YOU KNOW, WHAT IS THE CHEMISTRY TRAINING THAT YOU WENT  
24 THROUGH THERE?

25 A. BASICALLY, YOU ARE TALKING ABOUT THE PROCESS, CORRECT?

1    Q.     CORRECT.

2    A.     BASICALLY, IT IS EQUIPMENT MAINTENANCE FIRST OFF. WE USE WHAT IS  
3    CALLED A SPOT PLATE. SOUTH CAROLINA DOES THINGS A LITTLE DIFFERENTLY  
4    THAN A LOT OF OTHER STATES. A LOT OF OTHER STATES USE A TEST TUBE  
5    SYSTEM. SOUTH CAROLINA UTILIZES SPOT PLATES.

6    Q.     OKAY.

7    A.     BASICALLY, WE HAVE A SET OF CHEMICALS. WE HAVE THE DUQUENOIS  
8    REAGENT. THEN WE HAVE HYDROCHLORIC ACID AND - I BELIEVE IT'S  
9    CHLOROFORM. BASICALLY, WHAT HAPPENS IS YOU TAKE THE PLANT LIKE  
10   MATERIAL -

11                THE COURT: OKAY, WAIT A MINUTE. ARE WE - WE ARE  
12   PROFFERING TESTIMONY HERE TO DETERMINE IF HE IS STILL MAINTAINING AN  
13   OBJECTION TO HIM.

14                MR. COMISH: I JUST WANT TO KNOW WHAT HIS KNOWLEDGE  
15   BASE IS.

16   A.     MY KNOWLEDGE BASE IS BASED ON WHAT S.L.E.D. DEEMS AS ADEQUATE  
17   AND SPECIFIC KNOWLEDGE FOR THE TESTING OF - THE ANALYSIS OF  
18   MARIJUANA ONLY. AND IT'S UNDER DIRECT SUPERVISION AT THE TIME.

19   Q.     WHO WAS YOUR DIRECT SUPERVISOR?

20   A.     AT THE TIME IT WAS MELISSA HENDRIX WHO WAS A FORENSIC CHEMIST  
21   WHO OVERSAW MY WORK AND IN THIS CASE ALSO DID CONFIRM MY WORK.

22                THE COURT: DO YOU AGREE? YOU WITHDRAW YOUR OBJECTION?

23                MR. COMISH: I'LL WITHDRAW. THANK YOU.

24                THE COURT: I THINK WE CAN BRING IN THE JURORS.

25                (JURY RETURNS TO THE JURY BOX)

1                   **THE COURT:** LADIES AND GENTLEMEN, THE PUBLIC DEFENDER  
2 HAS WITHDRAWN HIS OBJECTION. OFFICER POTASH IS CERTIFIED AS AN EXPERT  
3 IN THIS AREA. MS. MANGUM.

4                   **DIRECT EXAMINATION CONTINUED BY**

5                   **MS. MANGUM:**

6    **Q.**     OFFICER POTASH, I THINK I ASKED YOU THIS BUT I'M CONFUSED. IN MAY,  
7 2011, WHAT WERE YOU DOING FOR C.P.D.?

8    **A.**     I WAS ASSISTING WITH REDUCING BACKLOG ON MARIJUANA TESTING.

9    **Q.**     AND WHAT DOES THAT MEAN, ASSISTING?

10   **A.**     WE HAD A FORENSIC CHEMIST, MELISSA HENDRIX, WHO ACTUALLY RAN  
11 THE CHEMISTRY LAB. I WORKED UNDER HER AS AN ANALYST AND COMPLETED  
12 FOR TESTING THE ANALYSIS OF MARIJUANA ONLY.

13   **Q.**     SO YOU WOULD GET ITEMS FROM EVIDENCE AND DETERMINE IF THEY  
14 WERE OR WERE NOT MARIJUANA? IS THAT CORRECT?

15   **A.**     YES.

16   **Q.**     AND HOW DID YOU TEST THOSE ITEMS?

17   **A.**     THERE'S ONLY ONE APPROVED METHOD BY S.L.E.D. AND THEY TRAIN  
18 SPECIFICALLY FOR THAT METHOD. THE FIRST THING THAT YOU ARE DOING IS  
19 YOU ARE LOOKING – IT'S A MICROSCOPIC TEST. YOU'RE LOOKING FOR SPECIFIC  
20 PHYSICAL CHARACTERISTICS OF MARIJUANA. YOU HAVE BASICALLY – YOU ARE  
21 LOOKNG FOR THE LEAVES FIRST. YOU ARE LOOKING FOR THAT SEPARATED  
22 SAWTOOTH LEAF. SOMETIMES THE STUFF CAN BE SO FINELY GROUND THAT  
23 YOU CAN'T TELL NECESSARILY THE SHAPE OF THE LEAF. THE THREE PORTIONS  
24 THAT WE ARE LOOKING FOR ARE HAIRS FOR LACK OF A BETTER TERM. ONE IS A  
25 CYSTOLITHIC HAIR, ONE IS MONOCELLULAR, A SIMPLE HAIR, AND THE OTHER IS

1 - FORGIVE ME. SOMETIMES WORDS ESCAPE ME. GLANDULAR HAIR. THE  
2 GLANDULAR HAIR IS WHAT PRODUCES THE RESIN. THE CYSTOLITHIC HAIR,  
3 (INAUDIBLE) IS ACTUALLY A LARGE CYST ON THE TOP - A FAIRLY LARGE CYST  
4 ON THE TOP OF THE LEAF WITH A SINGLE HAIR COMING OUT OF IT. THAT  
5 NODULE ACTUALLY CONTAINS CALCIUM CARBONATE ON THE BOTTOM OF THE  
6 LEAF AND THE HAIR WILL ALWAYS GO TOWARDS THE TIP OF THE LEAF IF YOU  
7 CAN DETERMINE SHAPE. ON THE BOTTOM OF LEAF YOU WILL GET SIMPLE HAIRS  
8 AND THEN YOU WILL HAVE ALSO GLANDULAR HAIRS. THE SIMPLE HAIRS WILL  
9 ALSO ALWAYS POINT TOWARDS THE TIP OF THE LEAF AND IF YOU CAN'T  
10 DETERMINE THE SHAPE OF THE LEAF THEN YOU ARE GOING TO LOOK FOR THOSE  
11 TWO HAIRS TO BE POINTING AT LEAST IN THE SAME DIRECTION. AND THAT'S  
12 BASICALLY THE FIRST TEST. IF THAT IS NEGATIVE, THEN IT STOPS RIGHT THERE.  
13 IT IS CONSIDERED NOT MARIJUANA. IF THE SUBSTANCE DOES POSSESS THOSE  
14 CHARACTERISTICS, THEN WE MOVE ON TO A CHEMICAL TEST WHICH IS  
15 CONSIDERED HIGHLY SPECIFIC. IT'S THE DUQUENOIS-LEVINE TEST. WHAT IT IS--

16 Q. LET ME STOP YOU FOR ONE SECOND. DO YOU RECOGNIZE THIS?

17 A. YES, I DO. IT'S A COPY OF MY MARIJUANA ANALYSIS WORKSHEET.

18 Q. IS THAT WHAT YOU USED AS YOU WERE ANALYZING?

19 A. YES, THESE ARE WHAT WE REFER TO AS BENCH NOTES. BASICALLY,  
20 EVERYTHING WE DO WE KEEP A WRITTEN RECORD OF IT AS WE WORK.

21 Q. LET ME HAVE THAT BACK FOR A SECOND.

22 A. AND IF I MAY ALSO -

23 Q. OFFICER POTASH, HOLD ON ONE SECOND.

24 MS. MANGUM: YOUR HONOR, AT THIS TIME I WOULD MOVE TO  
25 INTRODUCE THIS INTO EVIDENCE.

1           **THE COURT:** ANY OBM?

2           **MR. COMISH:** WITOUT OBJECTION.

3           **THE COURT:** THANK YOU.

4           (WORKSHEET IS RECEIVED INTO EVIDENCE AS CITY'S EXHIBIT #4)

5   **Q.**    (BY MS. MANGUM) SO WHEN YOU PERFORMED THAT FIRST TEST, THE  
6   MICROSCOPE TEST AND YOU WERE LOOKING AT THOSE HAIRS --

7   **A.**    IF I MAY, THE FIRST THING I'D SAY WAS PRIOR TO ANY OF THE TESTING,  
8   WE JUMPED A LITTLE AHEAD GETTING TO TESTING. PRIOR TO THAT THE FIRST  
9   THING WE DO IS WEIGH IT WHICH MEANS WE TAKE IT OUT OF THE PACKAGING.  
10  IF THERE IS SUBSTANTIAL STEMS OR SEEDS THEN WE WOULD REMOVE THOSE  
11  BEFORE WEIGHING. SO WE WOULD REALLY ONLY BE WEIGHING THE LEAVES. IN  
12  THIS CASE THERE WERE TWO WRAPPINGS OF PLASTIC, PLASTIC ENVELOPES,  
13  THAT CONTAINED GREEN LEAFY MATERIAL SO BOTH OF THOSE WERE WEIGHED  
14  WITHOUT THE CONTAINER AND I DON'T BELIEVE THERE WERE ANY SEEDS OR  
15  STEMS IN REGARD TO THIS.

16 **Q.**    AND SO AFTER YOU PERFORMED THAT FIRST MICROSCOPE TEST WHERE  
17 YOU WERE LOOKING AT THE THREE DIFFERENT KINDS OF HAIRS THAT YOU  
18 TALKED ABOUT, WHAT WAS YOUR DETERMINATION?

19 **A.**    THAT IT WAS POSITIVE FOR THE CYSTOLITHIC, THE GLANDULAR AND  
20 SIMPLE HAIRS.

21 **Q.**    AND SO WHAT DID YOU NEXT?

22 **A.**    BASED ON THE FACT THAT IT PASSED THE MICROSCOPIC TEST FIRST, I  
23 THEN MOVED TO A CHEMICAL TEST. THE DUQUENOIS-LEVINE TEST. TOOK A  
24 CLEAN SPOT PLATE, TOOK A SMALL AMOUNT OF THE GREEN LEAFY MATERIAL,  
25 PLACED IT IN A SPOT PLATE, TOOK A LITTLE BIT OF THE DUQUENOIS REAGENT,

1 PUT A FEW DROPS OF THE DUQUENOIS REAGENT ON THE LEAF AND LET IT SOAK  
2 FOR A MINUTE. THEN TOOK SOME HYDROCHLORIC ACID AND PLACED THAT ON  
3 THE MIXTURE OF GREEN LEAFY MATERIAL AND DUQUENOIS. ONE OF THE  
4 THINGS – I WAS TALKING ABOUT CALCIUM CARBONATE EARLIER. ONE OF THE  
5 THINGS IS WHEN YOU PUT THE HYDROCHLORIC ACID IN IT REACTS IN SUCH A  
6 WAY WITH CALCIUM CARBONATE, IT'S KIND OF LIKE SODA POP, IT FIZZES A  
7 LITTLE BIT AND YOU CAN SEE LITTLE BUBBLES. IT'S CARBONDIOXIDE BEING  
8 RELEASED FROM THE REACTION. I TEND TO LOOK FOR THAT, TOO. ONCE THAT  
9 WAS DONE, THE REACTION IS THAT YOU GET A PURPLISH COLOR IF IT'S  
10 POSITIVE, IF IT'S POSITIVE FOR MARIJUANA. NOW THE THING IS THAT'S NOT THE  
11 END OF THE TEST. THE NEXT PART OF THE TEST IS WE TAKE CHLOROFORM AND  
12 IF WE HAVE THAT PURPLE COLOR WE TAKE THE CHLOROFORM AND PLACE THE  
13 CHLOROFORM IN THE MIDDLE CREATING ALMOST AN EYE. IF THE COLOR  
14 BLEEDS FROM THE PURPLE INTO THE EYE, IF IT STARTS TURNING PINKISH OR A  
15 PURPLE COLOR, THEN THAT IS POSITIVE. IF THERE IS NO BLEED FROM THE  
16 COLOR BECAUSE THERE ARE THINGS LIKE, FOR EXAMPLE, SUCRETS. THERE ARE  
17 THINGS THAT CAN PROVIDE YOU THAT INITIAL PURPLE REACTION BUT WILL  
18 NOT PASS THE CHLOROFORM PORTION OF THE TEST. IF WE GET THAT PINKISH  
19 COLOR IN THE EYE, THEN WE MARK IT AS POSITIVE WITH THE TEST. IN THIS  
20 CASE FOR THE DUQUENOIS REAGENT IT DID COME UP PURPLE AND WHEN I  
21 ADDED THE CHLOROFORM I DID GET A PINK SPOT. BASED ON THE REACTION  
22 FROM BOTH TESTS, BASED ON THE POSITIVE FINDING OF THE TEST, I  
23 DETERMINED THAT, YES, IT WAS MARIJUANA.

24 Q. AND DID YOU COMPILE THAT INFORMATION?

25 A. YES, I DID.

1 Q. AND WHAT IS THIS?

2 A. THIS IS MY LABORATORY ANALYSIS REPORT AND THE LAB NUMBER IS M-  
3 11-353 AND THE CASE NUMBER IS 11-15571 WITH AN INCIDENT DATE OF 5-27-2011  
4 ON A SUBJECT HEYWARD, CEDRIC XAVIER. AND IT READS THE ITEMS  
5 SUBMITTED FOR ANALYSIS WERE EXAMINED. THE ASSURANCE OF THE  
6 SUBMITTED SPECIMENS HAVE NOT OR WILL NOT (INAUDIBLE) ANY OTHER LAB  
7 OR AGENCY FOR EXAMINATION. ITEM OF EVIDENCE ORANGE PILL BOTTLE WITH  
8 WHITE TOP. THERE WAS NO ANALYSIS PERFORMED ON THERE BECAUSE IT'S A  
9 PIECE OF PLASTIC BUT IT WAS CONTAINING ITEM TWO, WHICH WERE TWO TIED  
10 CLEAR PLASTIC BAGS EACH CONTAINING GREEN PLANT MATERIAL. WHAT I DID  
11 WAS I COMBINED THE WEIGHT. I TESTED BOTH BAGS SO THE MATERIAL THAT  
12 WAS IN BOTH BAGS WERE TESTED SEPARATELY. THE COMBINED WEIGHT OF  
13 BOTH BAGS WITH A POSITIVE REACTION WAS TWO (2) GRAMS, POINT ZERO  
14 SEVEN (.07) OUNCES. AND THEN IT HAS MY SIGNATURE AS AN ANALYST AND  
15 THE DATE, 06-09-2011.

16 Q. THAT'S THE DATE YOU ANALYZED THIS.

17 MS. MANGUM: YOUR HONOR, I MOVE TO PLACE THIS INTO  
18 EVIDENCE.

19 THE COURT: ANY OBJECTION?

20 MR. COMISH: YES, YOUR HONOR. I HAVE TO RENEW MY CHAIN OF  
21 CUSTODY OBJECTION. WE'VE HAD NO TESTIMONY ABOUT THE CHAIN OF  
22 CUSTODY. ALSO -

23 THE COURT: HOLD ON FOR A SECOND. DO WE NEED TO HAVE  
24 SIGNIFICANT ON THE RECORD?

25 MR. COMISH: YES, YOUR HONOR, BECAUSE I THINK THIS IS AN

1 APPROPRIATE TIME.

2 **THE COURT:** THEN I NEED TO ASK THE JURY TO LEAVE.

3 (JURY LEAVES THE JURY BOX)

4 **THE COURT:** OKAY. YOU CAN'T KEEP PREJUDICING THE JURY  
5 WITH YOUR OBJECTIONS. WHAT IS THE NATURE OF YOUR OBJECTION?

6 **MR. COMISH:** WELL, MY CHAIN OF CUSTODY OBJECTION? JESS  
7 SAID THAT SHE WAS GOING TO PROFFER TESTIMONY CONCERNING THE  
8 HANDLING OF THE EVIDENCE AND THE CHAIN OF CUSTODY AND WE HAD TO MY  
9 KNOWLEDGE NONE OF THAT CONCERNING OUR EVIDENCE TECHNICIAN WHO IS  
10 NOT HERE. IN ORDER FOR ANY CHAIN OF CUSTODY INFORMATION TO BE  
11 ADMISSIBLE SHE NEEDS TO BE HERE. WE EITHER NEED TO HAVE AN AFFIDAVIT  
12 OR WE NEED TO HAVE SUFFICIENT TESTIMONY THAT THERE ARE NO GAPS IN  
13 THE RECORD AS TO WHAT HAPPENED BETWEEN.

14 **THE COURT:** WE ARGUED THAT EARLIER. WE ARGUED IT A LITTLE  
15 BIT OUT OF ORDER. WE SAID WE WERE ARGUING IT OUT OF ORDER AT THAT  
16 TIME.

17 **MR. COMISH:** THAT'S RIGHT, YOUR HONOR. I'M JUST RENEWING  
18 THAT OBJECTION BECAUSE THE STATE'S - I MEAN WE ARE ENTERING INTO  
19 EVIDENCE NOW THE CHAIN OF CUSTODY, THE MARIJUANA AND ALL THAT, BUT  
20 WE STILL HAVEN'T HEARD ANY TESTIMONY CONCERNING THAT GAP IN THE  
21 CHAIN OF CUSTODY.

22 **THE COURT:** WELL, YOUR OBJECTION IS NOTED. I HAD ALREADY  
23 RULED ON THAT A LITTLE WHILE AGO.

24 **MR. COMISH:** OKAY. NOW WOULD BE AN APPROPRIATE TIME FOR  
25 THE 4<sup>TH</sup> AMENDMENT ARGUMENTS AS WELL?

1           **THE COURT:** THE 4<sup>TH</sup> AMENDMENT ON THE BASIS OF?

2           **MR. COMISH:** THE LACK OF REASONABLE SUSPICION AND  
3 ELONGATION OF THE TRAFFIC STOP WITH THE DOG SNIFF. EVEN IF YOU DON'T  
4 WANT TO HEAR THAT I WOULD LIKE TO PUT IT ON THE RECORD AND THEN THE  
5 4<sup>TH</sup> AMENDMENT SEARCH ARGUMENT BASED ON THE DRUG DOG GOING INTO  
6 THE CAR BEFORE GIVING ANY ALERT.

7           **MS. MANGUM:** YOUR HONOR, I THINK THOSE ARE PROPER AT THE  
8 DIRECTED VERDICT STAGE.

9           **THE COURT:** I AGREE. YOU ARE WELCOME TO PUT THOSE ON AT  
10 THE DIRECTED VERDICT STAGE. I MEAN WE'VE ALREADY PASSED THE  
11 TESTIMONY OF SGT. WILLIAMS WHICH WAS THE TIME TO RAISE IT IF YOU HAD  
12 ANY OBJECTION.

13           **MR. COMISH:** MY OBJECTION IS GOING TO BE THE MARIJUANA  
14 SHOULD BE SUPPRESSED, NOT HIS TESTIMONY. I WAS UNDER THE IMPRESSION  
15 THAT NOW WAS WHEN YOU WANTED THAT TO BE RAISED.

16           **THE COURT:** OKAY.

17           **MR. COMISH:** I MISUNDERSTOOD. I APOLOGIZE.

18           **THE COURT:** OKAY. SO GO AHEAD. YOUR OBJECTION IS? THE  
19 NATURE OF YOUR MOTION IS TO SUPPRESS ON THE BASIS OF?

20           **MR. COMISH:** WHICH ONE WOULD YOU LIKE FIRST, YOUR HONOR?

21           **THE COURT:** YOU TELL ME.

22           **MR. COMISH:** OKAY. WE'LL START WITH THE REASONABLE  
23 SUSPICION ARGUMENT.

24           **THE COURT:** OKAY.

25           **MR. COMISH:** AGAIN, WE SAW THAT THE TRAFFIC STOP WAS FIF-

1 TEEN MINUTES LONG AND IN THE VIDEO WE SAW WEBB SITTING IN HIS CAR FOR  
2 I BELIEVE A GRAND TOTAL OF FIVE MINUTES ON THE RADIO WITH WILLIAMS  
3 TRYING TO GET HIM THERE AND THROUGH HIS OWN TESTIMONY OFFICER WEBB  
4 ADMITTED THAT HE WAS ENGAGING IN BEHAVIORS SPECIFICALLY OF AN  
5 INVESTIGATIVE NATURE, COMPLETELY UNRELATED TO THE PURPOSE OF THE  
6 TRAFFIC STOP THEREBY UNAVOIDABLY ELONGATING THE STOP ABSENT ANY  
7 REASONABLE SUSPICION, THEREFORE – I MEAN THE DRUG DOG SEARCH, THE  
8 EXTERIOR DRUG SNIFF WAS ILLEGAL AND IMPERMISSIBLE AND ANY EVIDENCE  
9 DERIVING THEREFROM SHOULD BE SUPPRESSED.

10 **THE COURT:** OKAY. I BELIEVE THAT I ACTUALLY HAVE ALREADY  
11 RULE ON THAT MOTION WITH A PRIOR PUBLIC DEFENDER BUT I'LL RULE THE  
12 SAME. MS. MANGUM.

13 **MS. MANGUM:** YOUR HONOR, ARE YOU INTERESTED IN HEARING  
14 ARGUMENT FROM ME. I THINK YOU'VE ALREADY RULED ON THIS. CLEARLY  
15 OUR POSITION IS THAT IT WAS A LAWFUL TRAFFIC STOP. THE CASE LAW  
16 ALLOWS THE OFFICERS TO RUN THE DOG AROUND THE CAR DURING A LAWFUL  
17 TRAFFIC STOP WHICH IS WHAT HAPPENED HERE. THERE'S NO ISSUE OF  
18 REASONABLE SUSPICION, THERE'S NO ISSUE OF PROBABLE CAUSE BECAUSE IT  
19 WAS A LAWFUL TRAFFIC STOP. IT WAS A FIFTEEN MINUTE TRAFFIC STOP WHICH  
20 IS WELL WITHIN A REASONABLE AMOUNT OF TIME. WHEN THE K-9 ARRIVES –  
21 AND THE VIDEO SUPPORTED ALL OF THE TESTIMONY THAT SGT. WEBB WAS IN  
22 THE PROCESS OF – I THINK AT THE TIME HE WAS ACTUALLY ON THE RADIO  
23 TRYING TO VERIFY IF THERE WAS ANY OUTSTANDING WARRANTS ON THE  
24 DEFENDANT. HE WAS STILL WRITING TWO TICKETS AND SO IT CLEARLY FELL  
25 WITHIN THE TIME OF THE LAWFUL TRAFFIC STOP.

1           **THE COURT:** WE ARGUED THIS MOTION MONTHS AGO.

2           **MR. COMISH:** I UNDERSTAND YOU ARE LETTING ME PUT THIS ON  
3 THE RECORD. I UNDERSTAND THAT.

4           **THE COURT:** OKAY. SO I HAVE ALREADY RULED THAT I BELIEVE  
5 THAT OBJECTION OR THAT MOTION IS DENIED.

6           **MR. COMISH:** OKAY.

7           **THE COURT:** DO YOU HAVE ANOTHER MOTION?

8           **MR. COMISH:** YES, YOUR HONOR, I HAVE ONE MORE AND THIS  
9 WOULD BE FOR THE UNLAWFUL SEARCH. WE HEARD FROM OFFICER WILLIAMS'  
10 TESTIMONY THAT WHAT IS ALLOWED IS FOR THE DOG TO SEARCH THE  
11 EXTERIOR OF THE CAR, THE PRE-SCENT TEST. WE HEARD FROM OFFICER  
12 WILLIAMS THE DOG IS TRAINED TO – I BELIEVE THE PROPER TERMINOLOGY WAS  
13 AGGRESSIVELY ALERT. WHEN HE DETECTED THE ODOR OF CONTRABAND, IN  
14 FACT HE DID NOT AGGRESSIVELY ALERT WHILE PERFORMING THE EXTERIOR  
15 FREE-SNIFF TEST AND ONLY DID SO AFTER THE DOG ENTERED THE CAR. PER  
16 ILLINOIS V. TOBIAS, YOU CANNOT SEARCH THE INSIDE OF THE CAR ABSENT  
17 PROBABLE CAUSE. THERE WAS NO INDICIA OF PROBABLE CAUSE UNTIL AFTER  
18 THE DOG ENTERED THE CAR THEREBY RENDERING THAT AN ILLEGAL SEARCH  
19 UNDER THE 4<sup>TH</sup> AMENDMENT.

20           **MS. MANGUM:** YOUR HONOR, I BELIEVE THAT'S A  
21 MISINTERPRETATION OF THE CASE. THE DEFENDANT LEFT THE CAR DOOR OPEN  
22 WHICH AT THAT POINT ALLOWS THE OFFICER TO WALK THE DOG PAST THE CAR  
23 DOOR THAT'S LEFT OPEN BY THE DEFENDANT. THE VIDEO SHOWED AND THE  
24 OFFICER'S TESTIMONY WAS THAT HE DID NOT PROMPT THE CAR. I AGREE WE  
25 MAY HAVE AN ARGUMENT HERE IF THE OFFICER AS HAS BEEN REPRESENTED

1 ESSENTIALLY PICKED THE DOG UP AND PLACED HIM IN THE CAR BUT THAT IS  
2 NOT WHAT HAPPENED. THE CASE LAW IS CLEAR THAT IF THE DOG ALERTS  
3 OUTSIDE OF THE CAR AND THE DOOR IS OPEN AND THE DOG ON HIS OWN GOES  
4 IN WE HAVE NO ISSUES WITH AN ILLEGAL SEARCH.

5 MR. COMISH: THE DOG DIDN'T ALERT OUTSIDE THE CAR. OFFICER  
6 WILLIAMS' OWN TESTIMONY SAID HE DID NOT ALERT OUTSIDE THE CAR.

7 MS. MANGUM: THAT'S NO TRUE, YOUR HONOR.

8 MR. COMISH: HIS INCIDENT REPORT INDICATES THAT THERE WAS  
9 NO ALERT UNTIL HE WAS INSIDE THE CAR.

10 THE COURT: OKAY. I DON'T BELIEVE THAT THAT WAS THE  
11 TESTIMONY BUT YOU HAD THE OPPORTUNITY TO CROSS EXAMINE HIM ON THAT  
12 AND YOU DIDN'T.

13 MR. COMISH: BUT THAT'S AN ISSUE OF -

14 THE COURT: YOU CHOSE NOT TO.

15 MR. COMISH: THAT'S AN ISSUE FOR THE JUDGE, YOUR HONOR,  
16 WHETHER OR NOT - THIS IS AN ISSUE OF LAW. I MEAN IF HE DOES NOT TESTIFY  
17 THAT THERE WAS AN AGGRESSIVE -

18 THE COURT: I DON'T BELIEVE THIS TO BE AN UNLAWFUL SEARCH  
19 SO I APPRECIATE IT. YOUR OBJECTION IS NOTED FOR THE RECORD.

20 MR. COMISH: AND AT THIS POINT I WOULD LIKE TO RENEW ALL -  
21 FOR THE RECORD, RENEW ALL PREVIOUS MOTIONS AND OBJECTIONS.

22 THE COURT: OKAY. YEAH, THEY ARE THERE. THANK YOU.  
23 OKAY.

24 (JURY RETURNS TO THE JURY BOX)

25 DIRECT EXAMINATION CONTINUED BY

1        MS. MANGUM:

2        Q.     ALL RIGHT. JUST TO BRING US BACK TO WHERE WE WERE, YOU TESTIFIED  
3        TALKING ABOUT THE MARIJUANA AND IT WAS YOUR CONCLUSION THAT WHAT?

4        A.     IT WAS POSITIVE FOR MARIJUANA.

5        Q.     DO YOU RECOGNIZE THIS?

6        A.     YES, I DO. IN FACT, I HAVE THE ORIGINAL HERE.

7        Q.     AND WHAT IS THIS?

8        A.     THIS IS A DRUG ANALYSIS LABORATORY - ANALYSIS REQUEST AND  
9        CHAIN OF CUSTODY.

10      Q.     AND THIS HAS ALREADY BEEN ADMITTED AS EXHIBIT NUMBER TWO. SGT.  
11      WEBB TESTIFIED EARLIER THAT HE TOOK THE DRUGS TO THE EVIDENCE  
12      LOCKER. AT SOME POINT, DID YOU RECEIVE THE DRUGS FROM THAT LOCKER?

13      A.     YES, I DID. I DID NOT RECEIVE IT FROM THE LOCKER. WHAT HAPPENED  
14      WAS BASED ON THE CHAIN OF CUSTODY THEY WERE SIGNED INTO THE  
15      EVIDENCE LOCKER BY SGT. WEBB. ACCORDING TO DOCUMENTATION, OUR  
16      EVIDENCE CUSTODIAN, DONNA MARTIN, REMOVED IT FROM THE LOCKER. I  
17      ACTUALLY SIGNED IT OUT FROM DONNA MARTIN FOR TESTING. UPON  
18      COMPLETION OF TESTING, I RE-SUBMITTED IT TO THE EVIDENCE ROOM.

19      Q.     AND IS THIS WHAT YOU CHECKED OUT FROM THE EVIDENCE ROOM?

20      A.     YES, IT IS. IN FACT, RIGHT HERE ON THE SEAL IT HAS MY INITIALS, DATE  
21      AND THE LAB NUMBER.

22      Q.     AND WHEN YOU RECEIVED IT FROM THE EVIDENCE ROOM, DID IT APPEAR  
23      THAT IT HAD BEEN TAMPERED WITH AT ALL?

24      A.     NO. THE BEST KITS ARE SEALED AND THEY ARE SEALED IN SUCH A WAY,  
25      THE ADHESIVE ON THEM, IF YOU TRY TO REOPEN THEM OR ALTER THEM IN ANY

1 WAY THE PLASTIC DISTORTS THE SEAL AND - THEY ARE REFERRED TO AS  
2 TAMPERPROOF PACKAGING. SO ONCE THEY ARE SEALED YOU CAN'T GET INTO  
3 THEM UNLESS YOU CUT THEM OPEN. I WAS THE ONLY ONE THAT CUT IT OPEN.  
4 IT WAS INTACT WHEN I RECEIVED IT.

5 Q. AND AFTER YOU TESTED THE ITEM, WHAT DID YOU DO WITH IT?

6 A. AFTER I TESTED THE ITEMS, I COMBINED - FROM MY BENCH NOTES I  
7 MADE A NOTE THAT I HAD COMBINED THE MATERIAL, TWO BAGS. ONE  
8 WEIGHED POINT NINE SEVEN (.97) GRAMS, ONE WEIGHED ONE POINT "O" THREE  
9 (1.03) GRAMS. IT'S COMMON PRACTICE FOR US IN CASES LIKE THIS WHERE THE  
10 MATERIAL COMPLETELY TESTS FOR MARIJUANA AND IT'S ORIGINALLY  
11 PACKAGED TOGETHER, BECAUSE THE VALUES THAT THE MATERIAL HAD BEEN  
12 IN WERE NOT EASILY RESEALABLE SO THAT NOTHING IS LOST OR DAMAGED OR  
13 DESTROYED IT'S REPACKED IN A BAG AND I HAVE A NOTE HERE THAT IT WAS  
14 REPACKED, THE GREEN PLANT MATERIAL REPACKED. SO THEY WERE PLACED -  
15 THE GREEN PLANT MATERIAL WAS PLACED IN ANOTHER BAG AND THEN  
16 EVERYTHING WAS PLACED INTO A HEAT SEALABLE BAG, INCLUDING THE  
17 ORIGINAL PACKAGING, AND THEN THAT WAS SEALED AND THEN, OF COURSE, I  
18 SIGNED IT. I INITIALED IT AND DATED IT AND PUT THE LAB NUMBER ON IT.

19 Q. DO YOU HAVE ANY DOUBT THAT THE MARIJUANA THAT WAS FOUND IN  
20 THE DEFENDANT'S CAR IS THAT MARIJUANA?

21 A. NO, I HAVE NO DOUBT. I SHOULD SAY - CORRECTION. I SHOULD SAY  
22 THAT THE MATERIAL I RECEIVED FROM THE EVIDENCE ROOM, THIS WOULD  
23 ABSOLUTELY BE THAT SAME MATERIAL.

24 Q. AND THE SHEET THAT YOU REFERENCED EARLIER, THE CHAIN OF  
25 CUSTODY, SHEET -

1 A. YES.

2 Q. -- DOES THAT HAVE AN INCIDENT LOCATION IN IT?

3 A. YES, IT DOES. IT HAS 5000 FAIRFIELD ROAD.

4 Q. AND IS THAT IN THE CITY LIMITS OF COLUMBIA?

5 A. YES, IT IS. I KNOW THAT AREA WELL BECAUSE I USED TO PATROL IT.

6 MS. MANGUM: YOUR HONOR, AT THIS TIME WE WOULD MOVE TO  
7 PLACE THE MARIJUANA INTO EVIDENCE.

8 THE COURT: ANY OBJECTION OTHER THAN YOU'VE ALREADY  
9 NOTED?

10 MR. COMISH: EXACTLY. THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU.

12 (MARIJUANA IS RECEIVED INTO EVIDENCE AS CITY'S EXHIBIT #5)

13 Q. (BY MS. MANGUM) OFFICER POTASH, I BELIEVE AT SOME POINT YOU  
14 PREVIOUSLY MENTIONED PEER REVIEWING. I AM NOT CLEAR IF THAT WAS --

15 A. YES. BASICALLY, WHAT IT IS IS IT'S QUALITY ASSURANCE. AS I  
16 MENTIONED BEFORE, THE HEAD OF THE LAB AT THE TIME, MELISSA  
17 HENDRIX, WAS A FORENSIC CHEMIST WHICH IS CONSIDERABLY DIFFERENT FROM  
18 A REGULAR CHEMIST. JUST BEING A CHEMIST AND HAVING A DEGREE IN  
19 CHEMISTRY DOESN'T REALLY TRAIN PEOPLE TO BE FORENSIC CHEMISTS. IT'S A  
20 WHOLE DIFFERENT DISCIPLINE. SHE WAS A FORENSIC CHEMIST AND WE  
21 WORKED IN THE SAME LAB SO SHE ROUTINELY OVERSAW MY WORK. IT WOULD  
22 NOT BE UNCOMMON FOR HER TO COME OVER AND ACTUALLY INSPECT MY  
23 WORK TO ENSURE THAT I WAS DOING IT PROPERLY. NOT A SLIGHT ON ME, IT'S  
24 JUST PATTERN PRACTICE.

25 Q. AND IN TERMS OF WHAT YOU DO, WHAT'S THE TERM FOR THAT

1 PROCEDURE?

2 A. IT'S CALLED PEER REVIEW. WELL, I SHOULD SAY THAT'S OVERSIGHT.  
3 PEER REVIEW IS AFTER I AM DONE TESTING I SUBMIT MY ENTIRE PACKET TO  
4 HER AS A SUPERVISOR WHERE SHE REVIEWS ALL THE WORK THAT I HAVE DONE.  
5 IF SHE FINDS NO ERROR, SHE'LL SIGN OFF ON IT AND THAT'S ACTUALLY WHAT  
6 THIS BLUE SHEET IS IS A SIGNED PEER REVIEW.

7 Q. LET ME ASK YOU. WAS THIS FILE PEER REVIEWED?

8 A. YES.

9 Q. AND WERE THERE ANY PROBLEMS FOUND WITH IT?

10 A. NONE.

11 MS. MANGUM: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

12 THE COURT: THANK YOU. MR. COMISH.

13 CROSS EXAMINATION BY

14 MR. COMISH:

15 Q. GOOD AFTERNOON.

16 A. GOOD AFTERNOON.

17 Q. OFFICER POTASH, I HAVE TWO QUESTIONS FOR YOU. THE FIRST ONE IS  
18 YOU ARE NOT IN FACT A TRAINED CHEMIST, IS THAT CORRECT?

19 A. I AM NOT. AS I SAID, THERE IS A SUBSTANTIAL DIFFERENCE BETWEEN A  
20 FORENSIC CHEMIST WHO WOULD OPERATE AN ENTIRELY DIFFERENT SET OF  
21 EQUIPMENT AND A MARIJUANA ANALYST WHICH IS WHAT S.L.E.D. TRAINS  
22 PEOPLE FOR.

23 Q. YOU WERE CERTIFIED AS AN ANALYST BUT YOU WERE NOT A FORENSIC  
24 CHEMIST?

25 A. RIGHT. I RECEIVED SPECIFIC TRAINING FOR WHAT I DID.

1 Q. BUT YOU ARE NOT A FORENSIC CHEMIST?

2 A. RIGHT.

3 Q. THE SECOND QUESTION IS WHAT IS THE CURRENT STATUS OF THE  
4 COLULMBIA DRUG LAB?

5 MS. MANGUM: YOUR HONOR, OBJECTION.

6 THE COURT: I BELIEVE IT TO BE IRRELEVANT.

7 MR. COMISH: IT GOES TO THE CREDIBILITY OF THE LAB, YOUR  
8 HONOR.

9 MS. MANGUM: YOUR HONOR.

10 THE COURT: SUSTAINED. THAT IS OVERRULED. YOUR OBJECTION  
11 IS OVERRULED. WE DO NOT GO FARTHER WITH THAT.

12 MR. COMISH: I'M DONE, YOUR HONOR. NO FURTHER QUESTIONS.

13 THE COURT: THANK YOU. ANYTHING?

14 MS. MANGUM: NO, YOUR HONOR. AT THIS TIME THE CITY RESTS.

15 THE COURT: ALL RIGHT. YOU CAN STEP DOWN.

16 (WITNESS TO THE SIDE)

17 THE COURT: I'LL ASK Y'ALL TO RETIRE FOR JUST A MINUTE  
18 WHILE WE TAKE UP MOTIONS.

19 (JURY LEAVES THE JURY BOX)

20 THE COURT: ALL RIGHT. DO YOU HAVE MOTIONS YOU'D LIKE TO  
21 MAKE?

22 MR. COMISH: YES, YOUR HONOR. AT THIS POINT, I WOULD LIKE  
23 TO – I KNOW IT'S GOING TO ANNOY YOU BUT I HAVE TO RENEW ALL MOTIONS  
24 AND OBJECTIONS FOR THE RECORD.

25 THE COURT: THEY ARE RENEWED.

1           **MR. COMISH:** OKAY. AND MAKE A MOTION FOR A DIRECTED  
2 VERDICT ON MERE PRESENCE

3           **THE COURT:** ON THE BASIS OF?

4           **MR. COMISH:** MERE PRESENCE.

5           **THE COURT:** MERE PRESENCE. EXPLAIN THAT FURTHER FOR THE  
6 RECORD.

7           **MR. COMISH:** MERE PRESENCE IN THE VEHICLE SINCE THERE IS NO  
8 PHYSICAL CONTACT TESTIFIED TO BETWEEN HIM AND THE MARIJUANA SO HE  
9 WAS MERELY IN THE PRESENCE OF THE MARIJUANA AT THE INCIDENT  
10 LOCATION IN THE CAR.

11           **MS. MANGUM:** YOUR HONOR, THERE'S BEEN A LOT OF EVIDENCE  
12 AND A LOT OF TESTIMONY TODAY AS TO CONSTRUCTIVE POSSESSION OF THE  
13 VEHICLE AND, THEREFORE, THE MARIJUANA AND SO FOR THAT REASON WE'D  
14 ASK THAT YOU DENY HIS MOTION.

15           **MR. COMISH:** THE TESTIMONY IS HE WAS DRIVING THE CAR.  
16 THERE WAS A PICTURE THAT THEY COULDN'T PLACE IN ANY SENSE TO MY  
17 CLIENT OF WILLIE NELSON, THAT HE HAD DRIVEN THE CAR THREE TIMES AND  
18 THAT THEY WERE LOOKING FOR A BLACK MAN LEAVING A WHOLE APARTMENT  
19 COMPLEX. I BELIEVE THAT SUMS THE CASE'S CIRCUMSTANTIAL EVIDENCE. I  
20 MEAN SUMS THE STATE'S CIRCUMSTANTIAL EVIDENCE WHICH I DO NOT  
21 BELIEVE MEETS THE BURDEN OF A MERE PRESENCE JURY INSTRUCTION.

22           **THE COURT:** I APPRECIATE THAT. I APPRECIATE YOUR  
23 ARGUMENT. I THINK THEY HAVE MET THE ELEMENTS OF THE CASE SO I THINK  
24 THE CASE CAN GO TO THE JURY. NOW DO YOU HAVE ANY OTHER MOTIONS?

25           **MR. COMISH:** NOT AT THIS TIME, NO.

1           **THE COURT:** LET'S DO SOME HOUSEKEEPING. DO YOU INTEND TO  
2 OFFER ANY DEFENSES AT ALL?

3           **MR. COMISH:** NO, YOUR HONOR. NONE WHATSOEVER.

4           **THE COURT:** YOUR CLIENT IS NOT GOING TO TESTIFY? I'M ASKING  
5 YOU.

6           **MR. COMISH:** I JUST WANTED TO VERIFY WITH HIM THAT HE STILL  
7 DOES NOT WANT TO TESTIFY. THAT'S CORRECT, HE DOES NOT WANT TO  
8 TESTIFY.

9           **THE COURT:** AND YOU DO NOT WISH TO OFFER ANY OTHER  
10 EVIDENCE?

11          **MR. COMISH:** NO, YOUR HONOR.

12          **THE COURT:** ANY OTHER WITNESSES?

13          **MR. COMISH:** NONE.

14          **THE COURT:** ALL RIGHT. DO YOU WANT TO WAIVE OPENING? I  
15 MEAN OPENING FOR CLOSING?

16          **MS. MANGUM:** YES.

17          **THE COURT:** OKAY. LET'S TALK A LITTLE BIT ABOUT -

18          **MS. MANGUM:** I DO HAVE SOME PROPOSED JURY CHARGES.

19          **THE COURT:** YEAH, THAT'S WHAT I WAS GOING TO TALK WITH  
20 Y'ALL ABOUT.

21          **MR. COMISH:** I HAVE SOME AS WELL.

22          **THE COURT:** ALL RIGHT.

23          **MR. COMISH:** MINE WERE JUST THE STANDARD ONES ON THE S.C.  
24 COURT'S WEB SITE. THEY ARE IN HERE SOMEWHERE.

25          **THE COURT:** OKAY. WELL, WHY DON'T YOU RUN OVER WITH ME

1 WHAT I TYPICALLY CHARGE WHICH IS JUST THE GENERAL CHARGE ABOUT IT'S  
 2 MY DUTY TO GIVE YOU THE LAW AND YOU'VE GOT TO ACCEPT THE LAW. SOME  
 3 OF THE SAME THINGS I SAID IN THE OPENING. THEN THE TWO TYPES OF  
 4 EVIDENCE, DIRECT AND CIRCUMSTANTIAL. ARE YOU GOOD WITH THAT?

5 MR. COMISH: YES, YOUR HONOR.

6 THE COURT: OKAY. THEN A CHARGE ABOUT REASONABLE  
 7 DOUBT. THE LAW PRESUMES THE DEFENDANT TO BE INNOCENT OF THE CHARGE  
 8 UNTIL HE IS PROVEN GUILTY BEYOND A REASONABLE DOUBT. THEN I GO  
 9 THROUGH BOTH WAYS. ONE WAY TO DESCRIBE IT IS DOUBT BASED UPON  
 10 REASON AND COMMON SENSE, THE KIND OF DOUBT THAT WOULD MAKE A  
 11 REASONABLE PERSON HESITATE TO ACT. ANOTHER WAY IS PROOF THAT  
 12 LEAVES YOU FIRMLY CONVINCED. GOOD WITH THOSE?

13 MR. COMISH: RIGHT.

14 THE COURT: OKAY. NOW WITH REGARD TO READING THE  
 15 STATUTE, WHAT WOULD YOU LIKE ME TO READ? THE DRUG STATUTE IS PRETTY  
 16 CONFUSING TO SAY THE LEAST. I THINK WE COULD SAY EXCEPT AS  
 17 AUTHORIZED BY THIS ARTICLE IT SHALL BE UNLAWFUL FOR ANY PERSON TO  
 18 KNOWINGLY OR INTENTIONALLY POSSESS A CONTROLLED SUBSTANCE UNLESS  
 19 THE SUBSTANCE WAS OBTAINED DIRECTLY FROM OR PURSUANT TO A VALID  
 20 PRESCRIPTION OR ORDER OF A PRACTITIONER WHILE ACTING IN THE COURSE OF  
 21 HIS PROFESSIONAL PRACTICE. IT SHALL BE UNLAWFUL -

22 MS. MANGUM: I THINK THAT'S -

23 MR. COMISH: SUBSECTION "C." I THINK THAT'S -

24 THE COURT: SUBSECTION "C."

25 MS. MANGUM: THAT'S INCLUDED -- IN MY FIRST REQUEST TO

1 CHARGE IS THAT VERBATIM AND I INCLUDED I FURTHER CHARGE YOU THAT  
2 MARIJUANA IS A CONTROLLED SUBSTANCE.

3 THE COURT: DO YOU HAVE ANY OBJECTION TO THAT? DO YOU  
4 THINK WE NEED TO GIVE THEM (INAUDIBLE) WITH REGARD TO THE WEIGHT?

5 MS. MANGUM: NO.

6 MR. COMISH: NO, THIS IS SIMPLE POSSESSION.

7 THE COURT: ALL RIGHT. OKAY. NOW THE CITY HAS REQUESTED  
8 A CHARGE ACTUAL OR CONSTRUCTIVE POSSESSION. ACTUAL MEANS WAS IN  
9 THE ACTUAL PHYSICAL CUSTODY, CONSTRUCTIVE MEANS THE DEFENDANT HAD  
10 DOMINION AND CONTROL, THE RIGHT TO EXERCISE DOMINION OR CONTROL  
11 OVER EITHER THE MARIJUANA ITSELF OR THE PROPERTY IN WHICH THE  
12 PROPERTY WAS FOUND. ACTUAL KNOWLEDGE OF THE PRESENCE OF  
13 MARIJUANA IS STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL  
14 ITS DISPOSITION OR USE. THE DEFENDANT'S KNOWLEDGE AND POSSESSION ARE  
15 INFERRED WHEN A SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE  
16 DEFENDANT'S CONTROL. DO YOU HAVE ANY OBJECTION TO THAT?

17 MR. COMISH: I WOULD JUST LIKE IN YOUR PRESENCE AS WELL.

18 THE COURT: LET'S SEE WHAT IT SAYS ABOUT MERE PRESENCE.  
19 HAVE YOU SEEN THIS?

20 MS. MANGUM: I'M NOT SURE WHAT -

21 MR. COMISH: THIS IS THE STANDARD NO PRESENCE. I'M SORRY, I  
22 FORGOT TO MAKE YOU A COPY - FROM THE S.C. COURT'S WEB SITE AND THEY  
23 ARE RECOMMENDING A MERE PRESENCE JURY CHARGE.

24 THE COURT: THE STATEMENTS PROVE BEYOND A REASONABLE  
25 DOUBT THAT THE DEFENDANT KNOWINGLY OR INTENTIONALLY POSSESSED

1 MARIJUANA. KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY, NOT  
2 ACCIDENTALLY. INTENTIONALLY MEANS WILFULLY INTENDING THE RESULT  
3 WHICH ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARY. INTENT  
4 MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER  
5 CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER  
6 INTENT.

7 MS. MANGUM: I'M FINE WITH THAT, YOUR HONOR.

8 THE COURT: NOW WE ALREADY TALKED ABOUT POSSESSION.  
9 ARE YOU GOOD IF I STOP RIGHT THERE? WE ALREADY TALKED ABOUT THIS.

10 MR. COMISH: RIGHT.

11 THE COURT: SHE'S ALREADY ASKED TO CHARGE THAT.

12 MR. COMISH: IT'S THE CONSTRUCTIVE POSSESSION. SO YOU ARE  
13 PROPOSING THROUGH THIS PART?

14 THE COURT: UH-HUH.

15 MR. COMISH: AND THIS DOES HAVE MERE PRESENCE LANGUAGE?

16 THE COURT: MERE PRESENCE DOESN'T START UNTIL DOWN HERE.

17 MR. COMISH: I JUST WANT TO GET MERE PRESENCE LANGUAGE IN  
18 SO MAYBE JUST THIS PARAGRAPH.

19 THE COURT: MERE PRESENCE AT THE SCENE WHERE THE DRUGS  
20 WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION. THE DEFENDANT'S  
21 KNOWLEDGE AND POSSESSION MAY BE INFERRED WHEN THE SUBSTANCE IS  
22 FOUND ON THE PROPERTY UNDER THE DEFENDANT'S CONTROL. HOWEVER, THIS  
23 INFERENCE IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO  
24 CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE IN THE CASE TO BE  
25 GIVEN THE WEIGHT YOU DECIDE IT SHOULD HAVE.

1           **MR. COMISH:** SO IF WE COULD CUT SORT OF THAT MIDDLE  
2 SECTION OUT AND THEN JUST HAVE THE MERE PRESENCE APPENDED TO THE  
3 END.

4           **THE COURT:** ARE YOU OKAY WITH THAT, JESS?

5           **MS. MANGUM:** SURE.

6           **MR. COMISH:** AND OBVIOUSLY STOPPING WHEN IT TALKS ABOUT  
7 THE PRESCRIPTION.

8           **THE COURT:** SURE. OKAY. THEN JESS IS ASKING FOR A POLICE  
9 OFFICER'S PERSONAL OBSERVATIONS AND OPINIONS OF THE DEFENDANT'S  
10 ACTIONS, APPEARANCE AND CONDITION CONSTITUTE DIRECT EVIDENCE  
11 BECAUSE IT'S BASED ON THE OFFICER'S ACTUAL KNOWLEDGE OF THE  
12 SITUATION AND REQUIRES NO INFERENCE BY THE JURY. DO YOU OBJECT TO  
13 THAT?

14           **MR. COMISH:** I HAVE TROUBLE WITH THE OPINIONS OF THE  
15 DEFENDANT'S ACTIONS BY WHICH - I'D SAY ANYTHING ABOUT DIRECT  
16 OBSERVATIONS. I HAVE NO PROBLEM WITH THE OPINION ABOUT THE ACTIONS.  
17 IS THERE ANY WAY WE COULD STRIKE LIKE THOSE THREE WORDS?

18           **THE COURT:** SO YOU WOULD WANT IT TO SAY A POLICE OFFICER'S  
19 PERSONAL OBSERVATIONS OF THE DEFENDANT'S ACTIONS, APPEARANCE AND  
20 CONDITION CONSTITUTE DIRECT EVIDENCE? HE JUST WANTS TO STRIKE AN  
21 OPINION OUT OF THERE. JESS?

22           **MS. MANGUM:** I MEAN I THINK THE OPINION PART OF IT IS  
23 IMPORTANT. IT COMES DIRECTLY FROM THE CASE.

24           **THE COURT:** IS THAT THE EXACT LANGUAGE?

25           **MS. MANGUM:** UNFORTUNATELY, THERE'S NO QUOTES THERE SO I

1 DON'T WANT TO MISREPRESENT.

2 THE COURT: WE'LL LOOK IT UP REAL QUICK. THEN I WOULD  
3 ALWAYS CHARGE NO BIAS, PREJUDICE, SYMPATHY. I ANTICIPATED THAT YOUR  
4 CLIENT MIGHT NOT TESTIFY SO I'LL CHARGE NOTHING FOR FAILURE OF  
5 DEFENSE TO TESTIFY. USE THEIR COMMON SENSE, THEIR INDIVIDUAL OPINION  
6 AND THEN THE DEFINITION OF THE TERM VERDICT.

7 MR. COMISH: OKAY.

8 THE COURT: LET ME LOOK AT THIS CASE REAL QUICK.

9 MS. MANGUM: JUDGE, JUST TO SPEED THINGS ALONG, WE MIGHT  
10 JUST TAKE OPINIONS OUT AND JUST GO WITH THAT. I'M OKAY WITH THAT.

11 THE COURT: THEN I WON'T HAVE TO LOOK FOR IT. I THINK I'M  
12 READY.

13 (JURY RETURNS TO THE JURY BOX)

14 THE COURT: LADIES AND GENTLEMEN, WE ARE READY FOR  
15 CLOSING ARGUMENTS FROM THE ATTORNEYS. THE PUBLIC DEFENDER GETS THE  
16 OPPORTUNITY TO PROCEED FIRST.

17 MR. COMISH: MAY I JUST HAVE ONE MINUTE TO FIND MY NOTES.

18 THE COURT: SURE.

19 MR. COMISH: THANK YOU. MAY IT PLEASE THE COURT. FIRST  
20 OFF, LET ME APOLOGIZE BECAUSE I'M TRYING TO FIGHT A COLD BUT I'M LOSING  
21 MY VOICE SO I'M GOING TO HAVE TO TAKE A FEW SIPS SO I APOLOGIZE FOR  
22 THAT IN ADVANCE. SO THANK YOU FOR SITTING ON THIS CASE AND PAYING  
23 CLOSE ATTENTION. NOW ALL I AM GOING TO DO IS JUST RUN THROUGH VERY  
24 BRIEFLY WHAT YOU'VE HEARD AND MAKE A FEW ARGUMENTS TO YOU AND  
25 THEN I'M DONE. SO LET ME START BY JUST RECAPPING WHAT HE'S CHARGED

1 WITH. SIMPLE POSSESSION OF MARIJUANA. OKAY. WE'VE HEARD TESTIMONY  
2 THAT THE MARIJUANA WAS IN A CAR. WE'VE ALSO HEARD TESTIMONY THAT  
3 THE CAR WAS NOT HIS. IN FACT, OFFICER WEBB READ THE REGISTRATION THAT  
4 HE RAN AT THE TIME THAT HE PULLED MR. HEYWARD OVER. THAT CAR WAS  
5 REGISTERED TO HIS SISTER SO IT WAS NOT IN FACT HIS CAR. WE KNOW THAT  
6 THEY FOUND A GREEN LEAFY SUBSTANCE IN THE CAR WHICH TURNED OUT TO  
7 BE MARIJUANA PER MR. POTASH'S CHEMICAL ANALYSIS. UNFORTUNATELY FOR  
8 THE STATE, WHAT WE DON'T KNOW IS REALLY ANYTHING ELSE. THE STATE  
9 NEVER SAW HIM PHYSICALLY TOUCH THAT MARIJUANA. THERE'S NO DIRECT  
10 EVIDENCE THAT HE TOUCHED THE MARIJUANA, THAT HE SAW THE MARIJUANA,  
11 THAT HE KNEW ABOUT THE MARIJUANA, THAT HE HAD ANY IDEA OF WHAT WAS  
12 HIDDEN BEHIND THE DASH, BEHIND THAT PICTURE THAT THEY TALKED ABOUT.

13 NOW THE STATE IS GOING TO ARGUE THAT THERE IS  
14 CIRCUMSTANTIAL EVIDENCE SUCH THAT A REASONABLE PERSON CAN INFER  
15 BEYOND A REASONABLE DOUBT THAT MR. HEYWARD KNEW ABOUT THAT  
16 MARIJUANA. BUT LET ME TAKE A SECOND JUST TO REVIEW WHAT  
17 CIRCUMSTANTIAL EVIDENCE WE KNOW. WE KNOW THAT OFFICER ARNOLD  
18 WAS, YOU KNOW, LOOKING AT SOMEBODY AND FOR A SECOND THERE HE HAD  
19 PERFECT CLARITY OF RECOLLECTION AND POINTED OUT MY CLIENT BUT LATER  
20 WHEN I ASKED HIM DO YOU RECALL CERTAIN CONVERSATIONS HE SAID, WELL,  
21 IT WAS FOUR YEARS AGO, MY MEMORY IS REALLY FUZZY, I DON'T REMEMBER  
22 ANY CONVERSATIONS THAT DAY BUT WE DO KNOW THAT LIKE SECONDS  
23 PREVIOUSLY HE SAID, WELL, I DID CALL OFFICER WEBB. SO DO YOU REMEMBER  
24 ANY CONVERSATIONS? DOES HE CLEARLY REMEMBER MR. HEYWARD? AND,  
25 REMEMBER, WHAT WAS THE TIP? A BLACK MAN IN AN APARTMENT BUILDING

1 AND THAT WAS ENOUGH TO SPECIFICALLY IDENTIFY THAT PARTICULAR BLACK  
2 GENTLEMAN? LADIES AND GENTLEMEN, THAT IS FOR YOU TO DECIDE. IS THAT  
3 ENOUGH CIRCUMSTANTIAL EVIDENCE? WHAT OTHER CIRCUMSTANTIAL  
4 EVIDENCE DO WE HAVE? THAT THERE WAS A PICTURE OF WILLIE NELSON ON  
5 THE DASH, THAT THERE WAS RELIGIOUS PARAPHERNALIA ON THE DASH.

6 I DON'T KNOW ABOUT YOU BUT MY WIFE IS PORTER RICAN. WHEN  
7 I VISIT HER IN PORTER RICO THERE IS NOTHING BUT RELIGIOUS PARAPHERNALIA  
8 ON THE DASH. RELIGIOUS PARAPHERNALIA COULD MEAN ANYTHING. DOES IT  
9 MEAN BEYOND A REASONABLE DOUBT THAT THERE IS MARIJUANA BEHIND THE  
10 DASH? LADIES AND GENTLEMEN, THAT IS FOR YOU TO DECIDE. WE KNOW  
11 THERE IS A PICTURE OF WILLIE NELSON BUT WE DON'T KNOW WHO PUT IT  
12 THERE. THEY COULD HAVE DUSTED IT FOR PRINTS BUT FOR ALL WE KNOW  
13 THEY DIDN'T. THERE'S NO TESTIMONY THAT THEY DIDN'T. I DON'T KNOW  
14 WHO PUT IT THERE BUT IT COULD HAVE BEEN MR HEYWARD. MAYBE IT COULD  
15 HAVE BEEN ANYBODY BECAUSE WE JUST DON'T KNOW.

16 NOW THE STATE HAS ALSO MADE A BIG DEAL ABOUT, WELL, WE  
17 KIND OF THINK THIS IS MR. HEYWARD'S CAR DESPITE THE FACT THAT IT'S  
18 REGISTERED TO HIS SISTER, BUT ALL THEY COULD SORT OF BRING TO YOU GUYS  
19 TO CONVINCING YOU THAT IT'S HIS CAR, IT'S HIS AND ONLY HIS CAR, WAS THAT  
20 OFFICER WILLIAMS SAW HIM DRIVING IT THREE TIMES. DID THEY SAY OVER  
21 WHAT TIME FRAME? WAS IT THREE TIMES OVER THE INTERVENING THREE AND  
22 A HALF YEARS? I DON'T KNOW. WAS IT THREE TIMES IN A DAY? WHO KNOWS?  
23 DID ANYBODY ELSE SEE HIM DRIVE IT? WE DON'T KNOW. IS THAT ENOUGH TO  
24 GO BEYOND A REASONABLE DOUBT THAT IT WAS IN FACT HIS CAR? THAT'S FOR  
25 YOU TO DECIDE. EXCUSE ME FOR JUST ONE SECOND.

1 LADIES AND GENTLEMEN OF THE JURY, THE STATE'S CASE COMES  
2 DOWN TO A FEW SCATTERED CLUES AND REASONABLE PEOPLE CAN ASSIGN  
3 ANY NUMBER OF INTERPRETATIONS TO THESE FEW SCATTERED CLUES. OH,  
4 THAT CAR, IT BELONGS TO HIS SISTER. HIS SISTER OWNS TWO CARS. MY  
5 MOTHER OWNS TWO. DOES THAT MAKE ME A DRUG DEALER? SHE HAS TWO  
6 CARS IN HER NAME. I DROVE HER CAR FIVE TIMES. DOES THAT MEAN  
7 EVERYTHING IN THAT CAR BELONGS TO ME? IT'S A HOUSE OF CARDS, LADIES  
8 AND GENTLEMEN. AND I SUBMIT TO YOU THAT YOU PULL AWAY ONE LITTLE  
9 CARD AND THAT WHOLE HOUSE IS GOING TO COME TUMBLING DOWN. SO AS  
10 YOU GO BACK TO THE JURY ROOM TO DELIBERATE I WOULD LIKE YOU TO KEEP  
11 THESE SIMPLE FACTS IN MIND. THERE IS ABSOLUTELY NO DIRECT EVIDENCE  
12 LINKING MY CLIENT, MR. HEYWARD, TO THAT PILL BOTTLE. THE CASE IS A  
13 HOUSE OF CARDS. WHAT I WANT YOU TO DO IS START POKING AT THAT HOUSE  
14 OF CARDS AND SEE HOW FIRM IT REALLY IS. SHE HAD TWO CARDS TO HER  
15 NAME. IF YOU PRESS ON THAT, DOES THAT MAKE THE HOUSE FALL DOWN? OH,  
16 HE DROVE THAT CAR THREE TIMES. DOES THAT MEAN WITHOUT A SHADOW OF  
17 A DOUBT - BEYOND A REASONABLE DOUBT, EXCUSE ME -- BEYOND A  
18 REASONABLE DOUBT THAT THAT WAS HIS CAR? LADIES AND GENTLEMEN, THAT  
19 IS FOR YOU TO DECIDE AND THAT IS YOUR HEAVY DUTY TODAY. HOWEVER, I  
20 SUBMIT TO YOU THAT THAT CIRCUMSTANTIAL EVIDENCE DOES NOT REACH THE  
21 STATE'S HEAVY BURDEN OF BEYOND A REASONABLE DOUBT. AND I SUBMIT TO  
22 YOU THAT YOU WILL RETURN, ONCE YOU HAVE CAREFULLY CONSIDERED ALL  
23 THE FACTS AND EVERYTHING, A VERDICT OF NOT GUILTY. THANK YOU VERY  
24 MUCH.

25 MS. MANGUM: THE DEFENDANT IS HERE BECAUSE HE WAS

1 CHARGED WITH SIMPLE POSSESSION OF MARIJUANA AND WHAT THAT REQUIRES  
2 IS THAT THE DEFENDANT BE IN POSSESSION OF MARIJUANA. THE JUDGE IS  
3 GOING TO TELL YOU ABOUT THE LAW. SHE'S GONNA GIVE YOU THE LAW AND  
4 YOU ARE GOING TO HAVE TO APPLY THAT LAW TO THE FACTS TODAY.

5           HERE'S WHAT THE EVIDENCE SHOWS FROM THE CITY. WE HAD  
6 NOT ONE, NOT TWO, BUT THREE OFFICERS WHO SPECIALIZE IN DRUG  
7 SUPPRESSION, WHO HAVE SPENT CAREERS KEEPING OUR CITY SAFE. WE HAD  
8 THREE OFFICERS WHO TESTIFIED THAT THAT DEFENDANT WAS PART OF A TIP IN  
9 A COMMUNITY WHERE THERE WERE DRUG PROBLEMS, THAT THEY OBSERVED  
10 THAT DEFENDANT LEAVE AN APARTMENT BUILDING WHERE THERE WERE NO  
11 DRUG PROBLEMS, THAT THAT DEFENDANT COMMITTED TWO TRAFFIC  
12 VIOLATIONS AND WAS PULLED OVER FOR THOSE TRAFFIC VIOLATIONS, THAT  
13 AFTER HE WAS PULLED OVER FOR THOSE TRAFFIC VIOLATIONS THE DRUG DOG,  
14 K-9 ZORO - YOU SAW HIM ON THE VIDEO - CAME TO THE SPOT. IT'S ALL LEGAL  
15 AND IT'S ALL LAWFUL, CAME TO THE SPOT, WALKED AROUND THAT CAR, MADE  
16 A HIT AND IN THE EXACT SPOT WHERE THAT DOG HIT THE OFFICERS FOUND  
17 MARIJUANA. WE KNOW IT WAS MARIJUANA BECAUSE OFFICER POTASH  
18 TESTIFIED THAT HE TESTED IT. AND WHAT THEY FOUND IN THAT CAR THAT DAY  
19 WAS MARIJUANA. DEFENSE COUNSEL WANTS THIS CASE TO CENTER AROUND  
20 PHYSICAL POSSESSION, THAT THE DEFENDANT DIDN'T HAVE IT IN HIS POCKET,  
21 THAT THE DEFENDANT WASN'T DRIVING HIS VEHICLE AND SO, THEREFORE, IT  
22 CAN'T POSSIBLY BE HIS. AND HE SAID THE CITY PROVIDED NO DIRECT  
23 EVIDENCE THAT THAT MARIJUANA WAS HIS. BUT THAT'S NOT TRUE. AND THE  
24 JUDGE IS GOING TO TELL YOU ABOUT DIRECT EVIDENCE. DIRECT EVIDENCE  
25 INCLUDES THE OFFICER'S TESTIMONY. DIRECT EVIDENCE INCLUDES THE VIDEO

1 THAT YOU SAW. THAT IS DIRECT EVIDENCE. AND AS WE WERE WATCHING THAT  
2 VIDEO I WROTE DOWN SOME OF THE THINGS THAT THE DEFENDANT SAID. AND I  
3 REMEMBER, AND I HOPE YOU DO, TOO, SOME OF THE THINGS HE DIDN'T SAY.  
4 WHEN THAT CAR WAS PULLED OVER INITIALLY FOR A TRAFFIC VIOLATION THE  
5 DEFENDANT NEVER SAID, HEY, IT'S NOT MY CAR. I'M SORRY IF THE BLINKER  
6 DOESN'T WORK BUT IT'S NOT MY CAR. HE NEVER SAID THAT. WHAT HE DID SAY  
7 WAS IN REFERENCE TO THE LIGHT AND THE ISSUE WITH THE BLINKER, HE SAID  
8 WHEN HE GOT OUT OF THE VEHICLE IT DOES LOOK LOW. A DIRECT QUOTE. I  
9 CHECK IT ON THE REGULAR. I CAN'T FIND THE COVER, I'VE BEEN TRYING. ALL  
10 OF THOSE THINGS ARE EVIDENCE. EVIDENCE OF WHAT? THAT THE DEFENDANT  
11 DOESN'T OWN THE CAR? I DON'T THINK SO. ALL OF THOSE ARE THINGS THAT  
12 PEOPLE WHO HAVE CONTROL AND POSSESSION SAY AND THAT'S WHAT THE  
13 DEFENDANT DID HAVE ON THAT VEHICLE. IT DOESN'T MATTER WHO THE CAR  
14 WAS REGISTERED TO. THE DEFENDANT HAD CONTROL OF THAT VEHICLE. HE  
15 ADMITTED THAT HE DID THE MAINTENANCE ON THE CAR. HE ADMITTED THAT  
16 HE CHECKS IT FREQUENTLY. ALL OF THOSE THINGS INDICATE THAT HE HAD  
17 POSSESSION OF THAT VEHICLE.

18 IN TERMS OF HIS SISTER, IT IS IMPORTANT TO NOTE THAT  
19 ALTHOUGH THE CAR WAS REGISTERED TO HIS SISTER SHE ALSO HAD ANOTHER  
20 VEHICLE REGISTERED TO HER. THAT'S AN IMPORTANT PIECE OF THIS. IT'S ALSO  
21 IMPORTANT TO REALIZE THAT OFFICER WILLIAMS TESTIFIED THAT HE SAW THE  
22 DEFENDANT ON AT LEAST THREE OTHER OCCASIONS DRIVING THIS EXACT SAME  
23 VEHICLE. ALL OF THOSE THINGS ARE EVIDENCE. THE LAW DOES NOT REQUIRE  
24 FOR YOU TO FIND THIS DEFENDANT GUILTY THAT HE HAD TO BE THE  
25 REGISTERED OWNER OF THE VEHICLE. AND THE JUDGE WILL TELL YOU MORE

1 ABOUT THAT. ALL YOU HAVE TO FIND IS THAT HE HAD CONSTRUCTIVE  
2 POSSESSION WHICH MEANS THAT HE HAD THE ABILITY TO CONTROL THAT CAR  
3 AND WHAT WAS GOING ON WITH IT.

4 I ALSO WANT TO REMIND YOU ABOUT SGT. WEBB'S TESTIMONY  
5 AND YOU SAW THE VIDEO. THE DEFENDANT WAS EASY TO GET ALONG WITH,  
6 WAS SORT OF JOKING. THEY WERE HAVING A FINE CONVERSATION AND THE  
7 MINUTE THAT HE BROUGHT UP THE SEARCH OF THE CAR I HOPE YOU NOTICED  
8 THAT HIS DEemeanOR CHANGED, THAT HE SAT ON THAT VEHICLE, THAT HE AT  
9 ONE POINT PUT HIS HANDS BEHIND HIS BACK. SGT. WEBB TESTIFIED ABOUT THE  
10 CONCERN THAT HE WAS GOING TO FLEE THE SCENE AND ON THE VIDEO YOU SEE  
11 HIM KIND OF WALK AWAY, YOU SEE ANOTHER OFFICER WALK UP TO HIM. ALL  
12 OF THOSE THINGS ARE IMPORTANT PARTS OF THIS PUZZLE. AND ALTHOUGH I  
13 DON'T AGREE WITH THE ANALOGY OF DEFENSE COUNSEL ABOUT THE HOUSE OF  
14 CARDS, I THINK A BETTER ANALOGY IS IF YOU THINK ABOUT A PUZZLE AND IF  
15 WE TAKE ONE OF THOSE PIECES - WE ARE NOT SURE WHAT THE WHOLE PICTURE  
16 IS SO IF WE JUST HAD THE CROSSES ON THE VEHICLE, THAT ONE PIECE  
17 WOULDN'T BE ENOUGH FOR A FULL PICTURE. BUT WHEN YOU TAKE ALL OF  
18 THOSE PIECES OF THE PUZZLE AND YOU PUT THEM TOGETHER, WHEN YOU TAKE  
19 AN INFORMANT, A TIP, WHEN YOU TAKE A DEFENDANT IN A HIGH DRUG AREA,  
20 WHEN YOU TAKE A LAWFUL STOP, WHEN YOU TAKE SUSPICIOUS BEHAVIOR OF  
21 THE DEFENDANT, WHEN YOU TAKE A LAWFUL SEARCH BY A DRUG K-9, WHEN  
22 YOU TAKE THE MARIJUANA THAT WAS FOUND, WHEN YOU TAKE THE  
23 STATEMENTS OF THE DEFENDANT, WHEN YOU TAKE THE OBSERVATIONS OF THE  
24 OFFICER THAT HE DRIVES THAT CAR, WHEN YOU TAKE ALL OF THOSE PIECES  
25 THEN ALL OF A SUDDEN THAT PUZZLE COMES INTO FOCUS. AND I THINK WHEN

1 YOU LOOK AT THAT PUZZLE THERE IS ONLY ONE THING THAT YOU CAN DO AND  
2 THAT IS TO FIND THIS DEFENDANT GUILTY OF SIMPLE POSSESSION OF  
3 MARIJUANA. THANK YOU.

4 THE COURT: ARE THERE ANY MATTERS WE NEED TO TAKE UP  
5 BEFORE I CHARGE THE JURY?

6 MS. MANGUM: NOT FROM US, YOUR HONOR.

7 MR. COMISH: JUST THE RENEWAL, YOUR HONOR.

8 THE COURT: ALL RIGHT. MADAM FOREPERSON AND MEMBERS OF  
9 THE JURY, YOU'VE HEARD THE TESTIMONY, THE EVIDENCE AND THE  
10 ARGUMENTS OF BOTH SIDES. I WILL NOW EXPLAIN THE LAW THAT APPLIES TO  
11 THIS CASE. AS I MENTIONED EARLIER, UNDER OUR LAW YOU AND I HAVE  
12 SEPARATE AND DISTINCT DUTIES. ONLY YOU, THE JURY, CAN MAKE FINDINGS  
13 OF FACT IN THE CASE. I'M NOT PERMITTED TO INDICATE TO YOU HOW I FEEL  
14 ABOUT THE TESTIMONY AND THE EVIDENCE PRESENTED. THROUGHOUT THE  
15 TRIAL I'VE ATTEMPTED TO BE FAIR AND IMPARTIAL TOWARD EACH OF THE  
16 PARTIES INVOLVED. THE TRIAL IS VERY IMPORTANT TO THE CITY AND THE  
17 DEFENDANT AND YOU HAVE SWORN TO SEE THAT BOTH THE CITY AND THE  
18 DEFENDANT HAVE A FAIR AND IMPARTIAL TRIAL. YOU ARE NOT TO BE  
19 GOVERNED BY SYMPATHY, PREJUDICE OR PUBLIC OPINION. IT'S ESPECIALLY  
20 IMPORTANT THAT YOU PERFORM YOUR DUTY DILIGENTLY AND  
21 CONSCIENTIOUSLY FOR ORDINARILY THERE IS NO MEANS OF CORRECTING AN  
22 ERRONEOUS DETERMINATION OF FACT BY THE JURY. NOW IT'S MY DUTY TO  
23 GIVE YOU THE LAW AND YOU MUST ACCEPT AND APPLY THE LAW AS I GIVE IT  
24 TO YOU AND BE GUIDED BY IT IN YOUR CONSIDERATION AND DELIBERATION OF  
25 THE EVIDENCE IN THE CASE. NOT ONLY ARE YOU THE SOLE JUDGES OF THE

1   FACTS IN THE CASE, BUT YOU, AS THE JURY, ARE THE SOLE AND EXCLUSIVE  
2   JUDGES OF THE EFFECT AND THE VALUE OF THE EVIDENCE IN THIS CASE, AS  
3   WELL AS THE CREDIBILITY OF ALL THE WITNESSES WHO HAVE TESTIFIED IN  
4   THIS CASE.

5               NOW I REMIND YOU THAT WHAT THE ATTORNEYS HAVE TOLD YOU  
6   IN OPENING STATEMENTS AND CLOSING ARGUMENTS IS NOT EVIDENCE. TO  
7   DETERMINE THE FACTS IN THIS CASE, YOU HAVE TO EVALUATE CREDIBILITY  
8   WHICH MEANS BELIEVABILITY OF EACH WITNESS. YOU WILL APPLY THE TEST  
9   OF TRUTHFULNESS THAT YOU ARE ACCUSTOMED TO APPLYING IN YOUR DAILY  
10  LIVES. AND SOME OF THE THINGS THAT YOU MAY CONSIDER AS YOU DECIDE  
11  WHETHER OR NOT TO BELIEVE A WITNESS'S TESTIMONY ABOUT A PARTICULAR  
12  MATTER INCLUDE WHAT WAS THE MANNER AND APPEARANCE OF THE WITNESS  
13  WHO TESTIFIED. WAS HE STRAIGHTFORWARD OR HESITANT IN ANSWERING?  
14  WAS THE TESTIMONY OF THE WITNESS CONSISTENT OR INCONSISTENT? HOW  
15  DID THE WITNESS COME TO KNOW THE FACTS THAT HE TESTIFIED TO? WHAT  
16  WAS HIS ABILITY TO KNOW THE FACTS? IS THERE SOME REASON A WITNESS  
17  WOULD WANT TO GIVE TESTIMONY? IS A WITNESS POTENTIALLY BIASED OR  
18  PREJUDICED TOWARD ONE SIDE OR ANOTHER?

19              NOW THERE ARE TWO TYPES OF EVIDENCE FROM WHICH A JURY  
20  MAY PROPERLY FIND THE TRUTH AS TO THE FACTS OF THE CASE. ONE IS DIRECT  
21  EVIDENCE, SUCH AS THE TESTIMONY OF AN EYE WITNESS. THE OTHER IS  
22  INDIRECT OR CIRCUMSTANTIAL EVIDENCE. THE PROOF OF A CHAIN OF  
23  CIRCUMSTANCES POINTING TO THE EXISTENCE OR NON-EXISTENCE OF CERTAIN  
24  FACTS. A POLICE OFFICER'S PERSONAL OBSERVATIONS OF THE DEFENDANT'S  
25  ACTION, APPEARANCE OR CONDITION CONSTITUTE DIRECT EVIDENCE BECAUSE

1 IT'S BASED ON THE OFFICER'S ACTUAL KNOWLEDGE OF THE SITUATION AND  
2 REQUIRES NO INFERENCE FROM THE JURY. BEFORE YOU CAN CONVICT A  
3 DEFENDANT ON CIRCUMSTANTIAL EVIDENCE, THE CIRCUMSTANTIAL EVIDENCE  
4 MUST MEASURE UP TO THE REQUIREMENTS OF LAW. SO I CHARGE YOU THAT  
5 WHERE IT'S UNDERTAKEN BY THE STATE IN A CRIMINAL CASE TO PROVE THE  
6 GUILT OF THE DEFENDANT BY CIRCUMSTANTIAL EVIDENCE ONLY, NOT ONLY  
7 MUST THE CIRCUMSTANCES BE PROVEN, BUT THEY MUST POINT CONCLUSIVELY  
8 TO THE GUILT OF THE ACCUSED AND MUST BE WHOLLY AND IN EVERY  
9 PARTICULAR PERFECTLY CONSISTENT WITH EACH OTHER AND THEY MUST ALSO  
10 BE ABSOLUTELY INCONSISTENT WITH ANY OTHER THEORY THAN THAT OF THE  
11 GUILT OF THE ACCUSED. COURTS IN THIS STATE HAVE RULED THAT IN CASES OF  
12 CIRCUMSTANTIAL EVIDENCE THAT EVERY CIRCUMSTANCE WHICH IS RELIED  
13 UPON BY THE STATE AS MATERIAL MUST BE BROUGHT TO THE TEST OF STRICT  
14 PROOF. ALL THE FACTS PROVED MUST BE CONSISTENT WITH EACH OTHER AND  
15 TAKEN TOGETHER SHOULD BE OF A CONCLUSIVE NATURE PRODUCING TO A  
16 REASONABLE AND MORAL CERTAINTY THAT THE DEFENDANT AND NO ONE ELSE  
17 COMMITTED THE OFFENSE CHARGED. IT IS NOT ENOUGH THAT THEY CREATE A  
18 PROBABILITY THOUGH A STRONG ONE AND ASSUMING ALL THE FACTS WHICH  
19 THE EVIDENCE TENDS TO ESTABLISH TO BE TRUE THERE MAY YET BE  
20 ACCOUNTED FOR ANY THEORY WHICH DOES NOT INCLUDE THE GUILT OF THE  
21 DEFENDANT THEN THE PROOF FAILS. THE REASON FOR THIS IS THAT ALL  
22 PRESUMPTIONS OF LAW INDEPENDENT OF EVIDENCE ARE IN FAVOR OF THE  
23 INNOCENT AND EVERY PERSON IS PRESUMED INNOCENT UNTIL HE IS PROVED TO  
24 BE GUILTY. ONE CANNOT BE CONVICTED ON SUSPICION HOWEVER STRONG  
25 THAT SUSPICION MIGHT BE. A VERDICT OF GUILTY CAN BE BASED UPON

1 CIRCUMSTANTIAL EVIDENCE AS SAFELY AS UPON DIRECT EVIDENCE PROVIDED  
2 THE CIRCUMSTANTIAL EVIDENCE RELIED UPON TO PROVE GUILT MEASURES UP  
3 TO THESE REQUIREMENTS OF THE LAW THAT I'VE JUST STATED TO YOU.

4 THE LAW DOES NOT REQUIRE ANY DEFENDANT TO PROVE HIS OR  
5 HER INNOCENCE OF A CRIME. ON THE CONTRARY, THE LAW REQUIRES THE CITY  
6 TO ESTABLISH THE DEFENDANT'S GUILT BY LEGAL EVIDENCE BEYOND A  
7 REASONABLE DOUBT. THE LAW PRESUMES THE DEFENDANT TO BE INNOCENT  
8 OF THE CHARGE MADE AGAINST HIM UNTIL HIS GUILT HAS BEEN PROVEN  
9 BEYOND A REASONABLE DOUBT. THE BURDEN OF OVERCOMING THIS  
10 PRESUMPTION IS PLACED ON THE CITY AND RESTS UPON THE CITY  
11 THROUGHOUT THE TRIAL UNTIL THE CITY HAS SATISFIED YOU BY EVIDENCE OF  
12 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

13 NOW ONE WAY TO DESCRIBE REASONABLE DOUBT IS TO SAY A  
14 DOUBT BASED UPON REASON AND COMMON SENSE. THAT KIND OF DOUBT THAT  
15 WOULD MAKE A REASONABLE PERSON HESITATE TO ACT. ANOTHER WAY TO  
16 DESCRIBE REASONABLE DOUBT IS TO SAY IT IS PROOF THAT WILL LEAVE YOU  
17 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

18 NOW IT IS UNLAWFUL FOR ANY PERSON IN OUR STATE  
19 KNOWINGLY OR INTENTIONALLY TO POSSESS A CONTROLLED SUBSTANCE  
20 UNLESS THE SUBSTANCE WAS OBTAINED DIRECTLY FROM OR PURSUANT TO A  
21 VALID PRESCRIPTION OR ORDER OF A PRACTITIONER WHILE ACTING IN THE  
22 COURSE OF HIS PROFESSIONAL PRACTICE. I FURTHER CHARGE YOU THAT  
23 MARIJUANA IS A CONTROLLED SUBSTANCE. POSSESSION OF MARIJUANA MAY  
24 BE ACTUAL OR CONSTRUCTIVE. ACTUAL POSSESSION MEANS THAT THE  
25 MARIJUANA WAS IN THE ACTUAL PHYSICAL CUSTODY OF THE DEFENDANT.

1 CONSTRUCTIVE POSSESSION MEANS THAT THE DEFENDANT HAD DOMINION AND  
2 CONTROL OR THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER EITHER  
3 THE MARIJUANA ITSELF OR THE PROPERTY IN WHICH THE MARIJUANA WAS  
4 FOUND. ACTUAL KNOWLEDGE OF THE PRESENCE OF MARIJUANA IS STRONG  
5 EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE.  
6 THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE INFERRED WHEN THE  
7 SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE DEFENDANT'S CONTROL.

8 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT  
9 THE DEFENDANT KNOWINGLY OR INTENTIONALLY POSSESSED MARIJUANA.  
10 KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY.  
11 INTENTIONALLY MEANS WILFULLY INTENDING THE RESULT WHICH ACTUALLY  
12 OCCURS, NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY  
13 ACTS OR CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM  
14 WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. THE MERE  
15 PRESENCE AT THE SCENE WHERE THE DRUGS WERE FOUND IS NOT ENOUGH TO  
16 PROVE POSSESSION. THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE  
17 INFERRED WHEN THE SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE  
18 DEFENDANT'S CONTROL. HOWEVER, THIS INFERENCE IS SIMPLY AN  
19 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH  
20 THE OTHER EVIDENCE IN THE CASE AND TO BE GIVEN THE WEIGHT YOU DECIDE  
21 IT SHOULD HAVE.

22 YOU HAVE BEEN CHOSEN AND SWORN AS JURORS IN THIS CASE TO  
23 TRY THE ISSUES OF FACT PRESENTED BY THE ALLEGATIONS OF THE TICKET AND  
24 THE DENIAL MADE BY THE NOT GUILTY PLEA OF THE ACCUSED. YOU ARE TO  
25 PERFORM THIS DUTY WITHOUT BIAS OR PREJUDICE AGAINST ANY PARTY. THE

1 LAW DOES NOT PERMIT JURORS TO BE GOVERNED BY SYMPATHY, PREJUDICE OR  
2 PUBLIC OPINION. BOTH THE ACCUSED AND THE PUBLIC EXPECT THAT YOU WILL  
3 CAREFULLY AND IMPARTIALLY CONSIDER ALL THE EVIDENCE IN THE CASE,  
4 FOLLOW THE LAW AS INSTRUCTED BY THE COURT AND REACH A JUST VERDICT  
5 REGARDLESS OF THE CONSEQUENCES.

6 THE FAILURE OF THE DEFENDANT TO TAKE THE STAND AND  
7 TESTIFY IN HIS BEHALF DOES NOT CREATE ANY PRESUMPTION AGAINST HIM. I  
8 CHARGE YOU THAT YOU MUST NOT PERMIT THIS FACT TO WEIGH IN THE  
9 SLIGHTEST DEGREE AGAINST THE DEFENDANT, NOR SHOULD THIS FACT ENTER  
10 INTO DISCUSSIONS OR DELIBERATIONS OF THE JURY. THE CONSTITUTION OF  
11 THE UNITED STATES GIVES THE DEFENDANT THE ABSOLUTE RIGHT TO DECIDE  
12 NOT TO TESTIFY AND TO REQUIRE THE GOVERNMENT TO PROVE ITS CASE. YOU  
13 MUST IGNORE THIS DECISION NOT TO TESTIFY WHEN YOU DECIDE WHETHER HE  
14 IS GUILTY OR NOT GUILTY. A DEFENDANT IS PRESUMED INNOCENT. HE DOES  
15 NOT HAVE TO PROVE HIS INNOCENCE, IT IS THE GOVERNMENT THAT MUST  
16 PROVE GUILT.

17 NOW THERE'S NOTHING PARTICULARLY DIFFERENT IN THE WAY A  
18 JURY SHOULD CONSIDER THE EVIDENCE IN A CRIMINAL CASE FROM THAT  
19 WHICH ALL REASONABLE PERSONS TREAT ANY QUESTION DEPENDING UPON  
20 THE EVIDENCE PRESENTED TO THEM. YOU ARE EXPECTED TO USE GOOD SENSE,  
21 CONSIDER THE EVIDENCE IN THE CASE FOR ONLY THOSE PURPOSES FOR WHICH  
22 IT'S BEEN ADMITTED AND GIVE IT A REASONABLE AND FAIR CONSTRUCTION IN  
23 THE LIGHT OF YOUR COMMON KNOWLEDGE AND NATURAL TENDENCIES AND  
24 INCLINATIONS OF HUMAN BEINGS.

25 THE CITY OF COLUMBIA AND THE DEFENDANT ARE ENTITLED TO

1 THE INDIVIDUAL OPINION OF EACH JUROR ON THE ISSUES OF FACT IN THIS CASE.  
2 IT IS THE DUTY OF EACH OF YOU TO CONSIDER AND WEIGH ALL THE EVIDENCE  
3 IN THE CASE AND FROM SUCH EVIDENCE TO DETERMINE IF YOU CAN THE  
4 QUESTION OF GUILT OR INNOCENCE OF THE DEFENDANT. I CHARGE YOU THE  
5 SIMPLE QUESTION IS WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. THE  
6 WORD VERDICT COMES FROM THE LATIN WORD VEREDICTO WHICH MEANS TO  
7 SPEAK THE TRUTH. YOUR VERDICT SHOULD SPEAK THE TRUTH AS YOU FIND IT  
8 TO BE.

9 NOW IN A FEW MINUTES WE ARE GOING TO ASK YOU TO RETIRE TO  
10 THE JURY ROOM. I'LL NEED TO CHECK WITH THE ATTORNEYS, MAKE SURE WE  
11 HAVE NO FURTHER LEGAL MATTERS THAT NEED TO BE TAKEN UP AND THEN  
12 I'LL SEND IN A JURY VERDICT FORM AND ALLOW YOU TO BEGIN  
13 DELIBERATIONS. WHEN YOU HAVE REACHED A VERDICT, IF YOU'LL KNOCK ON  
14 THE DOOR MS. WILLIAMS WILL LET THE COURT KNOW. YOU'LL WRITE YOUR  
15 VERDICT ON YOUR VERDICT FORM AND, MADAM FOREPERSON, IF YOU WOULD  
16 SIGN THAT. ALL RIGHT. IF YOU WILL, RETURN TO THE JURY ROOM FOR JUST A  
17 MINUTE, WE'LL SEND THEM ON IN.

18 (JURY LEAVES THE JURY BOX)

19 **THE COURT:** ANY OTHER MATTERS WE NEED TO TAKE UP BEFORE  
20 THE JURY BEGINS?

21 **MS. MANGUM:** NONE, YOUR HONOR.

22 **MR. COMISH:** JUST RENEWING, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. THANK YOU SO MUCH. TELL THEM  
24 THEY CAN START DELIBERATING.

25 (JURY DELIBERATING)

1 (RECESS)

2 **THE COURT:** ARE WE READY?

3 (JURY RETURNS TO THE JURY BOX)

4 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, I  
5 UNDERSTAND YOU'VE REACHED A VERDICT. I HAVE THE VERDICT FORM THAT  
6 THE COURT OFFICER HAS PROVIDED TO ME. THE VERDICT FORM READS IN THE  
7 MATTER OF CEDRIC XAVIER HEYWARD, WE FIND THE DEFENDANT GUILTY. IT'S  
8 DATED MARCH 4<sup>TH</sup>, 2015, AND SIGNED BY YOU, MADAM FOREMAN?

9 **FOREMAN:** CORRECT.

10 **THE COURT:** ALL RIGHT. THANK YOU SO MUCH FOR YOUR  
11 SERVICE.

12 (JURY IS DISMISSED)

13 **THE COURT:** ALL RIGHT. I'LL HEAR FROM THE PARTIES WITH  
14 REGARD TO SENTENCING.

15 **MS. MANGUM:** YOUR HONOR, AS I MENTIONED EARLIER, MR.  
16 HEYWARD HAS BEEN CHARGED AT LEAST THREE OTHER TIMES WITH SIMPLE  
17 POSSESSION. I THINK ONE OF THOSE WAS A CONVICTION. HE WAS MADE A FAIR  
18 OFFER IN THIS CASE AND SO WE'LL BE ASKING FOR THE THIRTY DAYS.

19 **THE COURT:** ALL RIGHT.

20 **MR. COMISH:** YOUR HONOR, MY CLIENT TAKES CARE OF HIS  
21 YOUNG DAUGHTER SO HIS DAUGHTER'S MOTHER CAN WORK. IN THIS CASE  
22 WE'LL BE ASKING FOR A FINE RATHER THAN ANY JAIL TIME. HE ALREADY DID -  
23 IT WAS JUST ONE DAY BUT HE DID DO A JAIL ON THIS. HE'S VERY CONCERNED  
24 ABOUT WHAT'S GOING TO HAPPEN WITH HIS DAUGHTER AND THE DAUGHTER'S  
25 MOTHER'S LIVELIHOOD. AT THIS TIME, I WANT TO TAKE A FINAL OPPORTUNITY

1 TO RENEW ALL OBJECTIONS JUST FOR THE PURPOSES OF THE RECORD.

2 THE COURT: THEY ARE THERE.

3 MR. COMISH: I GET IN TROUBLE IF I DON'T DO IT AT THE VERY  
4 END.

5 THE COURT: THEY ARE THERE. THEY ARE SO NOTED.

6 MS. MANGUM: YOUR HONOR, MAY I ADD JUST A COUPLE OF  
7 THINGS IN TERMS OF SENTENCING. THIS IS A DEFENDANT THAT OUR OFFICERS  
8 HAVE HAD FREQUENT CONTACT WITH. THIS CONTINUES TO BE A PROBLEM.  
9 ALTHOUGH HE CERTAINLY HAS A RIGHT TO FILE A COMPLAINT AFTER ARREST  
10 AND ALL THOSE THINGS. HE CONTINUES TO DO THAT WITH THESE OFFICERS.  
11 HE'S FILED I.A. COMPLAINTS THAT ARE FACTUALLY INACCURATE. NOTHING  
12 HAS EVER BEEN SUSTAINED BUT THEY REMAIN ON THESE OFFICERS' RECORDS  
13 AND SO WE WOULD LIKE ALL OF THAT TO BE TAKEN INTO ACCOUNT. I THINK  
14 IT'S TIME THAT THIS DEFENDANT LEARNS THAT C.P.D. MEANS WHAT THEY SAY.

15 MR. COMISH: YOUR HONOR, I THINK THAT'S INAPPROPRIATE. MY  
16 CLIENT WAS CONVICTED OF SIMPLE POSSESSION, NOT OF FILING REPORTS IN  
17 ANY SENSE.

18 MS. MANGUM: I JUST MENTION THAT BECAUSE THERE'S A LACK OF  
19 RESPONSIBILITY IN TERMS OF WHAT'S HAPPENING HERE.

20 MR. COMISH: FILING REPORTS IS NOT INDICATIVE OR DISPOSITIVE  
21 OF RESPONSIBILITY OR THE LACK THEREOF. I CAN TELL YOU WHAT MY CLIENT  
22 TOLD ME AND THAT HE'S VERY CONCERNED ABOUT THE STATUS OF HIS  
23 DAUGHTER. HE'S CURRENTLY LOOKING FOR EMPLOYMENT AND HE'S HOPING -  
24 HE'S BEEN TOLD BY SEVERAL EMPLOYERS THAT THE RESOLUTION OF THESE  
25 PARTICULAR CHARGES THEY MIGHT CONSIDER EMPLOYING HIM. I WOULD LIKE

1 FOR HIM TO HAVE THE OPPORTUNITY TO START WORK AS SOON AS POSSIBLE. I  
2 WOULD – I'M PLANNING TO APPEAL THIS CASE AND IN LIGHT OF THAT, YOU  
3 KNOW, THE STATE SHOULD I WIN AN APPEAL CAN ALWAYS REFUND HIS MONEY  
4 BUT THEY CAN'T REFUND HIS TIME IN THE WHATEVER PROBABILITY CHANCE  
5 THAT THAT DOES HAPPEN. AND I JUST HATE TO SEE HIM DO THE TIME IF THIS  
6 SHOULD BE OVERTURNED.

7 THE COURT: MR. HEYWARD, HOW LONG HAS IT BEEN SINCE  
8 YOU'VE WORKED?

9 DEFENDANT HEYWARD: DURING THE COURSE OF MY CHILD'S  
10 MOTHER'S PREGNANCY I FINALLY FOUND A JOB AT THE HICKORY POINT IN  
11 IRMO, SOUTH CAROLINA. I WORKED FOR A FEW MONTHS WHERE I WAS  
12 DISCHARGED. THEY LET ME GO. AND THEN IT CAME UNDER NEW MANAGEMENT  
13 AND SEVEN-ELEVEN BOUGHT OUT THE COMPANY SO THEY DECIDED TO RE-HIRE  
14 ME AND I RAN THE KITCHEN. AND DUE TO THE LIKE TRANSPORTATION ISSUES I  
15 EVENTUALLY WAS LET GO.

16 THE COURT: OKAY. HOW LONG AGO WAS THAT?

17 DEFENDANT HEYWARD: THAT WAS IN 20... IT WAS JUST BEFORE  
18 MY DAUGHTER'S BIRTHDAY.

19 THE COURT: SO HOW OLD IS SHE?

20 DEFENDANT HEYWARD: SHE'S TWO.

21 THE COURT: OKAY. SO IT WAS TWO YEARS AGO OR A YEAR AGO?

22 DEFENDANT HEYWARD: IT WAS OVER A YEAR NOW.

23 THE COURT: OVER A YEAR CONSISTENT. OVER A YEAR SINCE  
24 YOU'VE WORKED ANYWHERE?

25 DEFENDANT HEYWARD: YES, MA'AM, BUT I HAVE – I SHOULD

1 HAVE HAD BROUGHT THEM BUT I HAD INTERVIEWS, A LOT OF INTERVIEWS.  
2 WAL-MART -- HAD A COUPLE OF 'EM. AMAZON. A COUPLE INTERVIEWS FOR  
3 WAL-MART.

4 THE COURT: SO HOW HAVE YOU BEEN SUPPORTING YOURSELF  
5 DURING THIS TIME?

6 DEFENDANT HEYWARD: MY FAMILY.

7 THE COURT: I MEAN. HOW ARE YOU EATING? HOW DO YOU GET  
8 FOOD, HOW DO YOU HAVE A ROOF OVER YOUR HEAD?

9 DEFENDANT HEYWARD: I EAT WITH MY SISTER.

10 THE COURT: OKAY.

11 DEFENDANT HEYWARD: AND MY CHILD'S MOTHER, SHE IS  
12 EMPLOYED. SHE'S AN ENTERTAINER.

13 THE COURT: WHERE IS SHE AN ENTERTAINER?

14 DEFENDANT HEYWARD: AT -- I CAN'T REMEMBER THE TECHNICAL  
15 NAME BUT IT'S A BAR. IT'S A CLUB OFF OF BROAD RIVER ROAD.

16 THE COURT: SO IF I CONSIDER SOME KIND OF A FINE, HOW ARE  
17 YOU GOING TO PAY A FINE?

18 DEFENDANT HEYWARD: IT WILL BE PAID EVEN IF I HAVE  
19 (INAUDIBLE).

20 MR. COMISH: YOUR HONOR, I UNDERSTAND MY CLIENT'S MOTHER  
21 IS HERE AND IS WILLING TO VOUCH FOR HIS PAYMENT OF THE CLAIM -- OF THE  
22 FINE, EXCUSE ME.

23 THE COURT: OKAY. WELL, MOM PAYING THE FINE DOESN'T GET  
24 ME TOO FAR.

25 DEFENDANT HEYWARD: IT'S LIKE THE SEASON HAS CHANGED

1 AND IT'S A LOT OF YARD WORK AVAILABLE AND I WILL BE MORE THAN WILLING  
2 IF I CAN - I AM POSITIVE THAT THIS MONEY WILL BE PAID.

3 MR. COMISH: WITH YOUR HONOR'S DISCRETION, I'M SURE MR.  
4 HEYWARD WOULD BE WILLING TO DO A NUMBER OF COMMUNITY SERVICE  
5 HOURS IN LIEU OF ANY PART OF THE FINE. I DON'T THINK THE MOTHER IS  
6 SAYING SHE'LL PAY IT BUT WILL VOUCHSAFE THE PAYMENT SHOULD MR.  
7 HEYWARD PROVE UNABLE TO AND HIS TAKING CARE OF THE CHILD IS WHAT  
8 ENABLES THE CHILD'S MOTHER TO WORK.

9 THE COURT: WHEN WAS THE LAST TIME YOU WERE ARRESTED?  
10 WAS THAT 2012?

11 DEFENDANT HEYWARD: THE LAST TIME I WAS ARRESTED WAS - I  
12 BELIEVE IT WAS MARCH THE 11<sup>TH</sup> OF 2011. NO, '12.

13 THE COURT: IS THAT CHARGE STILL PENDING?

14 DEFENDANT HEYWARD: NO, MA'AM, THAT CHARGE -- IT'S NOT  
15 PENDING ANY MORE AND I WAS NOT GUILTY.

16 THE COURT: YOU FOUND WERE FOUND NOT GUILTY?

17 DEFENDANT HEYWARD: I ASSUME THEY THREW IT OUT RIGHT  
18 BEFORE WE WENT UP FRONT AFTER A FEW MONTHS CONTINUANCES I GUESS.

19 THE COURT: OKAY. SO IN OUR SYSTEM I SEE - YOU ARE CEDRIC  
20 XAVIER LAMAR?

21 DEFENDANT HEYWARD: YES, MA'AM.

22 THE COURT: AND SO I SEE A SPEEDING CHARGE, AN OPERATING  
23 AN UNSAFE MECHANICAL CONDITION. THOSE ARE STILL PENDING, TOO?

24 DEFENDANT HEYWARD: YES, MA'AM, I ASSUME. DO YOU HAVE A  
25 DATE? I WAS ALSO WAITING A FEW OTHER SUMMONS, COURT SUMMONS.

1           **THE COURT:** OTHER JURY TRIALS?

2           **DEFENDANT HEYWARD:** YES, MA'AM.

3           **THE COURT:** IT LOOKS LIKE THERE'S A SPEEDING ON THE JURY  
4 TRIAL DOCKET. THERE'S AN OPERATING VEHICLE UNDER UNSAFE MECHANICAL  
5 CONDITION ON THE JURY TRIAL DOCKET. THERE'S ANOTHER SPEEDING ON THE  
6 JURY TRIAL DOCKET. THERE'S A PREVIOUS MARIJUANA CHARGE THAT WENT TO  
7 A SHOW CAUSE HEARING BUT ENDED UP GETTING PAID.

8           **DEFENDANT HEYWARD:** I BELIEVE THAT WAS AROUND - I PAID  
9 IT?

10          **THE COURT:** IT EITHER GOT WRITTEN OFF OR GOT PAID.

11          **DEFENDANT HEYWARD:** THE LAST TIME I WAS INCARCERATED IT  
12 WAS DUE TO MARIJUANA BUT THE CHARGE WAS DROPPED.

13          **THE COURT:** I REALLY DON'T WANT TO PUT YOU IN JAIL BECAUSE  
14 - AND I DON'T THINK, YOU KNOW, INTERNAL AFFAIRS COMPLAINTS ARE  
15 ANYTHING THAT MEANS THAT I SHOULD PUT YOU IN JAIL. ON THE OTHER HAND  
16 I WOULD REALLY LIKE TO SEE SOME CHANGED BEHAVIOR.

17          **DEFENDANT HEYWARD:** YES, MA'AM.

18          **THE COURT:** YOU KNOW, YOU ARE JUST GOING DOWN THE SAME  
19 TRACK OVER AND OVER AGAIN.

20          **DEFENDANT HEYWARD:** I WAS TRYING. AND I REALLY WANTED  
21 TO HAVE A GOOD JOB SO I CAN ESPECIALLY TAKE CARE OF MY DAUGHTER AND  
22 THAT WAS IMPOSSIBLE OR SO I WAS TOLD WITH HAVING A PENDING CHARGE.  
23 MY CONFIDENCE WAS SHOT DOWN MANY TIMES. I'VE SPENT NIGHTS AT HOME  
24 CRYING. IT'S JUST BEEN A HEADACHE. MY DAUGHTER RIGHT NOW IS THE ONLY  
25 - I FEEL LIKE EVER SINCE SHE WAS BORN I HAD A REASON TO TRY AND DO

1 BETTER AND STRAIGHTEN UP AND SHE'S LITERALLY ALL I HAVE. I HAVE BEEN  
2 TRYING WITH TEMP SERVICES, TRYING TO GET TEMP SERVICE AT FOUR THIRTY  
3 IN THE MORNING AND IT SEEMS LIKE THEY ONLY WANT PEOPLE THAT THEY  
4 BEEN WORKING WITH OR THAT HAVE EXPERIENCE.

5 **THE COURT:** ALL RIGHT. WELL, I HEAR THE SOLICITOR'S - I HEAR  
6 THE CITY ATTORNEY'S REQUEST. I AM GOING TO ACCEPT THE VERDICT, FIND  
7 YOU GUILTY AND IMPOSE SIX HUNDRED AND TWENTY DOLLARS OR THIRTY  
8 DAYS. ALL RIGHT. NOW LET ME SAY THIS. IF THE SIX HUNDRED AND TWENTY  
9 DOLLARS ISN'T PAID I AM NOT GOING TO HESITATE TO IMPOSE THE THIRTY  
10 DAYS.

11 **DEFENDANT HEYWARD:** YES, MA'AM, I UNDERSTAND.

12 **THE COURT:** YOU UNDERSTAND. AND, YOU KNOW, JUST BECAUSE  
13 YOU GET ARRESTED IS NOT A REASON TO FILE AN INTERNAL AFFAIRS  
14 COMPLAINT. I'M NOT SAYING YOU CAN'T EVER FILE ONE AGAIN AND I DON'T  
15 KNOW WHETHER THOSE ARE VALID OR NOT BUT JUST BECAUSE YOU GET  
16 ARRESTED IS NOT A REASON.

17 **DEFENDANT HEYWARD:** YES, MA'AM.

18 **THE COURT:** ALL RIGHT. GOOD LUCK TO YOU.

19 **MS. MANGUM:** THANK YOU, YOUR HONOR.

20

21 (ADJOURNED)

22

23

24

25

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
In The Court of Common Pleas

APPEAL FROM THE  
CITY OF COLUMBIA MUNICIPAL COURT

The Honorable Dana D. Turner  
Municipal Court Judge

Ticket Number 81734FP

The State,.....Respondent,

v.

Cedric Xavier Heyward,.....Appellant.

**NOTICE OF APPEAL**

Mr. Cedric Xavier Heyward, by and through counsel, Jonathan Scott Comish, appeals his conviction and sentence in this case. The Honorable Dana D. Turner imposed sentence on March 4, 2015.

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Appellant Cedric Xavier Heyward, seeks relief from his conviction and sentence on ticket number 81734FP. On March 4<sup>th</sup>, 2015 a jury trial was held in the City of Columbia Municipal Court. Appellant was found guilty by the jury and sentenced by the Honorable Dana D. Turner. All motions below were made by Appellant, and were preserved at the end of the trial. This appeal follows.

### ISSUES ON APPEAL

1. *Holding a trial for ticket number 81734FP after a delay of 45 months without any judicial review of the delay violated Appellant's rights under the Speedy Trial Clause of the 6<sup>th</sup> Amendment.*

The United States Supreme Court held in *Doggett v United States* that excessive delay between indictment and trial can cause a per se prejudice to the defendant. Moreover, the Court held that a delay of more than 17 months should trigger an automatic judicial review of the reasons for the delay. 505 U.S. 647 (1992).

While not meeting the 8 ½ year delay of *Doggett*, this case was heard by a summary court which, presumably, operates on a shorter timeframe than a general sessions court as in *Doggett*. As such, a delay of 45 months implicates the concerns raised by the Supreme Court in *Doggett*. In addition, there was specific testimony that the time delay had impacted the memory of key witnesses. At a minimum, *Doggett* requires at least some judicial oversight as to the reason for such an excessive delay.

2. *Officer Arnold was allowed to testify over Defense Counsel's objection in violation of Riddle v. State and Brady v. Maryland.*

The state was served with timely *Brady* and *Riddle* motions. *Riddle v. State*, 369 S.C. 39, 631 S.E.2d 70 (2006) and *Brady v Maryland*, 373 U.S. 83 (1963), require that the State to disclose witness statements to the Defense.

Officer Arnold was only mentioned once in all of the discovery provided with no indication as to the content of his testimony and what, if anything, he had witnessed.

Defense Counsel as well as another attorney witnessed the City Prosecutor conferring with Officer Arnold and other witnesses in the courtroom before the trial started. When the group noticed they were being observed, they retired from the courtroom to continue their discussions elsewhere.

These discussions fall within the purview of both *Riddle* and *Brady* and were, therefore, subject to Defense Counsel's motions.

Any testimony derived therefrom and not provided to Defense prior to commencement of trial would thus be in violation of Rule 5 and inadmissible.

3. *Officer Webb was allowed to testify as to the psychological factors governing Defendant's choice of movement and location without being qualified as an expert, over Defense Counsel's objection.*

During his testimony, Officer Webb described his interrogation technique and offered his opinions of the significance of Defendant's movements while under interrogation, claiming that choosing to stand in a particular location was evidence of Defendant's guilt. Such testimony is a clear violation of SCRP Rule 701(c), as it steps into the field of psychology and requires specialized knowledge, skills, and training.

This testimony is inadmissible from a witness who is not qualified as an expert.

4. *Chain of custody evidence was admitted over Defense Counsel's objection in spite of the fact that said evidence did not satisfy the requirements SCRP Rule 6(b) or State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (2004).*

SCRP Rule 6(b) requires that, upon Defense Counsel's timely request, each signatory to a chain of custody will be required to testify subject to the constraints of practicability. Defense Counsel made timely objection over a year prior to trial.

If a signatory to the chain of custody is unable to be present in court, *State v. Taylor* allows other witnesses to satisfy SCRP Rule 6(b) with testimony as to the identity of the missing signatories and the rules of the evidence room. However, the chain of custody was admitted *prior* to any of this sort of testimony.

Moreover, the testimony did not identify the missing signatories, nor did it explain why the evidence was unaccounted for by the chain of custody form for a period of 12 days – one Donna Martin checked the evidence from a locker and left a conspicuous blank on the form, then submitted it to the analyst Potash 12 days later. As such, the chain of custody should be inadmissible under both SCRP Rule 6(b) and *Taylor*.

5. *Officer Webb intentionally extended the traffic stop, without any reasonable suspicion of criminal activity, in order to allow the drug dog time to arrive on scene. This constitutes an illegal 4<sup>th</sup> Amendment seizure and requires suppression of any evidence obtained as a result of the seizure*

It is well established that a drug dog team may take a "free air sniff" around a car in the course of a normal traffic stop. However, *State v. Hewins*, 760 SE 2d 814, 409 SC 93 (2014), the culmination of a significant line of South Carolina case law, precludes the officer from prolonging the stop beyond the scope, in both time and manner, of a normal traffic stop, absent any reasonable suspicion of criminal activity.<sup>1</sup>

<sup>1</sup> See also: *State v. Trindal*, 698 SE 2d 203, 388 SC 518 (2010); *State v. Provet*, 747 SE 2d 453, 405 SC 101 (2013).

In the video of the stop, admitted into evidence and shown at trial, Officer Webb can be observed repeatedly returning to his car and engaging in prolonged conversation with Officer Williams, the drug dog handler. Moreover, Officer Webb, upon concluding the normal line of questioning, can be heard interrogating the Defendant as to whether he knew of any narcotics in his neighborhood and whether he had any illegal narcotics in his possession.

These actions of Officer Webb unavoidably prolonged the traffic stop, and were an intentional attempt to give Officer Williams time to arrive on scene. In fact, Officer Webb can be heard encouraging Officer Williams to make haste, during one three minute interlude in which Officer Webb stopped writing the warning citation in order to return to his cruiser and hold a conversation with Officer Williams.

As Officer Webb's actions prolonged the traffic stop beyond the scope allowed by *Hewins*, and he was unable to articulate any valid reasonable suspicion for doing so, the concomitant search was illegal under the 4<sup>th</sup> Amendment, and any results of that search should have been suppressed.

6. *Officer Williams, despite the fact that his drug dog did not alert in the course of the "free air sniff" admitted his drug dog into the interior of Defendant's car. As Officer Williams had no probable cause to do so, the dog's actions inside the car constitute an illegal search under the 4<sup>th</sup> Amendment.*

*Carroll v. United States*, 267 U.S. 132 (1925), allows an officer to search a vehicle without a warrant, if that officer has probable cause to do so.

Officer Williams testified at trial that his dog, Zorro, was an "aggressive alert" dog, meaning that if Zorro detected the odor of contraband narcotics, Zorro would bark or scratch to alert Officer Williams to the odor.

During the course of the "free air sniff" on the exterior of the vehicle, Zorro provided no such alert. It is clear from the video of the stop, admitted into evidence and shown at trial, that Zorro, despite what appeared to be hand signals from Officer Williams, was singularly uninterested in the exterior of the vehicle.

Zorro did not, in fact, give any "aggressive" alert until Officer Williams had admitted him into the vehicle. As the state had no probable cause, and Defendant had audibly denied consent to search the vehicle, admitting an agent of the state into the interior of the car to search for narcotics constitutes an illegal search under the 4<sup>th</sup> Amendment, and any contraband found as a result of the search should be suppressed.

7. *During cross examination of the state's drug analyst, the State, without stating any grounds, objected to Defense counsel's question as to the current state of the Columbia Police Department's drug lab. Despite Defense Counsel's argument that the question goes toward the credibility of the lab, the objection was sustained.*

As Defense Counsel's question was directly relevant to the credibility of the drug analyst's

*State v. Heyward*

testimony, that question was valid under SCRE 402. The objection, especially as it was presented without any grounds, should have been overruled.

Since the Defense was erroneously prevented from pursuing a relevant line of questioning, this ruling prejudiced the Defense's ability to make its case.

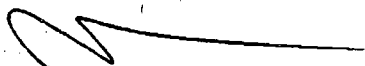
*8. Defense was prevented from showing the remainder of the recording of the traffic stop, in violation of SCRE 106*

The State admitted a video recording of the traffic stop into evidence. The State only wished to show the first fifteen minutes of the stop to the jury. Defense Counsel requested either the video be shown in full, or, at a minimum, that the jury be shown a brief conversation between officers that occurred later in the tape.

SCRE 106 allows an adverse party to require the introduction of any other part of a recorded statement when another part of that statement is introduced by a party. Since the contents of the conversation were directly relevant to the reason Officer Webb was following the Defendant, those statements should have been admitted into evidence. However, the Defense Counsel was not allowed to present that conversation to the jury, prejudicing both his case at trial, and his case at appeal, as those statements were directly relevant as to whether Officer Webb had reasonable suspicion to seize Defendant.

WHEREFORE, Appellant respectfully requests this Court to vacate his conviction and remand the case with instructions to set it for a jury trial.

Respectfully submitted,



Jonathan Scott Comish  
Attorney for the Appellant  
Richland County Public Defender  
1701 Main Street  
Columbia, SC 29201

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
Case Number: 2015CP4001604

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The State of South Carolina, )  
Respondent )

vs. )

APPELLANT'S BRIEF

Cedric Xavier Heyward, )  
Appellant )

TO: Honorable Tanya Gee, Richland County Court of General Sessions  
CC: Jessica Mangum, City Attorney

Jonathan Comish,  
Attorney for Respondent

Richland County Public Defender's Office  
P.O. Box 192  
Columbia, South Carolina 29202  
(803) 765-2592

1. Whether the State was in violation of *US v Doggett* 505 U.S 647 (1992) by not calling the case to trial for 45 months, and whether the Judge was in error by not initiating a judicial review of the delay within 17 months, as required by *Doggett*.
2. Whether the Trial Judge erred in admitting drugs into evidence over Defense Counsel's objection when the State had not satisfied Defense Counsel's timely demand, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure
3. Whether Officer Webb illegally prolonged the traffic stop, absent reasonable suspicion of criminal activity, in order to give Officer Williams time to arrive with the K9 unit, in violation of the 4<sup>th</sup> Amendment of the US constitution, and an overwhelming line of cases culminating in *Rodriguez v. U.S.* 575 U.S. \_\_\_\_ (2015).
4. Whether Officer Williams admitting his drug dog into Appellant's car without that dog alerting during his free air sniff was an illegal search under the 4<sup>th</sup> Amendment.
5. Whether the Trial Judge made an error of law in sustaining the State's objection to Appellant's attempt to introduce evidence as to the current state of the Columbia Police Department's Drug lab. The objection was made without the State stating the grounds for the objection.
6. Whether the Trail Judge made an error of law in cutting off the tape of the traffic stop, entered into evidence by the State, less than halfway through its play time over Appellant's objection.

Appellant Cedric Xavier Heyward was arrested on March 11, 2012, for possession of marijuana. On March 4, 2015, a jury trial was held in the City of Columbia Municipal Court. Appellant was found guilty by the jury and sentenced by the Honorable Dana D. Turner. All Motions below were made by Appellant, and were preserved at the end of the trial. This timely appeal follows.

### Statement of Facts

On March 11, 2011, Cedric Heyward left his apartment complex where Officer Arnold was conducting a stakeout based on information gleaned from an anonymous tip. When Heyward left the complex, Officer Arnold radioed Officer Webb to follow Heyward, because he was a black man who had left that apartment complex and was potentially a person of interest. Officer Webb then began following Heyward, and when he saw Heyward make a lane change in a construction zone that he perceived as too close to the vehicle in front, and potentially without a turn signal. Once the two cars made it past the construction zone, Officer Webb activated his blue lights and proceeded to pull Heyward over. At the stop, the officer collected Heyward's documentation, and asked another officer at the scene to contact Officer Williams, a drug dog handler. Officer Webb then asked Heyward to exit the vehicle to discuss the violation, and Heyward complied, leaving his car door ajar when he exited the vehicle. The two men entered into a discussion about the traffic violation and the problem with Heyward's tail light, and Officer Webb spends part of that discussion working on writing the citation.

The conversation between the two men shifted, as Officer Webb progressed from asking Heyward about his work and plans for the day to asking if he knows of any narcotic sales in the area and if he has any narcotics on his person or in the vehicle. When Heyward answers in the negative, Officer Webb then asked for permission to search Heyward's car. Heyward declined to allow him to do so, and Officer Webb immediately spoke to another officer and told him to call Officer Williams, while continuing to work on writing the warning citation.

At that point, Officer Webb returned to his cruiser with the citation book and has a two and a half minute conversation with Officer Williams, providing him with directions to the scene, asking how long it would take him to arrive at the scene, and informing Officer Williams that Heyward declined to let him search the car, reminding Officer Williams to turn down his

radio when he entered the scene. Officer Webb then exited his car and resumed writing the citation.

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Approximately thirteen minutes and forty seconds into the stop, Officer Williams arrives with Zorro, his drug dog. About twenty seconds later, Officer Webb finally radios in to check Heyward's name. After briefly prepping the dog to get him ready to search around the car, Officer Williams begins to lead Zorro around the car, tapping the front passenger side, sticking his hand into the interior of the car through the open door, hitting the trunk with his hand, and then returning Zorro to the open door, all the while working to keep Zorro from heading off into the woods.

When Zorro was led back to the open door, he jumped into the open door, and alerted at the dash. When officers searched the dash, they located a pill bottle with a green leafy substance inside, and proceeded to arrest Heyward. They then searched the rest of the car, and did not find any further substances.

### Argument

#### A. *Doggett v. U.S.*

Cedric Xavier Heyward was arrested on May 27, 2011 for Simple Possession of Marijuana, warrant number 81734FP. His trial on that charge commenced on March 4, 2015 for that charge. The length of time between arrest and trial totals 1377 day, or 45 months and 5 days.

At trial, Appellant moved for dismissal based on the State's violation of *Doggett*. In *Doggett*, the Supreme Court held that a delay of 8 to 12 years between a defendant's arrest and indictment violated his 6<sup>th</sup> Amendment right to a speedy trial. *Doggett*, 505 U.S. at 648. In reaching this conclusion, the court found that the 8 year delay "far exceeds the threshold needed to state a speedy trial claim; indeed we have called shorter delays 'extraordinary.'" *Id* at 658. According to the Court, "... the lower courts have generally found post-accusation delay 'presumptively' prejudicial,' at least as it approaches one year." *Id* at 652.

*Doggett* requires judicial review of any delay in prosecuting a case if the case has not come to trial within, generally speaking, 15 months. *Id.* at 658. There was never any record of any judicial review in this case. The Trial Court failed to exercise one of its basic responsibilities – to ensure a defendant a fair and impartial trial. In the absence of any review of the substantial

The court held that an extraordinary delay causes prejudice to the defendant to be presumptive. *Id* at 656-657. Moreover, the court found that the presumptions' importance increases proportionally to the length of the delay. *Id*. Since the delay of the present matter exceeded the one year threshold by 33 months, and the importance of the prejudicial presumption increases with delay, the State should have faced quite an obstacle in overcoming the presumption of prejudice. Thus, the Trial Judge committed an error of law in refusing to consider whether the State had overcome the presumption of prejudice to the Appellant. (*Heyward* tr. at 17.)

Thus, Appellant respectfully asks the court to reverse the Trial Judge's ruling on this matter.

**B.** *Chain of custody evidence was admitted over Defense Counsel's objection in spite of the fact that said evidence did not satisfy the requirements of SCrimRP Rule 6(b) or State v. Taylor, 360 S.C 18, 598 S.E.2d 735 (2004).*

SCRCrimP 6(b) provides that "The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a). This requirement is "inescapable" and "mandatory, not permissive." *State v. Joseph, 491 S.E.2d at 281(citing State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981), which clarified that courts should construe the word "shall" as mandatory in statutory provisions).* Defense counsel made a timely objection over a year prior to trial in compliance with the rule.

If a signatory to the chain of custody is unable to be present in court, *State v. Taylor* allows other witnesses to satisfy SCRCrimP 6(b) with testimony as to the identity of the missing signatories. However, no such testimony was provided prior to the admission of the chain of custody. The State did not provide the missing technician either in person or through affidavit to testify about her role in handling the evidence and the reason for the 12-day gap in the evidence log, and no other officer or witness testified about her role in the chain.

Although case law has stated that chain of custody only needs to be established as far as practicable, the court in *State v. Joseph* held that a technician who moved to Michigan was

According to the State, Donna Smith was, at the time of the trial, working in the Columbia Police Department Evidence Room. (*Heyward* Tr. at 52) The evidence room is located in the Columbia Police Department Headquarters, situated fewer than 500 feet from the courtroom in which the trial was being held. It would not have been impracticable to require either her presence or, in the absence of her presence, an affidavit from her explaining what the 12-day gap in the evidence log represented. The failure to comply with SCRCrimP 6(b) was in error, and the chain of custody should be inadmissible.

Therefore, Appellant respectfully asks this Court to reverse the Trial Judge's ruling.

C. *Officer Webb intentionally extended the traffic stop, without any reasonable suspicion of criminal activity, in order to allow the drug dog time to arrive on scene. This constitutes an illegal 4<sup>th</sup> Amendment seizure and requires suppression of any evidence obtained as a result of the seizure.*

It is well established that a drug dog team may take a "free air sniff" around a car in the course of a normal traffic stop. However, the most recent case in the line of South Carolina precedent precludes the officer from prolonging the stop beyond the scope, in both time and manner, of a normal traffic stop, absent any reasonable suspicion of criminal activity. *State v. Hewins*, 409 S.C. 93, 760 S.E.2d 814 (2014). Furthermore, in the most recent Supreme Court decision to address this topic, "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. U.S.*, 135 S.Ct. 1609, 1614 (2015)<sup>1</sup>. Although the Court acknowledged that "the Fourth Amendment tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention," the Court pointed out that an officer may not engage in these investigations "in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining the individual." *Id.* at 1615. The Supreme Court pointedly noted that during oral arguments, the Government acknowledged that "a dog sniff, unlike . . . routine measures, . . . is not an ordinary incident of a traffic stop. *Id.* So, "[a] dog sniff is not fairly characterized as part of the officer's traffic mission." *Id.* Therefore, the

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<sup>1</sup> Both *State v. Belcher*, 685 S.E.2d 802 (2009) and *Griffith v. Kentucky*, 479 US 314 (1987) provide for the retroactive application of new rulings to cases that are on direct appeal.

vital question, as the court notes, is not “whether the dog sniff occurs before or after the officer issues a ticket,” but “*whether conducting the sniff ‘prolongs’—i.e., adds time to—‘the stop.’*” 134  
*Id.* (emphasis added). If the sniff does prolong the stop beyond the scope, absent reasonable suspicion, then it is impermissible

A traffic stop may be extended if the officer has a reasonable suspicion of criminal activity. Under South Carolina law, proving reasonable suspicion is a substantial burden on the state. In *State v. Hewins*, conduct that consisted of driving in a known drug area, continuing to be nervous after being told he would receive a warning instead of a citation, and quickly responding that he did not have any drugs was insufficient to furnish the officer in that case with sufficient reasonable suspicion to extend the traffic stop. *State v. Hewins*, 409 S.C. at 117, 760 S.E.2d at 826 (2014).

Here, Officer Webb engaged in dilatory tactics. In the video of the stop, admitted into evidence and presented at trial, Officer Webb repeatedly returned to his car and engaged in prolonged conversations with Officer Williams, the drug dog handler. In fact, after the defendant exercised his right to refuse to give consent to search his car, Officer Webb told another officer to call Officer Williams, and he also returned to the car to encourage Officer Williams to hasten to the scene and to turn his radio down once he arrived. He checked his watch repeatedly while writing the citation. He did not run Heyward’s name until 14 minutes into the stop, when the drug dog shows up. He engaged in a series of calculated measures that prolonged the stop beyond what it should have taken to write a simple warning citation in order to give Officer Williams time to arrive at the scene. Once Officer Webb concluded the line of questioning pertaining to the traffic stop, he turned the conversation towards narcotics, asking if Heyward was aware of narcotic activity in the neighborhood and asking if he had any illegal narcotics in his possession.

Moreover, Officer Webb did not have the requisite reasonable suspicion needed to extend the stop. Since Officer Webb did not run Heyward’s name until fourteen minutes into the stop, he did not have reasonable suspicion develop from that avenue. Furthermore, according to Officer Webb’s testimony, Heyward sat on his car, walked around the scene, and when the drug dog arrived on the scene, put his hands behind his back. These factors constitute the entirety of reasonable suspicion articulated by Officer Webb, but, like in *State v. Hewins*, these behaviors are simply not enough to rise to the level of reasonable suspicion required to extend the stop.

According to the testimony given by Officer Arnold, the undercover officer at the apartment complex, the tip that they received was an anonymous tip about a “black man” coming

from the apartment complex in question. (*Heyward* Tr. at 26). Testimony later in the trial from<sup>135</sup> Officer Williams only served to reinforce the anonymity of the tipper, and the over-generality of the tip: "I believe it was a black male that was selling narcotics from an actual apartment there." (*Heyward* Tr. at 65). No other information was provided any testimony: there were no further descriptors that would point to Heyward and no distinguishing features that would give the officer reasonable suspicion that Heyward was the individual named in the tip. As the Supreme Court noted in *Florida v. J.L.*, a "bare report of an unknown, unaccountable informant who neither explained how he knew about the [suspected criminal activity] nor supplied any basis for believing he had inside information" was insufficient as a basis for reasonable suspicion to stop a suspect. *Florida v. J.L.*, 529 U.S. 266, 271 (2000).

Officer Webb's conduct prolonged the traffic stop beyond the scope permitted by *Hewins* and *Rodriguez*. He failed to demonstrate any reasonable suspicion that allowed him to do so, and the search that resulted from this impermissible seizure was illegal under the Fourth Amendment. Therefore, Appellant respectfully asks this Court to overturn the ruling of the Trial Judge and order that the results of the unconstitutional search be suppressed.

**D.** *Officer Williams, despite the fact that his drug dog did not alert in the course of the "free air sniff," admitted his drug dog into the interior of Defendant's car. As Officer Williams had no probable cause to do so, the dog's actions inside the car constitute an illegal search under the Fourth Amendment*

Under *Carroll v. United States*, an officer may search a vehicle without a warrant, provided that officer has probable cause to do so. *Carroll v. United States*, 267 U.S. 132 (1925). A drug dog may provide the probable cause that an officer needs to search a car, but in *Illinois v. Caballes*, the Supreme Court noted that probable cause came from a dog alerting on the exterior of a car. *Illinois v. Caballes*, 543 U.S. 405, 409 (2005).

Officer Williams testified at trial that his dog, Zorro, was an "Aggressive Alert" dog, a designation that meant Zorro would bark or scratch if he detected the odor of contraband narcotics to alert Officer Williams to the odor. (*Heyward* Tr. at 63). However, during the course of the "free air sniff" on the exterior of the vehicle, Zorro's conduct did not approach the designation of an "aggressive alert." (*Heyward* Tr. at 67). There is no evidence of barking or scratching or any other conduct indicating that Zorro has detected any narcotic odor until he was encouraged into the vehicle. *Id.* The video of the stop, which the State introduced at trial, shows

that Zorro was much more interested in investigating the woods next to the car than the car itself,<sup>136</sup> despite Officer Williams' hand signals. Zorro wasn't even interested in the interior of the car the first time Officer Williams impermissibly stuck his hand into the interior of the vehicle during the first pass around the vehicle, and only returned to the car door upon encouragement from Officer Williams.

Zorro did not give an "aggressive alert" while outside the vehicle, and gave no indication that he had detected a narcotic odor. As the state had no probable cause, and Heyward had audibly, firmly, and unambiguously denied consent to search the vehicle, admitting an agent of the state into the interior of the car to search for narcotics constituted an illegal search under the Fourth Amendment, and any evidence found as a result of the search should be suppressed.

Therefore Appellant respectfully asks this Court to reverse the Trial Judge's ruling and order that any evidence produced from the unconstitutional search be suppressed.

*E. The Trial Court sustained an objection to one of Defense Counsel's questions during the cross examination of the State's expert witness, George Potash. The objection was to a relevant line of questioning, and was made without any stated grounds.*

SCRE 611(b) permits cross examination of a witness on "any matter relevant to any issue in the case, including credibility."

At trial, Appellant attempted to pursue a line of questioning directly related to the credibility of George Potash, and the Columbia Police Department Drug Lab, to which he was seconded during the analysis of the drugs found in *Heyward*. Stating no grounds, the State objected to this line of questioning, and that objection was sustained.

The judge found that the line of questioning was irrelevant. However, SCRE 401 defines relevancy as: "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without evidence."

As the trial was for Simple Possession of Marijuana, whether the substance was tested with scientific rigor, and whether the substance was properly stored, labeled, and handled is central to the determination of the action – any deficit therein would call into question the accuracy of the drug analysis.

On August 21 2014, Solicitor Dan Johnson ordered the Columbia Police Department's Drug Lab to cease operations. This order was in response to a report submitted to Columbia Police leadership on July 11, 2014, which found multiple serious defects in the labs handling, storage, and analysis of evidence.

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As the Drug Lab had been operating under standards deficient enough to warrant closure for a prolonged period of time, inquiry into those standards and the state of the drug lab was relevant to the probability that the marijuana presented at trial was in fact properly handled, analyzed and stored and thus admissible under SCRE 401.

Therefore Appellant respectfully asks the Court to reverse the Trial Judge's ruling on this matter.

F. *Defense was prevented from showing the remainder of the recording of the traffic stop, in violation of SCRE 106.*

SCRE 106 states: "When a writing, or recorded statement, or part thereof is introduced by a part, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

The State introduced the dash cam video from Officer Webb's patrol car without objection. During the trial, the State played approximately the first 15 minutes of the video. Appellant announced his intention to introduce the remainder of the video on cross examination, pursuant to his right under SCRE 106. The State manifested her intention to object to that portion of the video, and the court recessed for lunch.

During arguments concerning the admission of the remainder of the video, the State's position was that the remainder of the video was irrelevant to the issues at trial. Appellant countered that it was absolutely relevant and that the jury was entitled to the totality of the circumstances surrounding the arrest. Moreover, that portion of the video contained conversations indicating that the officers knowingly misidentified Appellant as the target of their drug interdiction detail. By not allowing Appellant to show the video on cross-examination the judge not only made an error of law as to SCRE 106, but also prejudiced the Appellant's ability to mount an appeal, as it denied Appellant the opportunity to put evidence on record that casts further doubt on the already tenuous idea that Officer Webb had reasonable suspicion to detain Appellant.

Therefore Appellant respectfully asks the court to reverse the Trial Judge's ruling on this<sup>38</sup>  
matter.

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|---------------------------|------------------------------|
| State of South Carolina ) | In The Court of Common Pleas |
| County of Richland )      | Fifth Judicial Circuit       |
|                           | 2015-CP-40-01601             |

|                          |   |                      |
|--------------------------|---|----------------------|
| State of South Carolina, | ) |                      |
| Plaintiff,               | ) |                      |
| vs.                      | ) | Transcript of Record |
| Cedric Xavier Heyward,   | ) |                      |
| Defendant.               | ) |                      |

August 14, 2015  
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

Jessica R. Mangum, Esquire  
Attorney for the City of Columbia

Jonathan S. Comish, Esquire  
Attorney for the Defendant

Elizabeth B. Harris, CVR-M  
Circuit Court Reporter

I N D E X

| <u>Witness/Description</u> | <u>Page No.</u> |
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E X H I B I T S

| <u>No.</u> | <u>Description</u> | <u>Ev.</u> |
|------------|--------------------|------------|
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No exhibits introduced.

1 THE COURT: All right, who is appealing? Mr?

2 MR. COMISH: Good morning, Your Honor. My name is  
3 Jonathan Comish. I represent Mr. Heyward.

4 THE COURT: Yes, sir, Mr. Comish.

5 MR. COMISH: Thank you, Your Honor. May it please the  
6 court? This appeal comes from the City of Columbia  
7 Municipal Court. A little facts by way of background.

8 Mr. Heyward was arrested March 11, 2011, for simple  
9 possession of marijuana. We had a trial on March 4th of  
10 2015, during which time I made several motions of  
11 suppression which were overruled, and I filed a timely  
12 appeal, and this is before you based on that appeal.

13 THE COURT: All right.

14 MR. COMISH: I believe there are several dispositive  
15 issues in this case, and I'll take them up in order.

16 The first one would be a chain of custody argument,  
17 and this is really -- it's -- State vs. Taylor says that  
18 chain of custody is -- there's two ways to analyze it.  
19 It's either you analyze its admissibility, or you go to the  
20 weight of the evidence. They said:

21 If and only if there has been no testimony as to  
22 the identification of the signatories to the  
23 chain of custody, it becomes an admissibility  
24 issue.

25 In the present matter, the chain of custody was

1 admitted over my objection prior to any identification of  
2 the signatories being named, and in particular that would  
3 be Donna Martin, who is the, I assume, the evidence  
4 custodian at the city court. Ms. Mangum made  
5 practicability arguments, and again that, I believe, comes  
6 from *State vs. Taylor*, that it was impractical for her to  
7 be there. Ms. Mangum said that she was currently in the  
8 evidence locker at the Columbia Police Department. As Your  
9 Honor is well aware, that evidence locker is less than 500  
10 feet from the actual courtroom.

11 THE COURT: I'm not sure what -- what physical  
12 building are we talking about?

13 MR. COMISH: The City of Columbia headquarters and the  
14 City of Columbia Municipal Court, which are on the same  
15 block.

16 As regards impracticability, *State vs. Joseph* ruled  
17 that an evidence custodian who moved far as away from  
18 Michigan was still required to be in court. The other  
19 aspect of this is I also made an objection pursuant to Rule  
20 6 saying, and I quote:

21 The defendant may demand in -- appearance in  
22 court persons within the chain of custody in the  
23 same manner as provided in section A.

24 Section A referring to the actual technician doing the  
25 analysis. We made a timely demand on March 12, 2012, and

1 those persons were not present in the courtroom.

2 THE COURT: You made a demand per Rule 6?

3 MR. COMISH: Yes, Your Honor, and I, I have that with  
4 me should you wish to see it.

5 THE COURT: I carry this book everywhere. It has all  
6 the rules. I commend it to everyone.

7 And last week we didn't have one in this courtroom,  
8 Mr. Jim, so I had to get one out of room 3-A there and I  
9 had her take it back. So, this is from Judge Benjamin, but  
10 it should be in every room. Every judge needs one of  
11 these.

12 And tell which rule of this you're talking about  
13 again, criminal rule?

14 MR. COMISH: South Carolina Rule of Criminal  
15 Procedure, Rule 6. It may be Rule 114. It's Chemical  
16 Analysis and Chain of Custody.

17 THE COURT: And highlight it for us. Tell me ---

18 MR. COMISH: Excuse me?

19 THE COURT: Highlight the part that you're concerned  
20 about.

21 MR. COMISH: This would be subsection B.

22 THE COURT: All right. Yes, sir.

23 MR. COMISH: Would you like me to just briefly read  
24 the rule?

25 THE COURT: The part of your argument, tell me about

1 it.

2 MR. COMISH: For the purpose of establishing a chain  
3 of physical custody or control of evidence  
4 entered upon section A of this rule, a certified  
5 or sworn statement signed by each successive  
6 person having custody of the evidence, that he or  
7 she delivered it to the person stated ---

8 THE COURT: She's trying to keep up with you, the  
9 court reporter.

10 MR. COMISH: I apologize. I'll start again slowly.  
11 For the purpose of establishing a chain of  
12 physical custody or control of evidence entered  
13 under section A of this rule, a certified or  
14 sworn statement signed by each successive person  
15 having custody of the evidence, that he or she  
16 delivered it to the person stated, is evidence  
17 that the person had custody and made delivery as  
18 stated without the necessity of the person who  
19 signed the statement being present in court,  
20 provided, (1) the statement contains a sufficient  
21 description of the substance or its container to  
22 distinguish it; and (2) the statement says the  
23 substance was delivered in substantially the same  
24 condition as when received.

25 Continuing:

1 A defendant may object to the chain of custody in  
2 writing, setting forth with specificity what part  
3 of the sworn statement is challenged and the  
4 basis therefore. The challenge shall be filed  
5 with the court and served on the state within  
6 thirty days of receipt of the sworn statement and  
7 in no event later than ten days before trial.

8 THE COURT: What happened here?

9 MR. COMISH: We never received the sworn statement.  
10 We have a chain of custody form, but there's not a sworn  
11 statement. We filed proper objection during argument at  
12 trial. The city attorney attempted to admit the chain of  
13 custody into evidence with no testimony as to  
14 identification of the signatories, did not call the  
15 signatories to testify. And the judge overruled me,  
16 saying, and I'm quoting here from the transcript.

17 THE COURT: Which judge did you have?

18 MR. COMISH: Judge Dana Turner.

19 THE COURT: All right.

20 MS. MANGUM: No problem with her return, Your Honor.

21 THE COURT: What page are you on again in this  
22 transcript?

23 MR. COMISH: One second, Your Honor. Page 53.

24 THE COURT: 53.

25 MR. COMISH: That I could have asked about the chain

1 of custody on cross. She wanted me to establish the  
2 identify -- the identity of the parties in the chain of  
3 custody on cross to challenge the submission of the  
4 evidence. It's a clear error of law as the burden rests  
5 entirely with the party submitting the evidence to  
6 establish the foundation required.

7 THE COURT: And you're under the impression that they,  
8 don't want to worry with all this law on all these cases in  
9 municipal court?

10 MR. COMISH: That's the impression that I got, Your  
11 Honor. I, I don't know how you wish to structure this. I  
12 have two other dispositive issues. I don't know if you  
13 want to allow Ms. Mangum to respond to the issues after I  
14 raise them or all at once.

15 THE COURT: How would you like for her to go?

16 MR. COMISH: I believe -- Jess, would you like to  
17 respond now or wait until the end?

18 MS. MANGUM: I can respond now if you'd like to hear  
19 from me.

20 THE COURT: Okay.

21 MS. MANGUM: Your Honor, in terms of Rule 6 in terms  
22 of the chain of custody, Mr. Comish misunderstands the rule  
23 of the law and misrepresents what happens -- happened in  
24 the courtroom that day.

25 The rule requires that if the city, if the prosecution

1 wants to present affidavits rather than testimony, they may  
2 do that under Rule 6. However, defense may require that  
3 those persons be present. That's what the rule is. I do  
4 believe in the Rule 5 that was followed as part of their  
5 discovery, it's pretty standard that they object to, to the  
6 use of Rule 6(b) in terms of affidavits.

7 We weren't required to present an affidavit. Whether  
8 or not the chain is complete is a question for the trial  
9 court. There's no requirement, there's no statute, there's  
10 no case law that requires every person in the chain to be  
11 present.

12 We did argue to the trial court. We had -- this is a  
13 very simple case in terms of chain. We had an officer who  
14 had a traffic stop who found a small amount of marijuana,  
15 who testified in court that he took that marijuana. He  
16 placed it in an evidence bag; he logged it into an evidence  
17 locker, where it sat until our analyst withdrew it from the  
18 evidence locker, tested it. All that was part of the  
19 record; all of that is in the transcript.

20 THE COURT: Did the analyst testify?

21 MS. MANGUM: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. MANGUM: What we did not have was the person that  
24 is in charge of the evidence room. She's listed on the  
25 chain of custody sheet because she's in charge of the

1 evidence locker.

2 The city argued at that time that for her to come and  
3 testify would place a tremendous burden on the city.. She's  
4 the only employee in that room; the evidence room would  
5 have to be shut down. There also are some other safeguards  
6 that have to be put in place because that room has to be  
7 secure, and so for that reason we argued that her presence  
8 wasn't necessary. There was testimony from both officers  
9 as to what they did with the evidence, what his role in  
10 that was. So, we established her identity.

11 Her identity was on the chain of custody that was  
12 provided prior to trial to defense counsel.. There were no  
13 surprises here. The judge simply determined her presence  
14 in the courtroom to testify was not necessary for us to  
15 successfully make the chain.

16 And, Your Honor, in terms of case law, the city does  
17 rely on *State vs. Valentine*, which although is factually  
18 different, there is a chain of custody issue. And the  
19 court does find -- and I'll read straight from the case,  
20 Your Honor. I have a copy for you if you like. The court  
21 says:

22 Other evidence establishes the identity of those  
23 who handled the evidence and reasonably  
24 demonstrates the manner of handling the evidence.  
25 Our courts have been willing to fill gaps in the chain

1 of custody due to absent witnesses.

2 There's no abuse of discretion in the trial, the trial  
3 judge's decision to admit this. In this case, cocaine. I  
4 do have a copy of that if you'd like me to approach.

5 THE COURT: Yes. Okay.

6 MS. MANGUM: Your Honor, I'd also be glad to point out  
7 in the transcript the places where the other chain  
8 witnesses do describe what happens.

9 THE COURT: All right. Where is that?

10 MS. MANGUM: Of course now that I say that, I can't  
11 find the sticker.

12 (A PAUSE.)

13 MS. MANGUM: Your Honor, on page 51 is where we, as  
14 attorneys, begin to talk about the chain of custody. Page  
15 52 is when I explained why Ms. Martin is not present.

16 Your Honor, I do want to point out on 53 where Mr.  
17 Comish talks about the judge, I think he said she shifts  
18 the burden, something like that. What she's saying to him  
19 right there -- you can ask about that when you have these  
20 officers on the stand -- she's trying to tell him that  
21 those are great questions for cross-examination. At any  
22 point, he could have said to any one of those officers  
23 where did you take the evidence, who was in charge of that  
24 evidence, do they -- are they here today, how do you know  
25 that evidence was preserved. Those are all wonderful

1 questions to determine the credibility of the witnesses,  
2 the weight of the evidence for the jury. That's what she's  
3 telling him right there. There's nowhere in this  
4 transcript where he ever asks on cross-examination anything  
5 about that to those officers.

6 THE COURT: All right, any response to that particular  
7 one?

8 MR. COMISH: Thank you, Your Honor. In response, I  
9 believe Ms. Mangum was still conflating the issues of  
10 admissibility versus credibility, and I'm reading here from  
11 *State vs. Taylor*. This is the baseline rule:

12 We have found evidence inadmissible only where  
13 there is a missing link in the chain of  
14 possession because the identity of those who  
15 handled the blood was not established, as least  
16 as far as practical.

17 And here blood is okay because we're still talking  
18 about fungible evidence, blood or marijuana.

19 Ms. Mangum, I believe, just conceded the fact they  
20 never established the identity of the people in the chain  
21 of custody. She said I could have brought that identity  
22 upon cross. That's not my burden. It's her burden to  
23 establish the identity before the evidence is admitted.

24 She also referred to the fact that several other  
25 officers testified to the chain of custody. However, the

1 chain of custody was admitted, and you can see it here on  
2 page 54, I believe. It came into evidence on page 54 after  
3 the testimony of only one officer. Chain of custody must  
4 be established before it is admitted into evidence. It was  
5 clearly not established at that point as no identity had  
6 been made of the two missing signatories, and I have their  
7 names should Your Honor be ---

8 THE COURT: Is an issue before me the question as to  
9 the interpretation of Rule 6, whether -- well, let me ask  
10 just some questions for my own clarification.

11 Were you provided a copy of the report where the state  
12 serves -- the drug analysis report instead of the person  
13 having to come, the analyst? Were you served the report  
14 within a certain number of days before the hearing?

15 MR. COMISH: Yes.

16 THE COURT: All right, and did you object to them ---

17 MR. COMISH: Yes, Your Honor.

18 THE COURT: --- not being required to come?

19 MR. COMISH: We objected to that.

20 THE COURT: So, therefore, the analyst came?

21 MR. COMISH: Yes, Your Honor.

22 THE COURT: And so the next thing is in addition to  
23 the analyst, then the other people who are in the chain,  
24 including the evidence custodian or other people who've  
25 heard it that's referred to in subsection B where the rule

1 says:

2 They likewise do not have to appear, provided  
3 that reports or papers mentioned in A or B shall  
4 be made available to the defendant not later than  
5 eleven days prior to the hearing.

6 Is that -- is the applicability of whether or not B  
7 applies to waiving the other folks in the chain of custody,  
8 is that an issue before me?

9 MR. COMISH: Yes, Your Honor.

10 THE COURT: All right, and in what way is that? Why  
11 is that before me? In what way?

12 MR. COMISH: It's before you -- there's two different,  
13 I think, sort of sub-issues. First is the chain of custody  
14 submitted to us was defective. Subsection A, a certified  
15 or a sworn statement signed. We did not have certified or  
16 sworn statement. We just have the form with the person's  
17 name.

18 THE COURT: All right.

19 MR. COMISH: So, it's defective on its face and,  
20 moreover, pursuant to our authority, our right under B.

21 THE COURT: But that doesn't apply because the person  
22 showed up.

23 MR. COMISH: The person did not show up.

24 THE COURT: No, the analyst.

25 MR. COMISH: No. We're objecting to the signatories

1 of the chain of custody, not the analyst's report.

2 THE COURT: Okay. So, your point is that in addition,  
3 everyone in the chain must give a sworn statement?

4 MR. COMISH: That's correct.

5 THE COURT: Okay, per subsection B?

6 MR. COMISH: That's correct.

7 THE COURT: And so your argument is that person didn't  
8 show up, number one. Number two, you don't have a sworn  
9 statement. Number three, you didn't waive the right for  
10 that person not to have to come.

11 MR. COMISH: That's correct, and as Ms. Mangum pointed  
12 out, there are certain instances that they are not required  
13 to come if it's impractical for the state to require them  
14 to be there. In those instances, the identity of the  
15 person and their function, what they do, has to be clearly  
16 established before the chain can be admissible.

17 THE COURT: And that's per what?

18 MR. COMISH: That is per *State vs. Taylor*.

19 THE COURT: What does that say?

20 MR. COMISH: Give me just one second; I'll point to  
21 the relevant section.

22 THE COURT: Give me the citation of *State vs. Taylor*.

23 MR. COMISH: *State vs. Taylor* is 360 S.C. 18, 2004.

24 THE COURT: All right.

25 (A PAUSE.)

1 THE COURT: This is a good refresher court on all  
2 these rules and statutes and all that.

3 MR. COMISH: Yes, Your Honor. Unfortunately it turns  
4 into a bit of a mess.

5 This is, this is not directly on point, but it sort of  
6 illustrates what Ms. Mangum was arguing:

7 We believe it is clear from these decisions that  
8 if the identity of each person in the chain as  
9 handling the evidence is established, and the  
10 manner of handling reasonably demonstrated that  
11 no abuse of discretion is shown in the admission,  
12 absent proof of tampering, bad faith, or  
13 ill-motive.

14 THE COURT: Say that one more time. I was focusing on  
15 where the smoke was coming out of her mic over there.

16 MR. COMISH: I apologize, Your Honor. I'll try to  
17 talk more slowly the rest of the -- put it in my head.

18 We believe it is clear from these decisions that  
19 if the identify of each person in the chain  
20 handling the evidence is established, and the  
21 manner of handling is reasonably demonstrated, no  
22 abuse of discretion is shown in the admission --  
23 admission, absent proof of tampering, bad faith,  
24 or ill-motive.

25 THE COURT: So, how did they mess up with regard to

1 what you're just saying?

2 MR. COMISH: They did not identify the persons in the  
3 chain of custody. Ms. Mangum identified them at argument,  
4 but she cannot admit. She cannot testify. The testimony  
5 must come from the witnesses present in the courtroom.

6 THE COURT: And who handled it who wasn't identified?

7 MR. COMISH: Donna Martin, I believe, is the chief,  
8 and then there's one more name on the report. I believe  
9 that's in my brief. It is not in my brief. It was a  
10 sergeant -- I don't recall his name -- who only signed it  
11 once. My primary concern, obviously, would be Donna  
12 Martin, who is the ---

13 THE COURT: Well, and you said that person handled it.  
14 In what way?

15 MR. COMISH: From the chain of custody, it appears  
16 that she checked it out of the locker. There's then a  
17 thirteen-day gap, and then she checks it back into the  
18 locker.

19 THE COURT: What was she doing with it during that  
20 time?

21 MR. COMISH: I have absolutely no idea, Your Honor.

22 THE COURT: Why would she check it out of the drug  
23 room or wherever it was?

24 MR. COMISH: I would not venture to guess. Ms. Mangum  
25 at argument at some point indicated that I was misreading

1 the chain, which I think is a perfect example. If I was  
2 misreading the chain, then the custodian should be there to  
3 correct any misapprehension that I may ---

4 THE COURT: Is that the lady who's no longer with the  
5 city or someone else?

6 MR. COMISH: She is with the -- I believe at the time  
7 of the trial, she was still with the city working on the  
8 same block as the courtroom.

9 THE COURT: I mean, I think in the newspapers, some  
10 woman from the city drug department got fired, and I  
11 don't remember the name of the person. I'm just asking  
12 whether ---

13 MR. COMISH: Well, this is a completely different ---

14 MS. MANGUM: It's not related to this case, Your  
15 Honor.

16 THE COURT: Okay. All right.

17 MR. COMISH: Yes, Your Honor. We're not talking about  
18 an actual analyst but an evidence technician.

19 THE COURT: Oh. I gotcha. I understand. All right.  
20 Okay, final response on that. How many different points  
21 have you got here today?

22 MR. COMISH: I'm sorry. Two major points and one  
23 minor point. If we run out of time, I'm happy to skip the  
24 minor point.

25 THE COURT: All right. One response on the major

1 point and then we'll move to number two.

2 MS. MANGUM: Your Honor, in terms of the chain of  
3 custody, the city did present the chain as close as  
4 practicable; there's testimony in the record to support  
5 that. Ultimately it's up to the trial judge. There's no  
6 -- there's been no allegations of abuse of discretion.  
7 There really is no error of law.

8 As I said from the very start, Mr. Comish  
9 misunderstands the rule. He required prior to trial that  
10 we have all of those witnesses available, and so an  
11 affidavit does -- simply does not apply in this case, never  
12 applied.

13 THE COURT: Available in what way? For him to know  
14 who they are? Available?

15 MS. MANGUM: Right, Your Honor, and that would be my  
16 other point is that the defense counsel has to know who  
17 those people in the chain are. He was provided that  
18 documentation long, long, long ago. Certainly it is not  
19 the city's duty to do his investigating for him.

20 Ms. Martin was not available the day of trial. We  
21 went forward without her. There is evidence in the record.  
22 We have officers that testify about her role in the  
23 process; she was clearly identified. She was identified on  
24 the chain of custody documents. She was identified by the  
25 officers in court. Mr. Comish had the opportunity to

1 cross-examine those officers in terms of the weight of the  
2 evidence. He didn't use that opportunity.

3 THE COURT: How can he ask them about what happened  
4 to the item during the fourteen days it was out of the  
5 locker?

6 MS. MANGUM: He could certainly ask the officers.

7 THE COURT: I mean, how would they possibly know?

8 MS. MANGUM: Well, they don't know but, but Your  
9 Honor, you know as well as I do that reasonable doubt is a  
10 very difficult concept, and he certainly could have asked  
11 them where did you turn this over to, who did you give it  
12 to.

13 Issue in court today, he could have brought it up in  
14 his closing arguments that the city didn't provide a part  
15 of the chain. Those are all worthy arguments that he could  
16 have made. He didn't make those in court. There was no  
17 error of law.

18 THE COURT: All right. Next point.

19 MR. COMISH: Thank you, Your Honor. Moving along.

20 THE COURT: How many more cases do we have here today?

21 (A PAUSE.)

22 MR. COMISH: Thank you, Your Honor. My next point  
23 would be a Fourth Amendment argument.

24 THE COURT: All right.

25 MR. COMISH: About an illegal seizure. There's a new

1 rule coming down from the Supreme Court in the *United*  
2 *States vs. Rodriguez* concerning when it is permissible for  
3 an officer to extend a traffic stop for a dog sniff. The  
4 new rule is it is impermissible when the dog sniff extends  
5 the time of the traffic stop one iota.

6 THE COURT: *Rodriguez*?

7 MR. COMISH: Yes, Your Honor.

8 THE COURT: Which case -- which state is that from?  
9 Maryland? New Jersey? Florida?

10 MR. COMISH: Nebraska.

11 THE COURT: Nebraska, way over there. Okay. What  
12 happened there?

13 MR. COMISH: What happened there was the officer  
14 detained Rodriguez for swerving his car, I believe. It was  
15 a lawful traffic stop. Then gave him a warning ticket.  
16 Asked him to search the vehicle. Rodriguez refused. The  
17 officer detained him for purposes of running the drug dog.

18 The, I think, the conclusion, most important matter in  
19 the present matter, and here I'm quoting directly, the,  
20 sort of the dispositive question is:

21 Whether conducting the sniff adds time to the  
22 stop. If the answer to that is yes, then absent  
23 reasonable suspicion, it is an illegal seizure  
24 for the purposes of informing ---

25 THE COURT: You can't wait while the dog's coming?

1 MR. COMISH: You may not.

2 THE COURT: You can't wait while they find the dog?

3 MR. COMISH: You may not.

4 THE COURT: Unless you have reasonable suspicion?

5 MR. COMISH: Unless you have -- so it becomes then a  
6 two-tiered question. The first question is whether  
7 reasonable suspicion exists. If so, the officer may  
8 continue the detention. If not, then you must ask whether  
9 the detention measurably adds any time at all to the stop.  
10 If the answer to that question is no, it's a permissible  
11 sniff; if the answer to that question is yes, it is an  
12 impermissible sniff.

13 THE COURT: All right, and in this case?

14 MR. COMISH: In this case, I'll begin with the  
15 reasonable suspicion because without that -- with that,  
16 it's not an issue.

17 The reasonable suspicion attested to in the case of  
18 Mr. Heyward was, one, there was an anonymous tip. The  
19 anonymous tip ---

20 THE COURT: Takes us to Florida, the anonymous tip.

21 MR. COMISH: Exactly, Your Honor. That would be  
22 *Florida vs. J.L.*, which means an anonymous tip cannot give  
23 you reasonable suspicion.

24 THE COURT: All right.

25 MR. COMISH: And this tip is both anonymous and

1 general. Testimony at trial by Arnold was a subject was  
2 dealing drugs. Testified by Officer Williams, a black man  
3 was dealing drugs. So, not only was the tip anonymous. I  
4 would argue that it's unconstitutionally vague. You can't  
5 give a tip about a black man and then arrest that black  
6 man.

7 THE COURT: Well, I had one in Chester County where  
8 they said the guy who committed the robbery had on jeans  
9 and a white T-shirt and the police, police officer saw a  
10 car coming down the road. And he said he looked in the car  
11 as they were passing by and saw that a guy was in there  
12 with jeans and a white T-shirt, and he stopped the guy and  
13 charged him with armed robbery.

14 MR. COMISH: Well, that would be markedly more  
15 specific than in this manner.

16 MS. MANGUM: And, Your Honor, this is, this is --  
17 we're going down a rabbit hole here. The defendant was  
18 pulled over for two traffic violations. That was the  
19 reasonable suspicion. So, the tip is not relevant to this.  
20 There was a lawful traffic stop, and that was -- that  
21 creates the reasonable suspicion. There's no argument from  
22 defense counsel that it was not a lawful traffic stop;  
23 there's nothing in the record to indicate it was not a  
24 lawful stop.

25 THE COURT: I thought he was just warming up to get to

1 that point. I didn't realize that was the point.

2 MR. COMISH: Your Honor, if she wishes to concede that  
3 the anonymous tip does not give him reasonable suspicious,  
4 I'm happy to concede that point.

5 THE COURT: Well, as a matter of law, if that's the  
6 law, then ---

7 MR. COMISH: Okay.

8 THE COURT: --- anonymous tip cannot be a reasonable  
9 suspicion.

10 MR. COMISH: Moving on to the traffic stop itself.

11 THE COURT: Yes. All right.

12 MR. COMISH: The Fourth Circuit case law is quite on  
13 point with *U.S. vs. Digiovanni*, and I have copies of that  
14 case.

15 THE COURT: All right.

16 MR. COMISH: Should you wish it. Here, and again ---

17 THE COURT: I'll just pull it up on my computer, and  
18 then I won't have to have too many cases. Just give me a  
19 spelling and a year, and I'll get it on the computer here.

20 MR. COMISH: Digiovanni is D-I-G-I-O-V-A-N-N-I, Fourth  
21 Circuit 2011.

22 THE COURT: And where are they from?

23 MR. COMISH: That is from Maryland, Your Honor.

24 THE COURT: Okay.

25 MR. COMISH: Here and I'm quoting page 505:

1 Under Fourth Circuit precedent, Trooper Carmel  
2 was permitted to obtain Digiovanni's driver's  
3 license and vehicle registration, run a computer  
4 check, and issue the warning ticket.

5 If, as Ms. Mangum conceded, this was merely a traffic  
6 stop, the authorities -- the officer's authority extends  
7 only as much as he is conducting the traffic stop, and *U.S.*  
8 *vs. Rodriguez* was clear on this as well. The officer  
9 during the traffic stop without pre-existing reasonable  
10 suspicion cannot turn that into a criminal investigation,  
11 which is what the officer here, admittedly by his own  
12 words ---

13 THE COURT: What they do to Digiovanni? What happened  
14 to that?

15 MR. COMISH: With Digiovanni, they stopped him, said  
16 they were issuing a warning ticket -- this is directly on  
17 point because this is a warning-ticket case -- then asked  
18 to search his vehicle. Digiovanni refused. They conducted  
19 the search. The officers cited several factors leading to  
20 reasonable suspicion: he had rented the car from Florida,  
21 rented it one way; he had a go bag; he had clean shirts; he  
22 appeared nervous and evasive in his responses.

23 Here the district court, which was then affirmed by  
24 the Fourth Circuit Court of Appeals, said that does not  
25 rise to the level of reasonable suspicion. It was an

1 unlawful dog sniff.

2 THE COURT: So, I thought they said people driving  
3 rental cars charged with selling drugs, the rental car is a  
4 factor that can be used in ---

5 MR. COMISH: Yes, Your Honor, it is a factor.  
6 Reasonable suspicion would then be a totality of the  
7 circumstances test, and even in light of that factor  
8 leading towards reasonable suspicious -- suspicions, they  
9 could not meet the threshold.

10 THE COURT: All right. Now this guy, your guy here,  
11 what happened with him? Where was he, and what happened to  
12 him?

13 MR. COMISH: He was leaving the apartment complex. He  
14 was then pulled over for ---

15 THE COURT: What part of town was it? Where was he?

16 MR. COMISH: It was the -- I can find the -- just  
17 humor me, the specific name of the apartment complex.

18 THE COURT: I like to have a visual perspective of  
19 what I'm dealing with.. Was he down on Blanding Street  
20 around the corner? Was he over on Benedict, USC, Five  
21 Points?

22 MR. COMISH: I'm not from Columbia, so I'm not very  
23 familiar with ---

24 THE COURT: All right, where did this happen? Where  
25 does the ticket say? Where was he?

1 MS. MANGUM: Your Honor, the traffic stop occurred in  
2 the 900 block of Fairfield Road.

3 THE COURT: Fairfield Road, okay. We know where  
4 that's at. Okay.

5 MR. COMISH: So, my client was pulled over for failure  
6 to use a turn signal and, I believe, following too close in  
7 a construction zone, and I have here a transcript of the  
8 video which was submitted into evidence. The officer made  
9 contact with my client, asked to see his documents.

10 MS. MANGUM: And, Your Honor, I'm sorry, but just to  
11 clarify, there is no transcript. This is something that he  
12 created himself. The transcript is not the proper word.

13 THE COURT: Okay.

14 MR. COMISH: I created it.

15 THE COURT: His rendition.

16 MR. COMISH: My rendition of the video submitted into  
17 evidence.

18 THE COURT: Okay.

19 MR. COMISH: Which I have for Your Honor to review  
20 should you so wish.

21 MS. MANGUM: It was not submitted into evidence, Your  
22 Honor.

23 MR. COMISH: It was submitted into evidence at trial.  
24 Therefore, you are ---

25 MS. MANGUM: No, Your Honor. It was made part of the

1 court record. It was not submitted into evidence; it never  
2 went to the jury. It was not part of the evidence.

3 THE COURT: This was a jury trial?

4 MS. MANGUM: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. COMISH: The officer pulled him over at 101 in the  
7 recording. Two minutes thereafter, two and a half minutes,  
8 he returns to the cruiser with the driver's documents. He  
9 can get the driver's documents. At 431 after he pulled the  
10 car over, he exits the vehicle and immediately says to  
11 another officer standing nearby: Find out if Chris still  
12 has Zorro. Chris is the drug handler -- the dog handler.  
13 Zorro is the drug dog. He then goes back to the  
14 defendant's window and says: Mr. Heyward, come back here  
15 and let me explain this to you, okay?

16 And this is the point at which in his own testimony,  
17 the officer says I'm conducting a criminal investigation.  
18 From 411 until 809 in the video, he engages in drug  
19 investigation.

20 THE COURT: 441, are you talking minutes or hours?

21 MR. COMISH: Minutes, Your Honor.

22 THE COURT: Okay.

23 MR. COMISH: And this timeline, just for your  
24 reference, this stop lasted exactly as long as the stop in  
25 the *Digiovanni*, which was ruled impermissibly long.

1 THE COURT: How long was that?

2 MR. COMISH: That stop was six -- I'm sorry, fifteen  
3 minutes. This stop was fourteen minutes and twenty-eight  
4 seconds from the time officer made contact until the time  
5 my client was arrested.

6 During that period to which I just referred, he asked  
7 if he was aware of narcotics for sale, which is a question  
8 an officer is not allowed to ask under Fourth Circuit law.

9 THE COURT: Whether he was aware?

10 MR. COMISH: He's, he's...

11 THE COURT: Say again.

12 MR. COMISH: Under Fourth Circuit law, he's allowed to  
13 get the registration, run a computer check, write the  
14 ticket.

15 THE COURT: You can't ask him whether he's a drug  
16 dealer?

17 MR. COMISH: At that point, you're engaging in  
18 criminal investigation.

19 THE COURT: He said he was engaged in criminal  
20 investigation.

21 MR. COMISH: And that is impermissible.

22 THE COURT: Okay. Well, if he says I'm in criminal  
23 investigation, are you a drug dealer, and he says yes or no  
24 -- I mean, what did he tell him? No, I'm not or?

25 MR. COMISH: He says no, I'm not aware or -- there are

1 narcotics everywhere. He then asked my client whether he  
2 can search the vehicle. My client withholds his consent.  
3 The officer then returns to his vehicle. Says hey, call  
4 Chris. Hey, what's your ETA, Chris? Chris says as soon as  
5 I can break away. So, at that point clearly there's  
6 dilatory tactics to allow the drug dog time to get there.  
7 He then radios Chris several more times. The drug dog  
8 finally arrives on camera twelve minutes and forty seconds.

9 THE COURT: So, did he give him a warning or was he  
10 arresting him for these traffic tickets or what?

11 MR. COMISH: His intent was to give a warning, and  
12 that's per the officer's own testimony. I'm unaware as to  
13 whether -- I didn't see on video whether a warning ticket  
14 was actually issued.

15 MS. MANGUM: Your Honor, he issued two warning tickets  
16 after the drug sniff.

17 THE COURT: All right.

18 MR. COMISH: And then the stop was concluded fourteen  
19 minutes and twenty-eight seconds after initial contact,  
20 when my client was arrested for the possession of  
21 marijuana. So, my contention, then, is that is only  
22 permissible, that length of stop -- detaining my client to  
23 give the drug dog time to get there and then detaining him  
24 while the drug dog sniffs -- is only permissible if there  
25 is reasonable suspicion.

1 And the Supreme Court again in *Rodriguez* is clear.  
2 When viewing these things, one must weigh the dilatory  
3 tactics of the officer. If the officer is not diligent in  
4 performing those traffic duties, that lends weight to the  
5 claim that he is engaging in an unlawfully prolonged  
6 seizure. So, the next question is to determine whether  
7 there's reasonable suspicion.

8 THE COURT: To do what? To?

9 MR. COMISH: To detain my client.

10 THE COURT: All right.

11 MR. COMISH: For the drug dog search. We've already  
12 agreed that the anonymous tip is not reasonable suspicion.  
13 So, we have to go to the officer's own testimony as to why  
14 he was suspicious that my client possessed narcotics. That  
15 is to be found on page 38 of the transcript, and I will  
16 just summarize here. The officer's ---

17 THE COURT: This is a pretty thick file. I guess I'm  
18 supposed to read all of this to reach a decision in this  
19 case, all these ---

20 MR. COMISH: I'll don't believe that's necessary, Your  
21 Honor.

22 THE COURT: --- pages.

23 MR. COMISH: I'm hitting the highlights.

24 THE COURT: Okay.

25 MR. COMISH: On page 38, the officer testifies about

1 my client's changing body language and sitting on the trunk  
2 of the car. That's what made him suspicious.

3 THE COURT: You didn't work at the Court of Appeals  
4 with Dayne Phillips, did you?

5 MR. COMISH: No, Your Honor, I did not.

6 THE COURT: Okay. We get him in Lexington, and that's  
7 a different story, so go ahead.

8 MR. COMISH: Yes, Your Honor. Thank you. So, I'd  
9 submit that sitting on a trunk is -- in no conceivable way  
10 gives the officer reasonable suspicion for a Fourth  
11 Amendment search and seizure, and the courts here have been  
12 clear. In *State vs. Hewins*, driving through a known drug  
13 location, being nervous, and witness saying he doesn't have  
14 drugs is not reasonable suspicion. *State vs. Tendal*, car  
15 rented by another. Felony switch. Stretch, nervous.  
16 Again, no reasonable suspicion. If those factors, which in  
17 some I would argue are greater than sitting on the trunk  
18 here, if those factors don't rise to reasonable suspicion,  
19 there's no conceivable way that those could give the  
20 officers reasonable suspicion.

21 THE COURT: So, they had no reasonable suspicion to  
22 detain him per those cases and ---

23 MR. COMISH: Exactly, Your Honor.

24 THE COURT: --- he's just sitting on his car while  
25 they're waiting for whatever?

1 MR. COMISH: And key, while they're waiting, which  
2 would then mean that the stop has been measurably extended  
3 for the drug dog sniff.

4 THE COURT: What do you say about it, Ms. Mangum?

5 MS. MANGUM: Your Honor, there's nothing in the  
6 record. There is nothing argued on the lower court level  
7 to support any sort of delay by the officer. It's a less  
8 than fifteen minute stop from start to finish, a lawful  
9 traffic stop. It was never argued that the stop was not  
10 unlawful.

11 There's testimony in the record from the officer about  
12 the fact that it, it -- the length of time it takes to do  
13 all the things that he has to do on any lawful traffic  
14 stop. He's got to check defendant to make sure there's no  
15 outstanding warrants. He's got to check the registration.  
16 He's relying on other people through his radio for answers.

17 And as a matter of fact, Your Honor, on page 86 of the  
18 transcript when we are arguing this, I think, for the  
19 second or third time during the trial -- and you'll see  
20 where I say:

21 At the time when the K-9 arrives, Sergeant Webb  
22 was in the process -- he was on the radio trying  
23 to verify if there's any outstanding warrants.

24 When K-9 arrived, he still did not know if the  
25 defendant had any outstanding warrants. When K-9 arrived,

1 he still had not completed writing his citation.

2 THE COURT: And it might take longer in South Carolina  
3 than it takes in Nebraska.

4 MS. MANGUM: That's right. It's clearly, it's clearly  
5 a different case. It's easy to distinguish from *Rodriguez*,  
6 which is essentially the case that he relies on. In  
7 *Rodriguez*, the officer writes the warning tickets, then  
8 asks him to search the car. The stop is over; there's  
9 nothing else going. He's checked his record. He's checked  
10 the car and has written the ticket. He then asks him can I  
11 search the car. He says no. There's a twenty to thirty-  
12 minute delay while he waits for a K-9 dog to come, and the  
13 court says that is an elongated stop.

14 That's not the case here. The dog comes while the  
15 stop is still in action. By the time the K-9 arrives,  
16 there's been no check on the defendant's background.  
17 There's been no finalization that's been -- warning ticket  
18 has not been handed to the defendant. The stop is still in  
19 progress.

20 Because the stop is still in progress, we don't even  
21 have to get to the reasonable suspicion, probable cause,  
22 any of those kinds of things. There was reasonable  
23 suspicion to pull the car and, therefore, the K-9 search  
24 was -- there's no problem with that.

25 THE COURT: All right.

1 MR. COMISH: If I may briefly?

2 THE COURT: Yes, sir.

3 MR. COMISH: Once again, reasonable suspicion to pull  
4 the car over is a completely different issue. That's a  
5 traffic violation. We're talking about criminal  
6 investigation. And *Rodriguez*, again, on page 5: It is  
7 appropriate to examine whether the police diligently  
8 pursued the investigation.

9 Per Ms. Mangum's own testimony, he called the warrant  
10 division once the drug dog had already gotten there. He  
11 called the drug dog, I believe, four or five times.  
12 Therefore, he's not diligently pursuing his traffic  
13 investigation.

14 MS. MANGUM: Your Honor, what I said was ---

15 MR. COMISH: And ---

16 MS. MANGUM: --- he was on the radio with the warrant  
17 person.

18 THE COURT: All right.

19 MR. COMISH: Regardless of when he called the warrant  
20 division, he clearly engaged in dilatory tactics. He  
21 stopped the investigation several times to engage in  
22 conversations with the drug dog handler. The drug dog  
23 handler said hang on a minute. I'm still trying to get  
24 here. I had to tow a car. He goes back. Talk, talk to my  
25 guy. Comes back in. Talks to the drug dog handler.

1       If he was diligently pursuing his traffic  
2       investigation rather than using that time to delay to give  
3       the dog time to get there, he would have been calling the  
4       headquarters saying hey, why haven't you gotten me my  
5       warrants yet.

6           THE COURT: Was this a Saturday night?

7           MR. COMISH: No, Your Honor. This is 11 a.m. I do  
8       not believe what -- I don't recall which day of the week it  
9       is, but it is, I believe, a workday.

10          THE COURT: All right. Yes, ma'am. Final point on  
11       this point.

12          MS. MANGUM: Your Honor, it was a Friday just for your  
13       edification.

14          THE COURT: Friday morning, all right.

15          MS. MANGUM: And Mr. Comish misunderstands the purpose  
16       of the law and the stop. It's not his place to say that  
17       the officer did not have a right to or should not have  
18       gotten on his radio and called for the drug dog. It's not  
19       his place to say that the officer should not have asked  
20       questions about whether or not the defendant knew anything  
21       about drugs. These are all perfectly permissible  
22       activities that officers do every day in the course of a  
23       legal traffic stop.

24          THE COURT: All right.

25          MS. MANGUM: It doesn't rise to the level of violation

1 or error of law, Your Honor.

2 THE COURT: Thank you.

3 How about any minor points you had, unless you had  
4 more major points?

5 MR. COMISH: I have one more Fourth Amendment point,  
6 Your Honor.

7 THE COURT: All right.

8 MR. COMISH: This one will be brief but again will  
9 also be dispositive. Once the drug dog ---

10 THE COURT: So far you're leading on the first  
11 argument, and she's leading on the second argument.

12 MR. COMISH: Thank you, Your Honor. I hope to lead on  
13 the third argument as well.

14 THE COURT: All right.

15 MR. COMISH: Once the drug dog arrived on scene, when  
16 my client initially exited the vehicle, he left his door  
17 open. He then went around the back and discussed with the  
18 officer, you know, the traffic violation we've already  
19 talked about.

20 The drug dog handler got there, got his dog warmed up,  
21 and I'll just hold a piece of paper up to illustrate his  
22 route. Start here. Circled the car. In the video, you  
23 can see him putting his hand in the open door.

24 THE COURT: Talking about the dog now?

25 MR. COMISH: Yes, Your Honor, the dog and the handler.

1 THE COURT: All right.

2 MR. COMISH: Goes around the rear passenger bumper.  
3 The dog tries to wander off into the woods. He jerks back  
4 on the leash. Leads the dog back around the car. The dog  
5 jumps inside.

6 Now, he testified that his dog, Zorro, was an  
7 aggressive alert K-9, meaning that when -- once the dog  
8 smelled drugs ---

9 THE COURT: Is Zorro still with us? Because I know  
10 they've been honoring -- certain dogs die and they have ---

11 MR. COMISH: I don't ---

12 THE COURT: --- buried them with a badge and all that.

13 MR. COMISH: It was not clear in his testimony, but he  
14 was constantly referring to Zorro in the past tense, so I  
15 assume that maybe -- he was already an old dog in 2011.

16 THE COURT: Because I had a ceremony honoring the  
17 death and burial of one dog some years ago. We don't know  
18 if it's Zorro or not, so go ahead.

19 MR. COMISH: Thank you, Your Honor.

20 THE COURT: Seems like I heard Zorro because that was  
21 my favorite TV program growing up, Zorro. Do you remember  
22 that, or you were too young.

23 MR. COMISH: I used to watch it with my grandmother.

24 THE COURT: In reruns, all right.

25 MR. COMISH: So, Zorro is an aggressive alert dog.

1 When Sergeant Williams explained what aggressive alert  
2 means, he says the dog will bark, the dog will scratch, and  
3 the dog will butt with his head when it senses the odor of  
4 an illegal narcotic.

5 Per his own testimony, the only time in which Zorro  
6 was alerted was after he was admitted into the car. You  
7 can't do that.

8 THE COURT: You don't think Zorro found anything and  
9 he was directing Zorro, or what is your argument?

10 MR. COMISH: I, all I know is that Zorro did not alert  
11 to the -- in the exterior of the car. Therefore, there was  
12 no probable cause to search the interior of the car. Once  
13 he was inside the car ---

14 THE COURT: He forced Zorro into the car? Zorro  
15 wasn't acting independently?

16 MR. COMISH: It's unclear from the video exactly  
17 what's happened. There are people moving back and forth.  
18 I believe you can see in the first pass the handler put his  
19 hand inside the car. In the second pass you can see,  
20 clearly see that Zorro is not alerting, but because of just  
21 the enter -- you know, people moving back and forth in  
22 front of the camera, it's unclear whether Williams boosted  
23 him up or he got in the car of his own accord. Of course,  
24 I would submit that that is immaterial. He should not have  
25 been allowed inside the car until he ---

1 THE COURT: Maybe because it took him so long to get  
2 there, he didn't want to waste any time with Zorro going  
3 off into the woods and all those places he wanted to.

4 MR. COMISH: It could be. They knew they were on the  
5 clock; you can see them glancing at their watches the whole  
6 time.

7 Once Zorro was in the car, then he clearly alerts.  
8 And once again if you refer back to Williams's testimony,  
9 the only alert he talks about is once Zorro is in the car,  
10 he starts barking and scratching and head butting at the  
11 area of the dash in which they found...

12 THE COURT: So, I'm asked to evaluate the proper means  
13 of a dog sniffing a car, or what's the point of this?

14 MR. COMISH: The point of this is a government agent  
15 can only search the interior of a vehicle upon probable  
16 cause. The purpose of a dog sniff, a so-called free-air  
17 sniff which can be, obviously as we've discussed -- does  
18 not require probable cause. The purpose of that free-air  
19 sniff is to give the officer probable cause to search the  
20 interior of the vehicle. Free-air sniff is allowed in the  
21 exterior of the vehicle. If during the course of that  
22 free-air sniff the dog alerts, then the officer has  
23 probable cause to search the interior.

24 In the present case, by Officer Williams's own  
25 testimony, there was no alert on the exterior of the

1 vehicle. Therefore, he did not have probable cause to  
2 either himself or through the dog search the interior of  
3 the vehicle. Therefore, it's an illegal search and any  
4 evidence derived therefrom should be suppressed.

5 THE COURT: All right, how about that, Madame  
6 Prosecutor?

7 MS. MANGUM: It's a great argument, Your Honor, but  
8 it's not what happened. If we could look at the transcript  
9 on page 68, Officer Williams is in the middle of his  
10 testimony about what happened that day. There's also a  
11 video of all this that the jury has already seen at this  
12 point, and he says -- I'm on line 6.

13 THE COURT: All right.

14 MS. MANGUM: Page 68.

15 THE COURT: Skipping all over this thing. I've got to  
16 go back to page 1 and read the whole thing, I guess. I'm  
17 on page 68 on line what?

18 MS. MANGUM: Line 6, Your Honor.

19 THE COURT: All right.

20 MS. MANGUM: He's explaining to the jury what, what he  
21 did that day with the dog, with Zorro, and he says:

22 We get to the back of the vehicle. We come back  
23 around. When we get back to the door is when he  
24 catches ---

25 He is the dog, Zorro.

1           --- the narcotic odor, and he goes into the  
2 vehicle by himself. I didn't prompt him, didn't give him  
3 any commands or anything like that. He went in the  
4 vehicle, and that's when he went straight. I can tell by  
5 -- it's hard to see on the video because I believe somebody  
6 was in it, but if you noticed his tail, he started wagging,  
7 and then he went in there. He went into the vehicle. He's  
8 aggressive alert.

9           And he talks about that.

10          THE COURT: So, what was Mr. Comish explaining to me  
11 just a minute ago?

12          MS. MANGUM: I'm not sure, Your Honor.

13          THE COURT: His rendition of it or?

14          MS. MANGUM: I suppose so.

15          THE COURT: But not the testimony.

16          MS. MANGUM: Not the testimony. And, Your Honor,  
17 further in the transcript when we argue this for the, I  
18 don't know, third or fourth time, the judge says on page 87  
19 at the bottom of that page, starting on page -- 20, you'll  
20 see where his argument that he just made is made. And I  
21 say: Your Honor, I believe that's a misinterpretation. The  
22 defendant left the car door open. Essentially everything  
23 I'm telling you now. It continues on to page 88, and on  
24 line 10 there the court says: I don't believe -- in  
25 response to what he just argued here -- I don't believe

1 that's what the testimony was.

2 THE COURT: Well, can I review any of that sitting  
3 here on an appeal? Can I review any of this?

4 MS. MANGUM: Your Honor, I'm not sure. I find the, I  
5 find the whole appeal confusing. I'm not sure exactly what  
6 the issue is here. If he's claiming that it was an error  
7 of law that the judge allowed the testimony, then clearly  
8 that's within your purview. If he wants to argue *de novo*  
9 whether or not -- what the testimony was, then clearly  
10 that's not within your purview.

11 THE COURT: I'm not here to interpret your version of  
12 the testimony and his version of the testimony and then  
13 apply to law to whichever version I believe.

14 MS. MANGUM: Your Honor, I think the transcript speaks  
15 for itself.

16 THE COURT: Okay.

17 MS. MANGUM: The officer testified. There is  
18 testimony in the transcript that says that the dog alerted  
19 on his own, and so there is testimony to support that  
20 decision by the judge.

21 THE COURT: Okay, I've got to get this call.

22 (OFF THE RECORD.)

23 THE COURT: All right, thank you all. Who was  
24 talking?

25 MR. COMISH: May I respond just very briefly?

1 THE COURT: Yes, sir. Her point was ---

2 MR. COMISH: That he alerted.

3 THE COURT: That this is not -- whatever happened is  
4 not what you said happened.

5 MR. COMISH: That's right. So, I'm just going to go  
6 briefly back to the transcript.

7 THE COURT: All right.

8 MR. COMISH: On page 63: Aggressive dog, which means  
9 he barks or scratches at the item.

10 K-9 Zorro was an aggressive alert dog. So, if K-9  
11 Zorro alerts, it's going to be scratching and barking per  
12 the officer's own testimony.

13 Referring back to ---

14 THE COURT: Can I qualify the dog as an expert under  
15 *State vs. Jones*?

16 MR. COMISH: I do not know, Your Honor. That issue  
17 was not raised.

18 THE COURT: All right.

19 MR. COMISH: Referring back to the transcript on page  
20 68 where they're talking about the search itself, Ms.  
21 Mangum pointed out line 6. There is no aggressive alert  
22 mentioned until line 15. He was aggressive alert the first  
23 time. I believe the word alert was used was after the dog  
24 was in the vehicle. He goes:

25 When we get to the back door, he catches a

1           narcotic odor. He doesn't alert. He wags a  
2           tail.

3           That is not what Officer Williams himself says is an  
4           alert from this dog. Officer Williams says alert is  
5           barking and scratching.

6           THE COURT: Do we have a video of what the dog did?

7           MR. COMISH: Yes, Your Honor, we do.

8           THE COURT: And that's part of -- or that's what y'all  
9           are saying is in evidence or not in evidence or in the  
10          transcript? Am I supposed to look at that, too?

11          MS. MANGUM: No, Your Honor. I don't think the  
12          question is before you.

13          THE COURT: Okay.

14          MR. COMISH: But the question that -- I mean, I'm not  
15          sure that the video is necessary because we can rely on  
16          Williams's testimony to see what happened, which is the dog  
17          alerted in the car. Dog has to alert before he's in the  
18          car.

19          THE COURT: All right. I understand that issue.  
20          Y'all have done pretty good on that one. What's the next  
21          one?

22          MR. COMISH The next one, and I'll just mention this  
23          one briefly, Your Honor, would be a *U.S. vs. Doggett* issue.

24          THE COURT: *Doggett*?

25          MR. COMISH: Yes, Your Honor. This is a municipal

1 court case. It took us just shy of four years to bring  
2 this to trial, and I made a *Doggett* motion before the  
3 trial, which was ---

4 THE COURT: Was that a speedy trial motion? What is a  
5 *Doggett* motion?

6 MR. COMISH: A *Doggett* is an Eighth Amendment issue  
7 whether there is a presumption of prejudice to the  
8 defendant based on the length of the delay in *Doggett*  
9 between arrest and indictment, but the holding applies more  
10 generally to any time you are arrested up until the charges  
11 are resolved by trial.

12 U.S. vs. *Doggett* is a slightly different timeframe.  
13 It's an eight-year delay, but then that was a federal  
14 district court. My argument here is that the purpose of  
15 municipal court is to move these cases along in a much  
16 faster timeframe.

17 THE COURT: Why did it take so long with this one?

18 MR. COMISH: Your Honor, I have no idea. It was teed  
19 up for trial several times. It was in trial the summer  
20 before I started, which would have been the summer of 2014.  
21 My attorney -- the attorney in my office who was at the  
22 trial, Cheslyne Brighthop, said the judge, after hearing  
23 motions, *sua sponte* decided to continue the trial, which  
24 then took us another eight months.

25 THE COURT: Brighthop from Trenton?

1 MR. COMISH: Yes, Your Honor, Cheslyne Brighthop.  
2 She's in the building at the moment, should you wish to ask  
3 her just about that.

4 THE COURT: You know she's roommates with my ex-law  
5 clerk.

6 MR. COMISH: Oh. Okay.

7 THE COURT: Who is a prosecutor.

8 MS. MANGUM: Your Honor, I would just say that none of  
9 this is properly before you. He can't take testimony on an  
10 appeal. What we have is the record, not what he heard from  
11 somebody in his office.

12 THE COURT: You're a public defender now?

13 MR. COMISH: I am, Your Honor.

14 THE COURT: Okay.

15 MR. COMISH: It's another attorney in my office and,  
16 as you said, any attorney in my office could come talk  
17 should you require that. My order -- I mean, the *Doggett*  
18 issue is clearly properly before you as that was raised and  
19 preserved.

20 THE COURT: Well, you should ask Ms. Brighthop what  
21 Tonya thinks of Mr. Phillips before you remind me of making  
22 all these constitutional claims.

23 MR. COMISH: Is that a good thing or a bad thing, Your  
24 Honor?

25 THE COURT: It's a good thing. He won his last case

1 raising all these constitutional things. It's a good  
2 thing. I'm impressed by anyone who spends time to learn  
3 all this stuff and to present it, and most people don't  
4 even talk about it.

5 MR. COMISH: Thank you, Your Honor. I'll move very  
6 briefly.

7 The whole thing is after a year between arrest and  
8 trial, after a year has elapsed, a presumption of prejudice  
9 to the defendant attaches to the case. That presumption of  
10 prejudice only grows more important, I'm posing, as time  
11 floats. In this case, there was a forty-five month time  
12 delay between arrest and trial. The Supreme Court has said  
13 we have found delays shorter than this eight-year delay  
14 extraordinary. I submit that that should apply to a  
15 municipal court case for simple possession of marijuana  
16 that took forty-five months to bring to trial. So, the  
17 judge committed an error of law when she did not -- she  
18 denied my motion without requiring Ms. Mangum to rebut the  
19 presumption of prejudice.

20 THE COURT: And what did she say?

21 MR. COMISH: That would be a pretrial motion. Beg the  
22 court's indulgence for one moment.

23 MS. MANGUM: Your Honor, if I may? Our pretrial  
24 motion discussion begins on page 15. He makes this exact  
25 same argument. He brings out *Doggett* on page 15.

1 Beginning on line 22, the court says: All right, Ms.  
2 Mangum. To which I reply -- and I'm embarrassed to read  
3 what my little analogy is there. You can read it for  
4 yourself.

5 MR. COMISH: Ms. Mangum spoke -- just misspoke. It's  
6 actually on page 18, I believe, Your Honor, not 22.

7 MS. MANGUM: No. I'm on page 15. That's what I said,  
8 page 15.

9 And then, Your Honor, it goes on to page 16 where from  
10 the court's own file I read he was arrested in 2011. He  
11 did not request a jury trial until of November 2011. That  
12 delay is due to the defendant. He waited until February  
13 2012 to request a public defender; that delay is also due  
14 to the defendant. The case did not come back onto a docket  
15 until July of 2014. I'll address that in a second, Your  
16 Honor. Then I say the city was prepared to go forward that  
17 day, July 14th. There's a note in the court file the  
18 public defender asked for a continuance on that date. It  
19 was then on the jury trial docket in February of 2015. I  
20 personally attempted to schedule a trial; Mr. Comish was  
21 not available. We then set it for a date certain, and  
22 that's why we went forward.

23 In terms of the scheduling of the cases, we don't  
24 schedule cases the same way that general sessions does. It  
25 does not fall on the city attorney's office to do any

1 scheduling. Scheduling done completely by the court in  
2 terms of jury trial. We don't call a case. It had to be  
3 placed on a jury trial docket by the court, and that's also  
4 in here as well. So, the delay between February 2012 and  
5 July of 2014 is a court delay.

6 THE COURT: Well, he said it's a minor issue, and any  
7 time I see defendant requests continuance, that usually  
8 wipes that argument. So, you won that one.

9 MS. MANGUM: Thank you, Your Honor.

10 THE COURT: What else you got over there?

11 MR. COMISH: That would be all the issues, Your Honor.

12 THE COURT: All right. Very good.

13 Well, I'm going to -- as I said, you're leading on the  
14 first one on the chain of custody. I'm going to review  
15 everything. You're leading that one; she's leading the  
16 second one.

17 MR. COMISH: And the third one, Your Honor, the  
18 search?

19 THE COURT: She's leading the third one on the dog,  
20 but I have to read the transcript to get a clear  
21 understanding.

22 MS. MANGUM: Yes, Your Honor.

23 THE COURT: And you're leading on number one, and my  
24 question in my mind is do I rule on just the one if you win  
25 one, or do I rule on the one and also rule on the rest even

1 if you win the first one because if you win the first one,  
2 you get a new trial. I guess you do. Is that what  
3 happens?

4 MR. COMISH: If I win the first one, I would ask that  
5 you order that the chain of custody be suppressed,  
6 overruling her order.

7 THE COURT: Of course they get a chance to come back  
8 and do a better job the next time. They can find the  
9 person who wasn't there the first time if I say she's got  
10 to be there. I don't think I'd reverse the conviction.  
11 I'd remand.

12 MR. COMISH: We're not asking you to reverse. Just to  
13 overrule her denying my objection.

14 MS. MANGUM: Your Honor, if that's what he wants,  
15 we're fine with that.

16 MR. COMISH: If she wants to concede that she does not  
17 need a chain of custody be introduced, we can sign a  
18 consent order today.

19 THE COURT: Well, I'm a chain of custody expert, among  
20 many other areas of expertise. Since I've been listening  
21 to Donald Trump, I've found it's really good to just boast  
22 about what you're expert in. And so I think that's why  
23 I'm saying you're leading because having prosecuted for  
24 eighteen years, this Rule 6, I remember when it wasn't  
25 there, and it's now there and it's a substitute. That has

1 to be strictly complied with.

2 MR. COMISH: That's right, Your Honor, and  
3 respectfully I would ask that you, even if you would side  
4 with me on that one, include in your order the other two  
5 issues even if you side against me in those.

6 THE COURT: And decide the rest of them, too?

7 MR. COMISH: Yes, Your Honor.

8 THE COURT: But courts are typically -- appellate  
9 courts where I sit in appeal decide matters on as limited  
10 basis as is necessary so as to not risk making an error on  
11 other things that's not, that's not -- does not control the  
12 decision. So, if you win number one, then quite often the  
13 court says having granted -- having reversed the  
14 conviction, we will not address the remaining issues. So,  
15 that's often been the case.

16 MR. COMISH: Okay. Thank you, Your Honor.

17 THE COURT: But I've said she'd leading on everything  
18 else, so if you get a new trial -- no matter. We'll think  
19 about it.

20 MR. COMISH: Thank you, Your Honor.

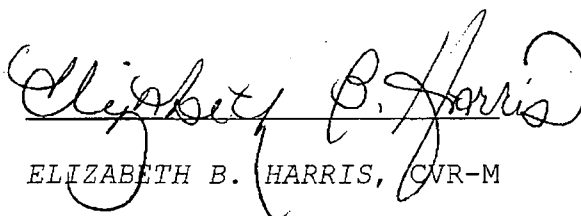
21 MS. MANGUM: Thank you, Your Honor.

22 --- END OF TRANSCRIPT OF RECORD ---

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED  
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH  
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING  
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE  
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON  
THE 14TH DAY OF AUGUST, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

  
ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

DECEMBER 16TH, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Case No. 2015-CP-40-01601

192

State of South Carolina, )

v. )

Cedric Xavier Heyward, )

Appellant. )  
\_\_\_\_\_ )

**ORDER DENYING APPEAL**

THIS MATTER came before the Court as a Municipal Court Appeal on August 14, 2015. Present at the hearing were Jonathan Cornish, representing the Appellant, and Jessica Mangum, representing the City of Columbia.

On March 4, 2015, a jury trial was held in the City of Columbia Municipal Court. Appellant, Cedric Xavier Hewyard, was found guilty of ticket number 81734FP and sentenced by the Honorable Dana D. Turner. Appellant, through his counsel, appealed claiming of an illegal search under the Fourth Amendment. Appellant contends that that trial judge erred in overruling objections made by Appellant and finding that the search of Appellant's vehicle was lawful and that the City complied with chain of custody requirements.

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. A seizure for a traffic violation justifies a police investigation of that violation. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). A dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. *Illinois v. Caballes*, 543 U.S. 405 (2005). An officer may conduct certain unrelated checks during

an otherwise lawful traffic stop. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). The United States Supreme Court held in *Rodriguez* that a dog sniff conducted after the completion of a traffic stop, which exceeded the time needed to handle the matter for which the stop was made, violated the Constitution. <sup>193</sup>

In this case, the Officer who made the initial traffic stop testified that he was still in the process of issuing the warning ticket when the K-9 Unit arrived at the scene. The traffic stop itself lasted for fifteen minutes during which the Officer checked Appellant's driver's license, registration, and proof of insurance in addition to inquiring about other safety related issues. Based on a review of the record, there is no evidence of a demonstrable delay in the traffic stop beyond a reasonable duration that would constitute a constitutional violation.

Furthermore, the law allows a drug dog a "free air sniff" around the exterior of a vehicle. Appellant contends that the dog did not alert to a narcotic odor until he was inside of the vehicle. However, the Officer in charge of the K-9 Unit testified that the dog was trained only to go where narcotics odors existed, which the dog did as an alert leading to the discovery of drugs in this case.

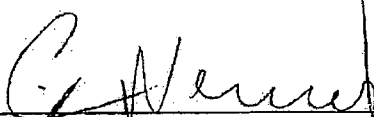
As for Appellant's assertion that the City did not properly comply with the chain of custody requirements, this is unsupported by the record. Rather, it appears that the lower court properly found that every person in the chain of custody need not be present to testify at trial, and that one only has to prove chain of custody to the extent practicable.

Having carefully considered the arguments, submissions of counsel, and applicable law, the Court finds no constitutional errors by the trial judge justifying the granting of this Appeal.

**THEREFORE, IT IS ORDERED that the Appeal is DENIED.**

AND IT IS SO ORDERED.

194

  
Clifton Newman  
Presiding Judge

Columbia, South Carolina

This 12<sup>th</sup> day of January, 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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FEB 17 2016

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Honorable G. Thomas Cooper, Circuit Judge

Case No. 2015-CP-40-01601

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

v.

Cedric Xavier Heyward,.....Appellant.

**NOTICE OF APPEAL**

Cedric Xavier Heyward appeals the order of the Honorable Clifton Newman dated January 13, 2016, which denied the appeal of his conviction (warrant no. 81734FP) in the City of Columbia Municipal Court. Appellant received written notice of the order on January 13, 2016.

November 9, 2015

Jonathan S Comish  
Richland County Public Defenders Office  
P.O. Box 192  
Columbia, South Carolina 29202  
(803) 765-2592  
Attorney for Appellant

**RECEIVED**  
FEB 12 2016  
Legal Department

**RICHLAND COUNTY**  
**FILED**  
2016 FEB 12 PM 2:31  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

**CERTIFIED TRUE COPY**  
**OF ORIGINAL FILED,**  
**C.C.P. & G.S.**  
**RICHLAND COUNTY**  
**SOUTH CAROLINA**

Other Counsel of Record:  
Assistant City Attorney Jessica Mangum  
City Attorney's Office, Columbia SC  
Post Office Box 667  
Columbia, SC 292002  
(803) 737-4242  
Attorney for Respondent

STATE OF SOUTH CAROLINA )

COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND )

Warrant # 81734FP

Indictment #

The State of South Carolina, )

Vs. )

CERTIFICATE OF SERVICE

Cedric Xavier Heyward )

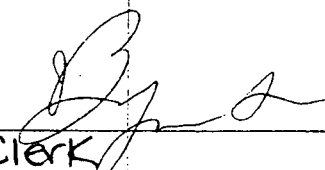
Defendant. )

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FEB 17 2016

**SC Court of Appeals**

The undersigned, being duly sworn, hereby deposes and says that he is a clerk for the Richland County Public Defender's Office and that on this the 10 day of Feb, 2016, he served the Court of Appeals by hand delivering the Sentencing Sheet to their office located at 1401 Main Street Columbia, South Carolina and leaving it with Jessica Magnum a person of authority at said office.

  
 Clerk

Richland County Public Defender's Office  
 P.O. Box 192  
 Columbia, South Carolina 29202  
 (803) 765-2592

Columbia, South Carolina

This 10 day of February, 2016.

FILED  
 ANNE H. W. McBRIDE  
 C.C.P. & G.S.

2016 FEB 17 PM 4:31

RICHLAND COUNTY  
 FILED

FORM 14  
DESIGNATION OF MATTERS

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 24 2016  
SC Court of Appeals

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

Case No. 2015-CP-400-1604

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

v.

Cedric Xavier Heyward,..... Appellant.

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposed the following be included in the Record on Appeal:

1. Transcript of proceedings of City of Columbia Municipal Court
2. City's Exhibit 1
3. Transcript of Court of Common Pleas proceedings

I certify that this designation contains no matter which is irrelevant to this appeal.

June 24, 2016

Jonathan Comish  
Assistant Public Defender  
Richland County Public Defender's Office  
Post Office Box 192  
Columbia, South Carolina 29202  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS

Warrant Numbers: 2015-CP-400-1604

The State of South Carolina )

Certificate of Service

vs. )

Cedric Xavier Heyward )

Defendant.)

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JUN 24 2016

SC Court of Appeals

I Steven Harper

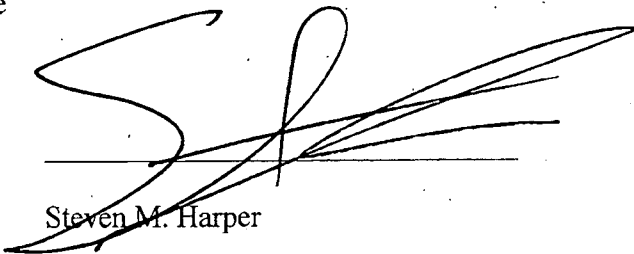
do swear that on this day I did serve a copy

of the appeal brief with the City Attorney Jessica Mangum by leaving a clocked copy of

the appeal brief in the above referenced case with the receptionist at City Attorney office  
~~Court of Appeals Desk Clerk at~~

~~1220 Senate St, Columbia, SC 29201~~ on behalf of Attorney Jonathan Comish with the

Richland County Public Defenders Office

  
 Steven M. Harper

Clerk  
 Richland County Public Defenders Office  
 1701 Main Street  
 Columbia, SC 29201  
 (803) 765-2592

Columbia, South Carolina

This 24 day of June, 2016

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS

Warrant Numbers: 2015-CP-400-1604

The State of South Carolina )

Certificate of Service

vs. )

Cedric Xavier Heyward )

Defendant.)

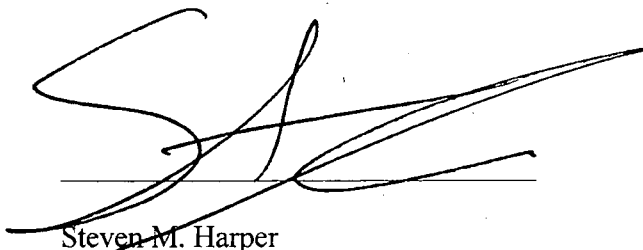
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JUN 24 2016

SC Court of Appeals

I Steven Harper do swear that on this day I did file an

appeal brief with the South Carolina Court of Appeals by leaving the original appeal in the above referenced case with the Court of Appeals Desk Clerk at 1220 Senate St, Columbia, SC 29201 on behalf of Attorney Jonathan Comish with the Richland County Public Defenders Office



Steven M. Harper

Clerk  
 Richland County Public Defenders Office  
 1701 Main Street  
 Columbia, SC 29201  
 (803) 765-2592

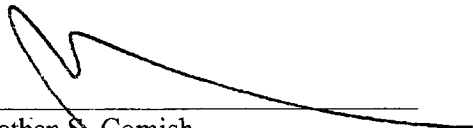
Columbia, South Carolina

This 24 day of June, 2016

## 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."

August 22, 2016

  
\_\_\_\_\_  
Jonathan S. Comish  
Assistant Public Defender

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Columbia, S. C. 29201  
(803) 765-2592

ATTORNEY FOR APPELLANT

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AUG 24 2016  
SC Court of Appeals